



Part 2

Planning Department <planning@edcgov.us>

FW: Saratoga Retail Phase 2 - DR-R18-0001 (email 4)

1 message

Brooke E. Washburn <BWashburn@murphyaustin.com>
To: "planning@edcgov.us" <planning@edcgov.us>

Thu, Aug 16, 2018 at 2:21 PM



Brooke E. Washburn // Attorney at Law
Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850, Sacramento, CA 95814
P: 916.446.2300 F: 916.503.4000 E: bwashburn@murphyaustin.com
murphyaustin.com

From: Brooke E. Washburn
Sent: Thursday, August 16, 2018 1:22 PM
To: 'charlene.tim@edcgov.us' <charlene.tim@edcgov.us>
Cc: 'Timothy White' <tjwhitejd@gmail.com>; 'John Davey' <jdavey@daveygroup.net>; 'john.hidahl@edcgov.us' <john.hidahl@edcgov.us>; 'jvegna@edcgov.us' <jvegna@edcgov.us>; 'Hilary Krogh - Saratoga' <hilaryd73@gmail.com>; 'Kim S - Camom' <CAmom2345@hotmail.com>; 'Rebecca - neighbor' <rebecca.isbell@ymail.com>; 'Wes Washburn' <weswashburn@yahoo.com>
Subject: RE: Saratoga Retail Phase 2 - DR-R18-0001 (email 4)

Attached, please find pdf documents that are collectively **Exhibit E**, substantial evidence submitted to demonstrate a significant impact to Aesthetics (Section A. of the public comment- previously submitted). Please add these documents to the public record for Saratoga Retail Phase 2 - DR-R18-0001.



Brooke E. Washburn // Attorney at Law
Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850, Sacramento, CA 95814
P: 916.446.2300 F: 916.503.4000 E: bwashburn@murphyaustin.com
murphyaustin.com

From: Brooke E. Washburn
Sent: Thursday, August 16, 2018 1:18 PM
To: 'charlene.tim@edcgov.us' <charlene.tim@edcgov.us>

8/17/2018

Edcgov.us Mail - FW: Saratoga Retail Phase 2 - DR-R18-0001 (email 4)

Cc: 'Timothy White' <tjwhitejd@gmail.com>; 'John Davey' <jdavey@daveygroup.net>; 'John.hidahl@edcgov.us' <john.hidahl@edcgov.us>; 'jvegna@edcgov.us' <jvegna@edcgov.us>; 'Hilary Krogh - Saratoga' <hilaryd73@gmail.com>; 'Kim S - Camom' <CAmom2345@hotmail.com>; 'Rebecca - neighbor' <rebecca.isbell@ymail.com>; 'Wes Washburn' <weswashburn@yahoo.com>
Subject: RE: Saratoga Retail Phase 2 - DR-R18-0001 (email 3)

Attached, please find pdf documents that are collectively **Exhibit B**, substantial evidence submitted to demonstrate a significant impact to Aesthetics (Section A. of the public comment- previously submitted). Please add these documents to the public record for Saratoga Retail Phase 2 - DR-R18-0001.



Brooke E. Washburn // Attorney at Law
Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850, Sacramento, CA 95814
P: 916.446.2300 F: 916.503.4000 E: bwashburn@murphyaustin.com
murphyaustin.com

From: Brooke E. Washburn
Sent: Thursday, August 16, 2018 1:13 PM
To: 'charlene.tim@edcgov.us' <charlene.tim@edcgov.us>
Cc: 'Timothy White' <tjwhitejd@gmail.com>; 'John Davey' <jdavey@daveygroup.net>; 'John.hidahl@edcgov.us' <john.hidahl@edcgov.us>; 'jvegna@edcgov.us' <jvegna@edcgov.us>; 'Hilary Krogh - Saratoga' <hilaryd73@gmail.com>; 'Kim S - Camom' <CAmom2345@hotmail.com>; 'Rebecca - neighbor' <rebecca.isbell@ymail.com>; 'Wes Washburn' <weswashburn@yahoo.com>
Subject: RE: Saratoga Retail Phase 2 - DR-R18-0001 (email 2)

Attached, please find pdf documents that are collectively **Exhibit A**, substantial evidence submitted to demonstrate a significant impact to Aesthetics (Section A. of the public comment- previously submitted). Please add these documents to the public record for Saratoga Retail Phase 2 - DR-R18-0001.

Brooke E. Washburn



Brooke E. Washburn // Attorney at Law
Murphy Austin Adams Schoenfeld LLP
555 Capitol Mall, Suite 850, Sacramento, CA 95814
P: 916.446.2300 F: 916.503.4000 E: bwashburn@murphyaustin.com
murphyaustin.com

From: Brooke E. Washburn
Sent: Thursday, August 16, 2018 12:21 PM
To: 'charlene.tim@edcgov.us' <charlene.tim@edcgov.us>
Cc: 'Timothy White' <tjwhitejd@gmail.com>; 'John Davey' <jdavey@daveygroup.net>; 'John.hidahl@edcgov.us' <john.hidahl@edcgov.us>; 'jvegna@edcgov.us' <jvegna@edcgov.us>; 'Hilary Krogh - Saratoga' <hilaryd73@gmail.com>;

<https://mail.google.com/mail/u/0/?ui=2&ik=55ccc7abc281c4c5b5185e2a141c2a>

8/17/2018

Edcgov.us Mail - FW: Saratoga Retail Phase 2 - DR-R18-0001 (email 4)

'Kim S - Camom' <CAmom2345@hotmail.com>; Rebecca - neighbor <rebecca.isbell@ymail.com>; 'Wes Washburn' <weswashburn@yahoo.com>

Subject: Saratoga Retail Phase 2 - DR-R18-0001

Dear Charlene,

Attached is public comment submitted by affected and concerned residents with regard to a proposed project (Saratoga Retail Phase 2 - DR-R18-0001). Due to the size of the documentation to be submitted, I will send all attachments under separate cover. Kindly include all comments and attachments in the public record for the project (Saratoga Retail Phase 2 - DR-R18-0001), and submit the same to the commission in advance of the **August 23, 2018**, hearing.

Brooke E. Washburn



Brooke E. Washburn // Attorney at Law

Murphy Austin Adams Schoenfeld LLP

555 Capitol Mall, Suite 850, Sacramento, CA 95814


P: 916.446.2300 F: 916.503.4000 E: bwashburn@murphyaustin.com


murphyaustin.com


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6 attachments


 **Community Design Standards.pdf**
318K

 **Parking-and-Loading-Standards-adopted-12-15-2015.pdf**
177K

 **Saratoga extension study approved; construction still years away.pdf**
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 **Saratoga.pdf**
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 **TIM-Fee-Admin-Manual-Adopted-01-24-17.pdf**
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 **GJ 17-18 Complete Final Report.pdf**
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Community Design Standards

On December 15, 2015, the County Board of Supervisors adopted new and/or updated community design standards to augment those found in the Zoning Ordinance Update on the following subjects:

1. Mixed Use
2. Landscaping and Irrigation
3. Mobile Home Parks
4. Outdoor Lighting
5. Parking and Loading
6. Research and Development

The documents below are in PDF format and should be viewed with Adobe Reader.

Mixed Use Design Manual - Revised 4-24-18

Mixed Use Design Manual - Adopted 12-15-2015

Landscaping and Irrigation Standards - Adopted 12-15-2015

Mobile Home Park Design Standards - Adopted 12-15-2015

Outdoor Lighting Standards - Adopted 12-15-2015

Parking and Loading Standards - Adopted 12-15-2015

Research and Development Zone Standards - Adopted 12-15-2015



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Community Design Standards

In accordance with the Zoning Ordinance Update

Parking and Loading Standards

Adopted December 15, 2015

Community Design Standards

Parking And Loading Standards

PARKING AND LOADING

Sections:

- 4.1 Purpose and Intent
- 4.2 Definitions
- 4.3 Parking Plan Required
- 4.4 Special Parking Requirements and Adjustments
- 4.5 Material and Passenger Loading/Unloading Areas
- 4.6 Recreational Vehicle Parking
- 4.7 Parking Lot Design Standards
- 4.8 Parking Lot Construction and Maintenance Standards
- 4.9 Non-conforming Parking

4.1 Purpose and Intent

The purpose of this Chapter is to ensure the provision and maintenance of safe, adequate, and well-designed off-street parking facilities in conjunction with a use or development in order to protect the public health, safety, and welfare. The intent is to reduce road congestion and traffic hazards, to promote storm water quality and management practices, to provide safe and convenient access to businesses, public services, and places of public assembly, and to promote an attractive environment through design and landscape standards for parking areas.

4.2 Definitions

“**Active use area (AUA)**” shall mean all developed areas within a building except for storage areas, restrooms, and employee lunchroom/cafeteria(s).

“**Gross floor area (GFA)**”. See Article 8

“**Outside use area (OUA)**” shall mean the total square footage of an area enclosed by fences, gates, walls, buildings, landscaping or other features which define the perimeter of the outdoor area where uses and activities are or may be conducted, including, but not limited to recreational use, retail sales, rentals, and restaurant seating.

“**Transportation Demand Management Plan (TDM)**” shall mean a program designed by an employer to reduce the amount of traffic generated by either new nonresidential development or the expansion of existing nonresidential development, by using a combination of services and incentives to maximize the potential for alternative transportation usage and encourage efficient utilization of existing transportation facilities.

4.3 Parking Plan Required

- A. A parking plan showing all off-street parking spaces, parking aisles, and access to parking areas shall be required, as follows:

Community Design Standards

Parking And Loading Standards

1. At the time of submittal of an application for a building permit for construction of any building or structure that requires parking under this Section;
 2. For an expansion or addition to increase the floor area, lot coverage, or seating capacity of an existing use or structure that requires additional parking under this Chapter;
 3. When a more intensive land use is established requiring more parking than a previous use; or
 4. At the time of submittal of any discretionary application.
- B. The parking improvements shown on the approved plan shall be constructed prior to occupancy of any structure, or the commencement of any approved use.
- C. Minor revisions to an approved parking plan may be approved by the Director. If the parking plan was approved as a part of a discretionary permit, the Director shall refer revisions to the review authority if the revisions have the potential to raise new issues that were not reviewed or are substantial enough to warrant further review at public hearing.

4.4 Special Parking Requirements and Adjustments

The following special requirements and adjustments may apply to the parking standards set forth in Section 17.35.040:

- A. **Increases and Decreases in Requirements.** The required number of parking spaces may be increased or decreased by the Director or review authority, as part of a discretionary permit, as follows:
1. The number of parking spaces required by this Chapter may be increased when it is determined that the proposed use would have a parking demand in excess of the requirements of this Chapter.
 2. The number of parking spaces required for commercial and industrial uses may be decreased from the requirements of this Chapter where the review authority finds all of the following:
 - a. The intent of the parking ordinance is preserved;
 - b. The parking provided is sufficient to serve the use for which it is intended; and
 - c. The modification will not be detrimental to the public health, safety, or welfare.

Community Design Standards

Parking And Loading Standards

3. In considering requests for an increase or decrease in the number of parking spaces, the review authority shall consider:
 - a. Size and type of use or activity;
 - b. Composition and number of tenants;
 - c. Peak traffic and parking loads;
 - d. Rate of turnover based on the following criteria, as applied in Table 17.35.040.1:
 - (1) High intensity areas are those having rapid turnover of less than two hours;
 - (2) Medium intensity areas are those where vehicles are parked from two to four hours;
 - (3) Low intensity areas have minimum turnover and few repeat users, such as long-term and employee parking lots.
 - e. Availability of public transportation including carpools or employer-provided transportation.
 - f. Payment of in-lieu fees authorized by the County Transit Authority for public transportation facilities, if available, or other options that support mass transportation alternatives.
 - g. The extent and effectiveness of a proposed TDM program including its monitoring plan.
- B. **Reduction Methods.** The following reductions in required parking can be applied separately or in concert with each other, providing findings under Paragraph A.2 above can be made.
 1. **Reduction for On-street Parking.** Where on-street parking is available on public streets fronting the subject property, the required off-street parking may be reduced by one space for each available on-street space adjoining the property. Determination of availability of on-street parking shall be made by the review authority after consultation with the Department of Transportation and the local fire district.
 2. **Reduction for Rear-lot Parking.** The required off-street parking for commercial and civic uses located in a community region or rural center may be reduced by 10 percent when the project locates the parking area behind the structure(s) so that the parking area is not visible from the road frontage, sidewalks or other pedestrian accessways are available, and a transit stop is within 300 feet of the site.
 3. **Shared Parking.** Shared parking shall be permitted as follows:

Community Design Standards

Parking And Loading Standards

- a. Where two or more nonresidential uses on a single site or adjacent sites are developed, a parking analysis shall be required demonstrating parking demand based on distinct and differing hours of use and peak traffic periods. Table 4.4.A below shall be the default method of calculation, however, variations may be allowed subject to Director review and approval.

Table 4.4.A Calculating Shared Parking by Use Types (in percents)

Use Type	Weekday		Weekend		Nighttime
	Daytime 8 am - 6 pm	Evening 6:01 pm – 12am	Daytime 8 am - 6 pm	Evening 6:01 pm – 12am	12:01am – 7:59am
Office/Industrial	100%	10%	10%	5%	5%
Retail/Service	60	90	100	70	5
Lodging	75	100	75	100	75
Restaurant	50	100	100	100	10
Recreation/Entertainment	40	100	80	100	10
Churches/Assembly	40	80	100	100	5
Schools	100	75	40	40	5

- b. Shared parking shall be calculated as follows:
- (1) Parking shall be determined for each use as though it were a separate use, based on Table 4.4.A;
 - (2) Each amount of required parking shall be multiplied by the corresponding percentage for each time period;
 - (3) The parking requirement shall be totaled for each column; and
 - (4) The column with the highest value shall be the total parking space requirement.

Example: Calculating Shared Parking Requirement

For a development of office, retail, and restaurant uses that require the following number of spaces for each separate use:

Office	50
Retail	75
Restaurant	60

Community Design Standards

Parking And Loading Standards

185 Total required spaces

Under shared parking requirements using Table 4.4.A:

Use Type / Space Requirements	Weekday		Weekend		Nighttime 12:01am – 7:59am
	Daytime 8 am - 6 pm	Evening 6:01 pm – 12am	Daytime 8 am - 6 pm	Evening 6:01 pm – 12am	
Office / 50	(50 x 100% =) 50	(50 x 10% =) 5	(50 x 10% =) 5	(50 x 5% =) 3	(50 x 5% =) 3
Retail / 75	(75 x 60% =) 45	(75 x 90% =) 68	(75 x 100% =) 75	(75 x 70% =) 53	(75 x 5% =) 4
Restaurant / 60	(60 x 50% =) 30	(60 x 100% =) 60	(60 x 100% =) 60	(60 x 100% =) 60	(60 x 10% =) 6
Total	125	133	140	116	13

The “weekend daytime” is the highest use period and the hypothetical mixed use project would require 140 parking spaces, thereby reducing the parking requirement by 45 spaces.

- c. The following restrictions shall apply to shared parking provisions:
 - (1) Reserved parking spaces shall be prohibited.
 - (2) Where shared parking occurs on adjoining lots, a maintenance agreement, in a form acceptable to the County. Said agreement shall provide for common maintenance of the parking area and shall state that any change in occupancy shall be subject to proof that sufficient parking is available.

4. Off Site Parking. Required parking for commercial or industrial uses may be located off site when all of the following requirements are met:

- a. Off-site parking is located on a site where parking is otherwise allowed and is located within 500 feet of the site which it is intended to serve.

Community Design Standards

Parking And Loading Standards

- b. Parking requirements shall be met for both on site and off site uses either in total or as allowed by any of the reduction methods under this Subsection.
 - c. There shall be no hazardous traffic safety conditions for pedestrians utilizing an off site parking facility.
 - d. An off site parking easement is granted ensuring the continued availability of the off-site parking facilities for the life of the use that it is intended to serve, in compliance with Chapter 17.65 (Covenant of Easement).
- C. **Handicap Parking.** Parking for the physically handicapped shall be provided as required in the building code, in compliance with the Americans with Disabilities Act (ADA).
- D. **Compact Car Spaces.** Where 10 or more parking spaces are required for commercial, industrial, recreational, or civic uses, compact spaces may be incorporated for up to ten percent of the required spaces. Multi-unit residential developments containing ten or more units may incorporate compact spaces for up to 20 percent of the required visitor parking. All compact parking spaces shall be clearly marked by surface paint or signage reserving each parking space for compact car use, only. Compact spaces shall be evenly distributed throughout the parking lot.
- E. **Carpool/Vanpool.** Voluntary installation of carpool/vanpool parking may be allowed in return for a reduction in total parking requirements as part of a Transportation Demand Management Plan approved by the review authority.
- F. **Motorcycle Parking.** Parking areas accommodating 100 cars or more shall designate five percent of their required parking space for motorcycle use, rounded to the nearest whole number. General space requirements shall measure four feet wide by eight feet long per motorcycle, with adequate maneuvering space around the motorcycle. Two such spaces shall count as one car space.
- G. **Bicycle Parking.** Bicycle racks shall be designed to enable a bicycle to be locked to the rack and shall be installed in a manner that allows adequate access to the bicycle. General space allowances shall measure two feet wide by six feet long per bicycle, with a five foot maneuvering space behind the bicycle. Surfacing shall be consistent with adjacent sidewalk or parking areas. Bicycle parking shall be required for the following development:
- 1. **Office and Retail Commercial.** One bicycle space per every five required vehicle parking spaces up to the first 25 vehicle spaces. An additional bicycle space is required for every ten additional vehicle spaces or portion thereof. The maximum number of bicycle spaces required is 20, unless more are deemed necessary by the Director for major employment and commercial facilities.
 - 2. **Community Services - Minor and Public Recreation Facilities.** Thirty percent of the required number of vehicle spaces, to a maximum of 25 bicycle spaces, unless more are deemed necessary by the Director.

Community Design Standards

Parking And Loading Standards

3. **Elementary, Middle and High Schools.** One bicycle space per student at 25 percent of peak enrollment.
- H. **Drive-through Facilities.** Sites containing these facilities shall be in compliance with the following circulation and traffic control standards:
1. A drive-through facility shall be located at the rear or side of a commercial structure and not within any front setback area.
 2. Ingress to and egress from a drive-through facility shall be prohibited from driveway(s) directly facing a residential zone.
 3. A drive-through facility, including stacking areas for vehicles awaiting service, shall be a minimum of 50 feet from the nearest property line of any residentially zoned lot.
 4. Stacking lane(s) shall be physically separated from other traffic circulation on the site by concrete or asphalt curbing. The stacking lane(s) shall accommodate a minimum of four cars per drive-through window in addition to the car receiving service. The lanes shall be a minimum width of ten feet.
 5. Signage shall be provided to indicate the entrance, exit, and one-way path of drive-through lanes in compliance with Chapter 17.37 (Signs).
 6. Stacking areas shall not block access to any parking area or space required of a business. Lane striping to separate drive-through traffic from parking areas shall be provided from the nearest point of site access, as feasible, to the stacking lane(s).
 7. Where a facility exceeds the standards of Paragraphs 1 through 6 above, and is not located within a development that is subject to a discretionary permit, such as a Conditional Use, Design Review, or Development Plan Permit, a Conditional Use Permit shall be required.
 8. When a drive-through facility requires a Conditional Use Permit or is within a development that is subject to a discretionary permit, the review authority may impose a greater setback than is required under Paragraph 3 above, when it is determined necessary to mitigate impacts from noise, air pollution, lights, or other land use conflicts. The review authority may deny any application for a drive-through facility if it finds that the facility will add to the cumulative air quality impacts for a specified pollutant and the County is found to be in non-attainment status of either federal or state air quality standards for that pollutant.
- I. **Historic Structures.** The following exemptions and reductions in parking standards shall apply to all historic structures, as designated by the County:

Community Design Standards

Parking And Loading Standards

1. When a change or increase in intensity of use occurs in a historic structure no additional parking spaces shall be required.
2. When expansions or additions to an historic structure increase its square footage by more than 25 percent, additional parking shall be required. The revised parking requirement shall be calculated on the resultant total square footage of the structure, whether such total increase occurs at one time or in successive stages, such as with a phased project.

4.5 Material and Passenger Loading/Unloading Areas

- A. **Materials.** All uses which require the receipt or distribution of materials or merchandise by vehicle shall provide off-street loading spaces in the amount specified under Table 4.5.A, based on the projected demand intensity for the use as provided by the applicant, subject to approval by the review authority:

Table 4.5.A Loading Bay Requirements

Use Area (in square feet)	NUMBER PER LOADING BAY DEMAND		
	High	Medium	Low
Less than 10,000	1	0	0
10,000 to 30,000	2	1	0
30,001 to 60,000	3	2	1
60,001 to 100,000	4	3	2
100,001 to 150,000	5	4	3
Each additional 50,000	1	0.5	0.25

1. Area(s) provided for passenger loading and unloading required under Subsection B below, may be utilized for material loading/unloading at the discretion of the review authority based on the type of use and material, expected demand for loading/unloading the material, time of material delivery, and other relevant factors.
2. Industrial sites shall be self-contained and capable of handling all truck loading, maneuvering, and docking on site. The use of public roads for staging and/or maneuvering is prohibited.
3. The review authority may modify the loading zone requirements in special circumstances based on the specific nature of the use or combination of uses, the design characteristics of the project and site dimensions, the impacts to surrounding properties, and public safety.

Community Design Standards

Parking And Loading Standards

- B. **Passengers.** Vehicle turn-out lanes for passenger loading and unloading shall be provided outside of the normal circulation lane for the following uses:
 - 1. Apartments/condominiums containing 50 units or more.
 - 2. Retail sales and service uses containing 30,000 square feet or more of building area.
 - 3. Hotels/motels containing 50 units or more.
 - 4. Schools and child day care facilities with 50 or more students.
 - 5. Public buildings open for general use by the public.
 - 6. Public transportation facilities.
 - 7. River recreational use areas.
 - 8. Ski areas.

- C. All loading/unloading areas shall conform to the dimensions under Table 4.5.B:

Table 4.5.B Dimensions of Loading/Unloading Areas

Use Type	Width	Length	Vertical Clearance
Commercial Office, Recreational, and Civic	12 ft.	25 ft.	14 ft.
Other Commercial and Industrial	12 ft.	40 ft.	14 ft.

- D. All loading and unloading areas shall be marked appropriately with curb painting and/or signs that prohibit parking.
- 4.6 Recreational Vehicle Parking**
- A. Recreational vehicle (RV) parking spaces shall be required as set forth in Table 17.35.040.1.
 - B. In residential zones, RV parking or storage shall be limited to one such vehicle per lot. RV parking or storage shall not encroach into any required setback area and shall be screened from public view.

Community Design Standards

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- C. Where RV parking and storage areas are provided in association with a mobile/manufactured home park, townhouse, apartment, or other multi-unit residential development, such parking shall be screened with fencing or landscaping.

4.7 Parking Lot Design Standards

The following standards shall apply to all parking lots required under this Chapter.

- A. **Parking Lot Dimensions.** Parking lot dimensions shall conform to requirements under the El Dorado County Standard Plans Manual, Standard Plan RS-90.
- B. **Controlled Access.** Every parking and loading stall shall be accessible from the drive aisle without displacement of other vehicles.
- C. **Public Road Access.** Except for single-unit residential dwellings, as defined in Article 8, parking stalls shall be designed so as to prohibit the backing of vehicles directly into any public road right-of-way or easement in order to exit the site.
- D. **Vertical Clearance.** Every parking stall and drive aisle shall have a minimum of eight feet vertical clearance.
- E. **Snow Removal Storage.** Parking areas located at the 4,000 foot elevation or higher shall provide snow removal storage areas. Such storage areas shall be equivalent to 10 percent of the surface used for parking and access and shall not utilize any required parking spaces. Landscaping areas may be utilized for this purpose in compliance with Section 17.34.060 (Maintenance and Protection).
- F. **Parking Area Gradient.** All parking areas shall be graded to provide adequate drainage of all surface areas into an on-site drainage improvement or stormwater drainage system, in compliance with the gradient standards in the Land Development Manual (LDM).
- G. **Landscaping Required.** Landscaping shall be required for all parking lots consistent with the requirements set forth in Chapter 17.33 (Landscaping Standards).

4.8 Parking Lot Construction and Maintenance Standards

Based on parking lot turnover set forth in Table 4.8.A, all required parking and loading areas shall conform to the following surfacing requirements, as provided in the LDM, unless otherwise allowed under Article 4 for a specific use:

Community Design Standards

Parking And Loading Standards

Table 4.8.A Parking and Loading Area Surfacing Requirements

Location	PARKING LOT TURNOVER		
	High	Medium	Low
A. Community Region	Asphalt / Concrete	Asphalt / Concrete	Asphalt / Concrete
B. Rural Center	Asphalt / Concrete	Asphalt / Concrete	Chip Seal
C. Rural Region	Asphalt / Concrete	Chip Seal	Gravel

Wheel Stops.

1. All parking spaces adjacent to sidewalks or landscaping, other than for single-unit residential dwellings, shall provide concrete wheel stops a minimum of three feet between the farthest edge of the wheel stop and the nearest edge of the sidewalk or landscaped area.
2. Wheel stops may be eliminated adjacent to landscape areas in compliance with Paragraph 17.33.050.C.3 (Landscape Standards).
3. Wheel stops shall be anchored securely to the asphalt.

D. **Directional Arrows and Signage.** Aisles, approach lanes, pedestrian crossings, and loading/unloading areas shall be clearly marked with directional lines, arrows and/or signs to facilitate traffic movement and ensure pedestrian safety.

E. **Maintenance.** All parking and loading areas, drive aisles, and access drives shall be maintained in good condition and kept free of outside storage and debris.

4.9 Non-conforming Parking

No additional parking spaces shall be required for those existing uses made noncompliant with parking standards on the effective date of this Chapter, subject to the following:

- A. Whenever the existing use is enlarged, expanded, or intensified, additional parking spaces shall be provided only for the enlargement, expansion, or intensification subject to the standards in this Chapter.

Community Design Standards

Parking And Loading Standards

- B. Whenever the existing use is changed to a new use where the parking requirement becomes 50 percent higher, parking for the entire site shall be consistent with the requirements and standards of this Chapter.

Mountain Democrat

PLACERVILLE, CALIFORNIA

Archived Stories

Saratoga extension study approved; construction still years away

By Noel Stack

Managing editor

The El Dorado County Department of Transportation has an approved environmental impact report for the extension of Saratoga Way to Folsom's Iron Point Road but don't expect to see any dirt move soon.

DOT's 2010 Capital Improvement Program lists the project but construction is scheduled outside of the five-year planning period.

Phase 1 of the extension ties Saratoga Way with Iron Point Road (about 2,300 feet), creating a two-lane Folsom-El Dorado Hills connector that runs parallel to Highway 50. The project also includes installation of a Class II bike lane along the entire phase 1 segment and a paved pedestrian path from Finders Way to the county line.

The connection is expected to cost nearly \$15.3 million; about \$1.5 million has already been spent. Funding will come from El Dorado Hills traffic impact mitigation fees.

During a recent presentation at the El Dorado County Board of Supervisors meeting some grumbled at the phase 1 plan for Saratoga Way but it was the second stage (with a construction date around 2030 if growth necessitates improvements) that really ruffled neighborhood feathers.

Phase 2 widens Saratoga Way to four lanes between El Dorado Hills Boulevard and Iron Point Road. Class II bike lanes would run the entire distance. Traffic signals will be installed at Finders Way and Arrowhead Drive and drivers on Mammoth Way will no longer be allowed to turn left on to Saratoga.

The El Dorado Hills Boulevard-Saratoga Way intersection's expected traffic volume around 2030 would, for safety concerns, necessitate a left-turn prohibition, said Matt Smeltzer, DOT deputy director of roadway design. The intersection of Mammoth and Saratoga probably couldn't be signalized because it's too close to the El Dorado Hills Boulevard-Saratoga Way intersection, he added.

This turning restriction and a four-lane road angered residents, who said they didn't want their still streets turned into busy thoroughfares that would generate noise and pollution.

"We want to keep it two lanes," said one resident.

Employees at nearby businesses already use the residential streets to get on Saratoga Way, speakers noted, and restricting a left turn from Mammoth Way would mean more traffic on the neighborhood streets, ruining the area's quiet nature.

Smeltzer told the board the project does meet noise standards set in the county's General Plan.

Supervisor John Knight urged speakers not to consider the EIR adoption the final action on the connector. The county doesn't currently have the right of way or the money for this project, he noted.

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ing Saratoga that will have to be addressed as time goes on," Knight said. "There's going to be the extension's initial design work in 2013, according to the CIP, giving people time to address the circulation runs and is managed safely."

ld mitigate residents' concerns.

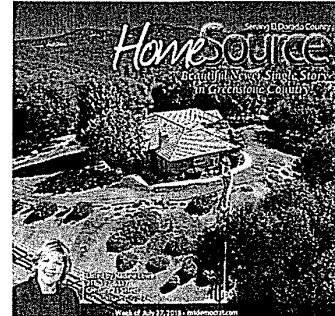
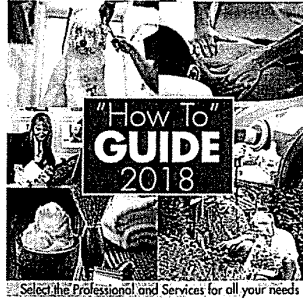
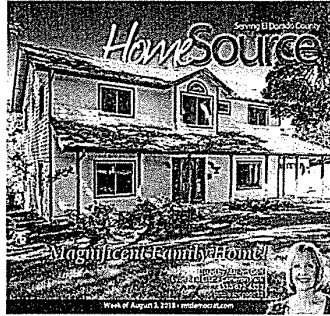
8/6/2018

Saratoga extension study approved; construction still years away

Knight was joined by Supervisors Ron Briggs, Ray Nutting and Jack Sweeney in certifying the environmental impact report. Supervisor Norma Santiago, citing concerns about the cumulative effects of the project, voted against the motion.

nstack@villagelife.com

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EL DORADO COUNTY GRAND JURY 2014-2015

SARATOGA WAY: ROAD TO NOWHERE?

Case GJ-14-09

The Saratoga Way Extension Project came to the attention of the Grand Jury amid controversy. It would purportedly relieve traffic on US 50, primarily between El Dorado Hills and Folsom if completed.

Preliminary investigation determined there was, in reality, very little reason to further investigate the road project, *per se*, and there was little substantive evidence to be found related to the physical changes the road project would entail. This report is limited to what the investigation did find - the project's current status and why it has not yet been completed.

BACKGROUND

Saratoga Way travels a short distance generally westward from El Dorado Hills Boulevard, closely paralleling the north edge of Highway 50 before coming to a dead end about 2,500 feet from the El Dorado County-Sacramento County line. The Saratoga Way Extension Project would extend it the remaining one-half mile to connect with Iron Point Road in Folsom at the county line.

The Saratoga Way Extension Project became a priority in the El Dorado County Capital Improvement Program in about 2004. It is divided into two phases: the first phase would acquire land for right-of-way and build the needed one-half mile of two-lane roadway to Folsom. The second phase would build out the roadway to a four-lane divided arterial. Both phases depended upon prior completion of the Saratoga Way Realignment Project, which would realigned the west end of existing Saratoga Way to increase efficiency and accommodate traffic on El Dorado Hills Boulevard.

The realignment project became the subject of litigation brought by Citizens Against Roadway Encroachment, which resulted in a writ of mandate in 2002 ordering mitigation of noise impact primarily affecting the El Dorado Hills Townhouses to the north of Saratoga Way. The county complied with the writ by constructing a sound wall and installing double-glazed upper-floor windows where needed and the realignment project was completed in about 2005.

The extension phase one project initially was scheduled to begin construction in fiscal year 2007. The 2007 Capital Improvement Program anticipated that the Environmental Impact Report would be completed in the summer of 2007, and construction was scheduled to begin as soon as funding became available, which was anticipated to be in fiscal year 2010. Total phase one project costs was estimated at slightly more than \$10.5 million, including about \$4.5 million for right-of-way acquisition.

The project was designated to be 100 percent funded from Traffic Impact Mitigation fees. However, at that time, mitigation fee revenue was dropping dramatically with the decline of new housing construction to nearly a standstill. High foreclosure rates drove down property values,

seriously impacting property tax revenues to public agencies. Consequent unemployment and business stress further reduced sales tax and fuel tax revenues.

The 2009 Capital Improvement Program showed impacts to both phases of the Saratoga Way Extension Project. It increased first phase costs to about \$15 million and rescheduled completion of planning and environmental review to fiscal 2010. Design was planned to resume in fiscal 2013, and all other work was moved out to later years.

METHODOLOGY

The following persons were interviewed:

1. Employees of the county Department of Transportation whose responsibilities in 2010 included the Saratoga Way Extension project
2. County Supervisors who were involved with the key decisions in 2010 for the Saratoga Way Extension project and oversight of County fiscal issues

The following documents were reviewed in their relevant sections of contents:

1. Audio/video recordings of the 6/29/2010 and 7/26/2010 Board of Supervisors meetings
2. Board packets and minutes of the 6/28/2010, 6/29/2010, 7/20/2010 and 7/26/2010 Board of Supervisors meetings.
3. County Department of Transportation Capital Improvement Program documents for years 2004 through 2014.

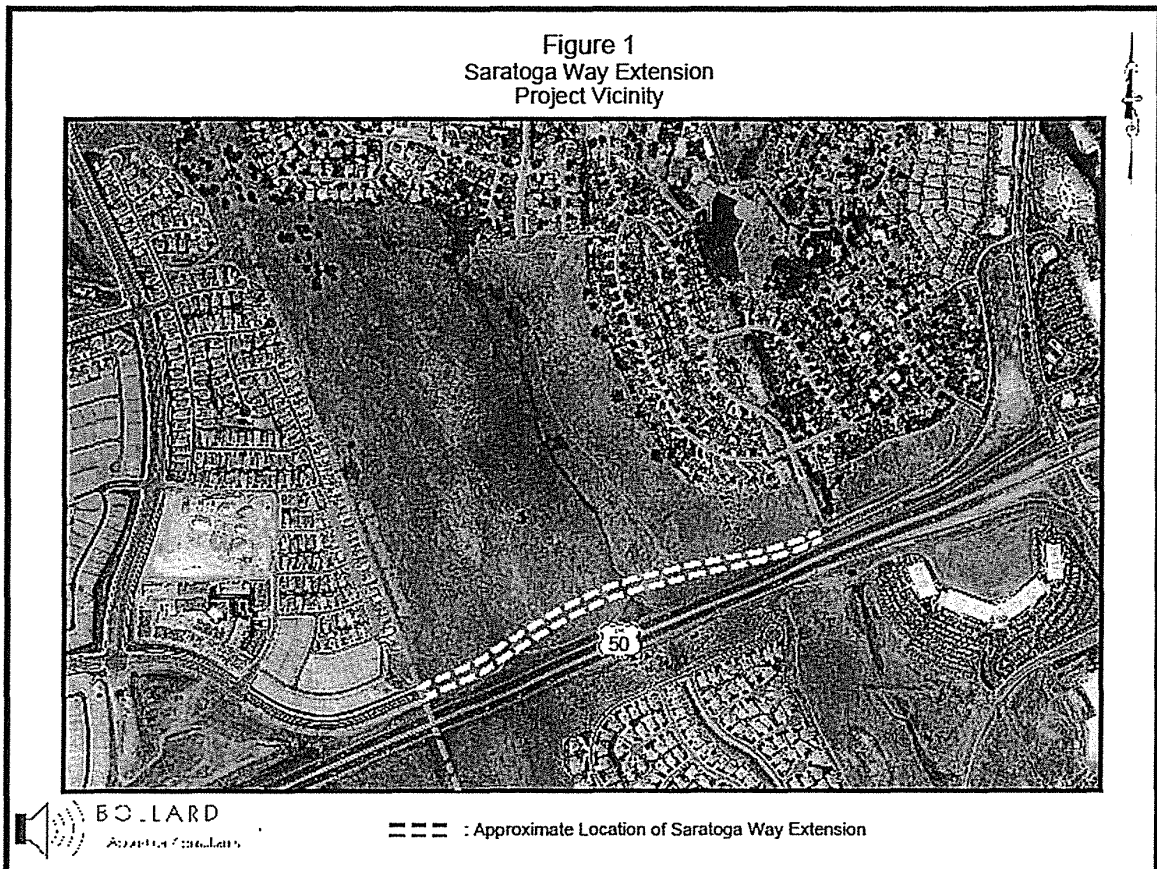
DISCUSSION

The Board of Supervisors certified the first phase of the project's Environmental Impact Report at its meeting on June 29, 2010, along with the related findings of fact, adopting the report's mitigation monitoring plan and approving the project to go forward. A credible threat of litigation was growing and in addition to opponents' comments on the public record, the Board of Supervisors meeting minutes for four meetings in June 2010 and July 2010 reported that closed sessions included: "Conference with Legal Counsel - **Significant Exposure to Litigation** pursuant to Government Code Section 54956.9(b): Title: Issues relating to Saratoga Road Connection." No action was reported from any of them.

Apprehension of litigation led the board to decertify the Saratoga Way Extension Project Environmental Impact Report on July 26, 2010, effectively putting the project on hold for an indefinite time. The decertification eliminated the risk of a lawsuit over the report. Multiple witnesses described the cause as simply *no money*. The funding was not available to defend a lawsuit, acquire right-of-way and build the project.

The Saratoga Way Extension project remains on hold at the time of this report; the second quarter of 2015.

SARATOGA WAY EXTENSION LOCATION



RESPONSES

Responses are not required

This Report has been provided to the El Dorado County Board of Supervisors.

COUNTY OF EL DORADO

**TRAFFIC IMPACT
MITIGATION FEE**

ADMINISTRATIVE MANUAL

Adopted by Board Resolution 001-2017 on January 24, 2017.

Exhibit A

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Note: Acronyms and terms (shown with “initial capitalization”) are defined in the Glossary in Appendix A.

I. PURPOSE

El Dorado County (EDC) Ordinance Code 12.28.010

The purpose of this administrative manual is to assist County staff with implementation of the Traffic Impact Mitigation (TIM) Fee Program. The TIM Fee Program is used to fund transportation improvements needed to accommodate growth anticipated over the next 20 years within the unincorporated area of the western slope of El Dorado County (generally defined as the unincorporated area of the County west of the Sierra crest as defined by the TIM Fee zone boundaries in the TIM Fee Program Schedule). Improvements funded by the TIM Fee Program include new roadways, roadway widenings, roadway intersection improvements and, where appropriate, bridge, bicycle, pedestrian, and transit improvements.

EDC Ordinance Code 12.28.040

The TIM Fee Program Schedule is based on the funding needed for capital improvements required to accommodate growth for a period of 20 years as determined by the level of service policy in General Plan Policy TC-Xd. These capital improvements are part of the TIM Fee Program and become part of the County’s Capital Improvement Program (CIP).

II. APPLICABILITY OF TIM FEE

A. Development Projects

EDC Ordinance Code 12.28.030

The TIM Fee shall apply to any Development Project unless exempt (see Section II.B). Unless exempt, the Applicant for any Development Project must pay the County the required TIM Fee. The Applicant may be eligible for TIM Fee credit or reimbursement through the provisions for Developer-Constructed Facilities (see Section V).

A Development Project includes either:

- ♦ New construction, whether a new building or an addition to an existing building,
- ♦ Change and Intensification of Use of an existing building as part of a Nonresidential Project,
- ♦ Additional Dwelling Units in an existing building as part of a Residential Project,

- ♦ Any change in land use, regardless of whether a building permit is required, that adds vehicle trips to the County roadway network, such as an RV storage facility, solar farm, athletic field, etc.

B. Exemptions

The following types of Development Projects are exempt from the TIM Fee:

1. Residential Additions

Additions to existing residential buildings, inclusive of detached accessory structures, that do not result in Additional Dwelling Units are exempt from the TIM Fee because the Development Project would not generate additional vehicle trips.

2. Local Government Facilities

A Nonresidential Project owned by the County of El Dorado, or a school or special district within El Dorado County that provides public services within TIM Fee Zones may be exempt from the TIM Fee if it can be demonstrated that the need for these facilities is caused by other Development Projects.

3. Affordable Housing

The Board may offset TIM Fees on Affordable Housing projects upon determination of the eligibility of the project. If eligible, the Board may authorize an equal or partial contribution of funds for construction of capital improvements in the TIM Fee Program Schedule from other non-tax sources such as State and Federal grants to backfill the Program. The Board must approve an application for the offset program for the offset to be valid. See Board Policy B-14 in **Appendix D**.

4. Secondary Dwelling Units

Secondary Dwelling Units are exempt from the TIM Fee. The Board has authorized an equal contribution of funds for construction of capital improvements in the TIM Fee Program Schedule from other non-tax sources. Non-tax sources such as State and Federal grants are used to backfill the program, and to offset the traffic impacts from Secondary Dwelling Units.

5. Accessory Structures

TIM Fees are not collected for residential and non-residential accessory structures that do not generate additional vehicle trips.

III. CALCULATION OF TIM FEES

A. Fee calculation

EDC Ordinance Code 12.28.050

The formula for calculating the TIM Fee for a Development Project is shown below. To calculate the TIM Fee, the following information is required:

- ♦ TIM Fee Use Category applicable to the Development Project (see Section III.B and Appendix B for more details).
- ♦ TIM Fee Zone in which the Development Project is located (see Section III.C and Appendix C for more details).
- ♦ Applicable TIM Fee per Dwelling Unit or per square foot (see the TIM Fee Program Schedule).
- ♦ Size of the Development Project in terms of Additional Dwelling Units for Residential Projects or building square feet for Nonresidential Projects (as indicated on the Building Permit application).

1. Residential Projects (New Construction and Existing Buildings)

$$\text{TIM Fee} = \left[\begin{array}{l} \text{TIM Fee per Dwelling Unit} \\ \text{(based on TIM Fee Zone} \\ \text{and TIM Fee Use Category)} \end{array} \right] \times \text{Additional Dwelling Units}$$

2. Nonresidential Projects (New Construction)

$$\text{TIM Fee} = \left[\begin{array}{l} \text{TIM Fee per square foot} \\ \text{(based on TIM Fee Zone} \\ \text{and TIM Fee Use Category)} \end{array} \right] \times \text{Additional Square Feet}$$

3. Nonresidential Projects (Existing Buildings)

A TIM Fee for Nonresidential Projects in existing buildings is applicable only if there is a Change and Intensification of Use from a lower to a higher TIM Fee based on the TIM Fee Use Category.

$$\text{TIM Fee} = \left[\begin{array}{l} \text{TIM Fee per square foot} \\ \text{based on TIM Fee Zone} \\ \text{and proposed TIM Fee} \\ \text{Use Category} \end{array} - \begin{array}{l} \text{TIM Fee per square foot} \\ \text{based on TIM Fee Zone and} \\ \text{highest TIM Fee Use Category} \\ \text{for current permitted use} \end{array} \right] \times \text{Additional Square Feet}$$

There is no impact from a Development Project and therefore no TIM Fee if the fee per square foot for the proposed TIM Fee Use Category is less than the highest TIM Fee for

the current permitted use. Refunds are not provided if the Project would result in lower TIM Fee based on the TIM Fee Use Category. See Section III.B.3 for more explanation.

B. TIM Fee Use Category

TIM Fees vary based on the TIM Fee Use Category of the Development Project. See **Appendix B** for a list of uses and the applicable TIM Fee Use Category. Appendix B does not have a comprehensive list and CDA will make the final determination of the appropriate TIM Fee Use Category. TIM Fee Use Categories found in the TIM Fee Program Schedule are shown below in **Table 1**. Following the list are guidelines on how to classify specific types of Development Projects.

Table 1: TIM Fee Use Categories

Residential	Nonresidential
Single-family Not Age Restricted	General Commercial
Single-family Age Restricted	Hotel/Motel/B&B
Multi-family Not Age Restricted	Church
Multi-family Age Restricted	Office/Medical
	Industrial/Warehouse

For a Development Project that is not consistent with any of the TIM Fee Use Categories in Table 1, see Section III.D - Alternative TIM Fee Calculation Method.

1. TIM Fee Use Categories for Residential Activities

Single family: Includes Dwelling Units that are Single Family Detached, Manufactured Homes, Patio Homes, and Mobile Homes not located in a Mobile Home Park.

Multi-family: Includes Dwelling Units that are: Apartments, Condominiums, Multiplexes, Manufactured Housing, Mobile Homes located in a Mobile Home Park, Modular Units, Quadraplexes, Townhouses, Triplexes, and Two-Family Units.

See **Appendix A** for definitions of residential activity terms.

2. Unknown Uses

If the type of activity within a Development Project is not indicated in the permit application sufficient to determine the TIM Fee Use Category, then determine the most likely activity and related TIM Fee Use Category based on further analysis of the Project.

3. Development Projects in Existing Buildings

Residential Projects: There is no TIM Fee for a Development Project in an existing building, such as addition and remodel projects, unless the Project would result in Additional Dwelling units.

Nonresidential Projects: There is no TIM Fee on a Nonresidential Project in an existing building unless there is a Change and Intensification of Use. A Change and Intensification of Use occurs when the activity within an existing building associated with a Development Project would change from a TIM Fee Use Category with a lower fee to a TIM Fee Use Category with a higher fee. There is no fee or refund if the change in use is from a higher to a lower TIM Fee Use Category. See Board Policy J-5 in Appendix D.

4. TIM Fee Use Category for Mixed-Use Development Projects

For a Development Project with multiple TIM Fee Use Categories, the TIM Fee is calculated separately for each TIM Fee Use Category, and then summed to calculate the total fee for the Project.

C. TIM Fee Zones

The amount of the TIM Fee varies depending on the location of the Development Project based on the TIM Fee Zones included in the TIM Fee Program Schedule. See Appendix C for a map of TIM Fee Zones.

1. Development Projects in Multiple TIM Fee Zones

If a Development Project is split between multiple zones, then the TIM Fee is calculated separately for each zone based on the portion of the Project located in that zone.

2. Development Projects on State and Federal Lands

Based on the nexus analysis the TIM Fee is applicable to Development Projects on State and Federal lands in the same manner as it would be applied to privately-owned lands. The Director should consult with County Counsel if the Applicant asserts that they are not subject to payment of the TIM Fee due to the jurisdictional status of the land.

D. Alternate TIM Fee Calculation Method

If a Development Project would result in a use not consistent with any of the Use Fee Categories used in the TIM Fee Program Schedule, then a TIM Fee specific to the Development Project may be calculated as follows:

1. Calculate net new evening peak hour vehicle trip generation rate using data from the Institute of Transportation Engineers, *Trip Generation* manual and other sources as appropriate:
 - a. Estimate the evening peak hour trip generation rate for the Project.
 - b. Estimate percent new trips for the Project (exclude diverted and passby trips).
 - c. Multiply (1.a) by (1.b) to calculate the net new evening peak hour vehicle trip generation rate. See **Table 2**, on the following page, for comparison of factors used in the TIM Fee nexus model.
2. Calculate the equivalent dwelling unit (EDU) factor:
 - a. Identify the appropriate adjustment factor for local-serving businesses applicable to the Project (**1.0** for Residential Projects and **0.293** for Nonresidential Projects).¹
 - b. Multiply (1.c) by (2.a) to calculate the EDU factor for the Project (same as the net new evening peak hour vehicle trip generation rate for Residential Projects).
3. Calculate the Hwy. 50 TIM Fee component for the Project:
 - a. Identify the applicable Hwy. 50 cost per EDU for the Project based on zone and land use (residential or nonresidential) from Table 17 in the nexus model, adjusted for inflation consistent with adjustments to the TIM Fee Program Schedule since the TIM Fee Program Schedule was updated using the nexus model.
 - b. Multiply (2.b) by (3.a) to calculate the Hwy. 50 cost per unit of development for the Project.
 - c. Multiply (3.b) by the size of the Project to calculate the Hwy. 50 fee. The units used for project size (dwelling units, rooms, square feet, etc.) should be the same as the units used for the trip generation rate in Step (1).
4. Calculate the local roads TIM Fee component for the Project:
 - a. Identify the applicable local roads cost per EDU for the Project based on zone and land use (residential or nonresidential) from Table 18 in the nexus model, adjusted for inflation consistent with adjustments to the TIM Fee Program Schedule since the TIM Fee Program Schedule was updated using the nexus model.
 - b. Multiply (2.b) by (4.a) to calculate the local roads cost per unit of development for the Project.

¹ The local-serving business adjustment factor is based on the ratio of the "Final EDU" to the "Preliminary EDU" factors in Table 4 of the nexus model.

- c. Multiply (4.b) by the size of the Project to calculate the local roads fee. The units used for project size (dwelling units, rooms, square feet, etc.) should be the same as the units used for the trip generation rate in Step (1).

Calculate the total fee by adding (3.c) and (4.c).

Table 2: Vehicle Trip Generation Rates

TIM Fee Use Category	Units	Evening Peak Hour Vehicle Trip Generation Rate	Percent New Vehicle Trips (excludes diverted and passby trips)	Net New Evening Peak Hour Vehicle Trip Generation Rate
Residential				
Single-family Not Age Restricted	per Dwelling Unit	1.00	100%	1.00
Single-family Age Restricted		0.27	100%	0.27
Multi-family Not Age Restricted		0.62	100%	0.62
Multi-family Age Restricted		0.25	100%	0.25
Nonresidential				
Hotel/Motel/B&B	per room	0.47	58%	0.27
General Commercial	per 1,000 sq. ft.	3.71	47%	1.74
Church		0.55	64%	0.35
Office/Medical		1.49	77%	1.15
Industrial/Warehouse		0.97	79%	0.77
Source: Institute of Transportation Engineers, <i>Trip Generation 9th Edition</i> , 2012; San Diego Association of Governments, <i>Brief Guide of Vehicular Trip Generation Rates</i> , April 2002.				

IV. PAYMENT OF TIM FEES

EDC Ordinance Code 12.28.060

Consistent with the intent of this section, no Development Project may be finalized by the County (i.e., occupancy, encroachment permit approval, etc.) unless the applicable TIM Fee has been paid to the County. TIM Fee is due upon issuance of any permit (e.g.,

encroachment permit, etc.) or to comply with a condition of approval of a Development Project.

A. Development Projects Not Subject to Fee Deferral Policy

Payment of TIM Fees shall be due prior to the issuance of a Building Permit or prior to finalizing of appropriate permits (i.e., occupancy, encroachment, etc.) of an approved Development Project. Payment shall be in the amount of one hundred percent (100%) of the applicable TIM Fee.

B. Development Projects Subject to Fee Deferral Policy

An alternative method for payment of the TIM Fee is by application of a Board-adopted fee deferral policy. Fee deferral is an option for all Nonresidential Projects. See **Appendix D** for Board-adopted fee deferral policy (Board Policy B-3).

V. CREDITS AND REIMBURSEMENTS FOR DEVELOPER-CONSTRUCTED FACILITIES

EDC Ordinance Code 12.28.110

Developer-Constructed Facilities are capital improvements that are included in the TIM Fee Program Schedule and constructed by an Applicant. An Applicant may provide Developer-Constructed Facilities to offset some or all of the Development Project's TIM Fee obligation. Developer-Constructed Facilities are constructed by an Applicant and upon completion are accepted by the County as a public asset.

The Director has sole discretion to determine whether Developer-Constructed Facilities are eligible for TIM Fee credit or reimbursement. The Director may require transportation improvements as a condition of approval for a Development Project that are not eligible for a credit or reimbursement.

A. Credits Versus Reimbursements

Credits: Credits occur if the Applicant seeks to offset some or all of the Applicant's TIM Fee obligation.

Reimbursements: Reimbursements occur if either (1) the cost of Developer-Constructed Facilities eligible for reimbursement exceeds the applicable TIM Fee obligation, and/or (2) the Applicant seeks reimbursement for prior TIM Fee payments. The TIM Fee accounts shall be the sole sources of reimbursements for Developer-Constructed Facilities.

The sum of credits and reimbursements for Developer-Constructed Facilities associated with a Credit and Reimbursement Agreement (see Section V.C) shall equal the total cost

of Developer-Constructed Facilities eligible for credit and reimbursement as identified in the Credit and Reimbursement Agreement.

B. Total Eligible Cost for Credit and Reimbursement

The total eligible cost for a credit and, if applicable, a reimbursement, shall equal the actual cost of the Developer-Constructed Facilities up to the amount identified for the same capital improvement in the TIM Fee Program Schedule, adjusted for inflation. Costs may include, for example, land, design and engineering, environmental review, permits, surveys and inspection, performance bond premiums, construction, furnishings and equipment, and project management.

C. Credit and Reimbursement Agreement

To enable Developer-Constructed Facilities to offset a TIM Fee obligation, the Applicant must execute a Credit and Reimbursement Agreement (Agreement) with the County. Whether to enter into such an Agreement is within the sole and absolute discretion of the Director. The Agreement must include provisions that address the following topics:

- ♦ **Preparation and Approval:** The Director shall prepare the Agreement. The Board and Applicant must each approve the Agreement for the Agreement to take effect.
- ♦ **Facility Description:** The description of the Developer-Constructed Facilities shall include location, size, and any other characteristics needed to identify the Facilities.
- ♦ **Facility Cost:** The total eligible cost for the Developer-Constructed Facilities as defined in Section V.B. Actual cost shall be supported by documentation provided by the Applicant including, for example, land acquisition contracts, construction contracts, invoices, and payment records. If land was purchased well in advance of construction, land costs shall be based on a current appraisal conducted by an appraiser with a current California license that is applicable to the type of land being appraised. The Director has sole discretion whether to accept submitted documentation.

If the Agreement is executed prior to construction of the Developer-Constructed Facilities, then the Agreement shall include the estimated eligible cost as supported by documentation provided by the Applicant including, for example, construction unit costs and quantities, and lump sum estimates for design, engineering, and other soft costs.

- ♦ **Acceptance of Facility:** Include the time when the Developer-Constructed Facilities were accepted by the County, or an estimated schedule for acceptance and any conditions associated with acceptance.

- ♦ **Credits:** The total credit amount shall equal the eligible cost of Developer-Constructed Facilities or the actual applicable TIM Fee obligation, whichever is less. If the actual cost of Development Constructed Facilities, and/or the actual TIM Fee obligation, is not known at the time the Agreement is executed, then amounts may be estimated.
- ♦ **Reimbursements:** The total reimbursement amount shall equal the eligible cost of the Developer-Constructed Facilities minus the applicable TIM Fee credit. Indicate how payments are calculated, funded, and scheduled. Options include:
 - **Calculation of Payments:**
 - **Fixed Percentage Payment:** Reimbursement payments are based on a fixed percentage of annual TIM Fee revenues for the TIM Fee account funding the reimbursement. This approach can protect the County from over-commitment to reimbursement payments during years of low fee revenue.
 - **Fixed Amount Payment:** Reimbursement payments are based on an annual fixed amount. This approach may be appropriate if the payments are small relative to anticipated fee revenues net of committed funding for capital improvements and outstanding reimbursements due on other Agreements.
 - **Interest on Unpaid Balances:** Indicate whether the reimbursement balance is adjusted annually, and if so the index to be used for that adjustment. An index is typically the interest rate associated with a specified type of U.S. Treasury debt or commercial bank lending.
 - **Funding:** The County shall make reimbursement payments only from the TIM Fee account(s) that otherwise would be obligated to fund the Developer-Constructed Facilities. The Agreement should state that:
 - The County’s general fund is not liable for payment of any obligations arising from the Agreement.
 - The credit or taxing power of the County is not pledged for any obligations arising from the Agreement.
 - The Applicant shall not compel the exercise of the County taxing power or the forfeiture of any of its property to satisfy obligations arising from the Agreement.
 - Obligations arising from the Agreement are not a debt of the County, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues.
- ♦ **Timing of Credits and Reimbursements:**

- **Credits:** Outstanding credit balances shall be reduced based on the TIM Fee obligation calculated at time of submittal of a Building Permit application.
- **Reimbursements:** Payments on outstanding reimbursement balances must be made no less often than once annually.
- **Delay in Granting Credits and Reimbursements:** If the County has not accepted the Developer-Constructed Facilities, and the total amount of credits and reimbursements to date is 90 percent or more of the estimated Facilities cost, then the County may delay the remaining credits or reimbursements until the County accepts the Facility. In the case of outstanding credits, this delay would require payment of the TIM Fee, as applicable, and an increase in the reimbursement amount due pursuant to the Agreement.
- ♦ **Security:** If the Applicant seeks credits and/or reimbursements prior to County acceptance of the Developer-Constructed Facilities, then the Applicant shall post a performance bond to ensure satisfactory completion of the Facilities.
- ♦ **Agreement Preparation and Administrative Costs:** The agreement may include provisions for the County to recoup preparation and administrative costs from the Applicant.
- ♦ **Termination:** The Agreement shall be terminated when the County accepts the Developer-Constructed Facilities, or all credit and reimbursement obligations have been satisfied, whichever occurs later.

If all credit and reimbursement obligations have been satisfied based on an estimated cost of Developer-Constructed Facilities and prior to County acceptance of Facilities, then upon acceptance by the County:

- If the actual cost is greater than the total amount of credits and reimbursements made to date, then the County, at its sole discretion, may seek the Applicant's approval to amend the Agreement to enable an additional credit and/or reimbursement amounts.
- If the actual cost is less than the total amount of credits and reimbursements, then the Applicant shall reimburse the County for the difference. As described above under "Timing of Credits and Reimbursements", once 90 percent of the estimated cost has been funded through credits and/or reimbursements, the County can delay remaining credits or reimbursement payments until acceptance of the Facilities. This capability enables the County to avoid this circumstance in which the Applicant would need to reimburse the County for over-funding credits and reimbursements.

VI. APPEALS

A. Types of Reductions

EDC Ordinance Code 12.28.070(A)

1. Incorrect Fee Application

If the requirements of this Administrative Manual have been incorrectly applied to a Development Project, because of an incorrect TIM Fee Use Category or an incorrect trip generation rate, then an adjustment in the applicable TIM Fee is justified to reflect the correct application of this Administrative Manual. Refer to Alternative TIM Fee Calculation Method in Section III.D for calculation of the adjusted TIM Fee.

2. Unlawful Fee Application

If the application of the requirements of this Administrative Manual to a Development Project is unlawful under and/or conflicts with federal, state, or local law and/or regulation, then a reduction in the applicable TIM Fee is justified. The justification for such a reduction includes circumstances where application of the TIM Fee would result in an unlawful taking of property without just compensation.

B. Application for Appeal

EDC Ordinance Code 12.28.070(B)

Authorization of an appeal of the TIM Fee must meet the following requirements:

- ◆ The Applicant must appeal the TIM Fee no later than the date of application for the Building Permit for the Development Project on a form provided by the County.
- ◆ The Applicant shall pay the TIM Fee pursuant to this Administrative Manual pending the resolution of the application for an appeal.
- ◆ The burden of establishing satisfactory factual proof of the applicability and elements of this section shall be on the Applicant.
- ◆ The Applicant must submit full information in support of their submittal as requested by the Director.
- ◆ Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court.
- ◆ Failure to submit such an application shall preclude such person from challenging the TIM Fee in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.

C. Determination of Appeal

EDC Ordinance Code 12.28.070(C)

The Director shall mail the Applicant a final, written determination on the appeal. The Applicant may appeal the Director's decision to the Hearing Officer. The Hearing Officer's decision is final and not administratively appealable.

VII. COLLECTION AND ACCOUNTING OF TIM FEES

A. Fee Accounts

All TIM Fee payments shall be deposited in the accounts listed below. The Director shall administer each account and have the authority to regulate the use of each account.

- ♦ TIM – Zone 8 El Dorado Hills
- ♦ TIM - Silva Valley Interchange
- ♦ TIM – Zones 1-7
- ♦ TIM – HWY 50

No Comingling of Funds: Use of these accounts shall avoid any comingling of revenue from TIM Fees with any other revenues and funds, including other impact fees, except for temporary investments to earn interest on fund balances.

Interest Earned on Fund Balances: Any interest income earned by moneys in each account shall be deposited in that account and shall be expended only for the purpose for which the TIM Fee was originally collected.

B. Transfers

EDC Ordinance Code 12.28.120

Transfers and/or noninterest earning loans shall be allowed between the different TIM Fee accounts upon the recommendation of the Director and shall comply with the following:

- ♦ The transfer or loan is to provide funding for a capital improvement included in the TIM Fee Program Schedule.
- ♦ Transferred or loaned funds will be repaid as funds become available.
- ♦ The Board is notified of and approves the transfer through the annual budget process pursuant to the Mitigation Fee Act requirements (see Section VII D).
- ♦ The Director determines in writing that special circumstances exist to justify the loan. "Special circumstances" shall include, but is not be limited to, opportunities to obtain grants or other funding, coordination with other capital improvement(s)

and/or capital improvement timing. The Board is notified of and approves the loan pursuant to the Mitigation Fee Act requirements.

C. Annual TIM Fee Adjustment

EDC Ordinance Code 12.28.050

The fee amounts in the TIM Fee Program Schedule shall be adjusted for inflation in accordance with the percentage change published by the Engineering News Record Construction Cost Index, or if such index ceased to be published, by an equivalent index chosen by the Director, with appropriate adjustments for regional and local construction costs as necessary.

The Director shall notify the Board at a public meeting of the proposed annual fee adjustment. No annual fee adjustment shall be effective until approved by the Board. Any annual fee adjustment approved by the Board shall be effective on July 1st of the year in which the action is taken, or at such other time as is provided by law.

D. Annual TIM Fee Program Report

Schedule: The Director shall, prior to December 27th of each year (within 180 days following the end of the fiscal year), make available to the public information regarding activity within each account for the prior fiscal year.

Report Content: The annual TIM Fee Program report shall contain the following information for the prior fiscal year:

- ◆ A brief description of each TIM Fee account.
- ◆ The amount of the TIM fees as shown in the TIM Fee Program Schedule.
- ◆ The beginning and ending balance of each TIM Fee account.
- ◆ The amount of TIM Fee revenue collected and the interest earned on each TIM Fee account balance.
- ◆ An identification of the capital improvements for which TIM Fees were expended and the amount of the expenditures on each capital improvement, including the total percentage of the cost of the capital improvement that was funded with TIM Fees.
- ◆ A description of each interfund transfer or loan made from the account, including the capital improvements on which the transferred or loaned funds will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
- ◆ If a specific capital improvement has been identified in the County's CIP for funding by TIM Fees, and if sufficient TIM Fees have been collected to complete funding of the capital improvement, then the approximate date by which the construction of that capital improvement will commence. If a date is not

identified, then TIM Fees may have to be refunded pursuant to Government Code Sections 66001(e) and (f).

- ♦ The amount of TIM Fee offset granted to Affordable Housing and Secondary Dwelling Units (see Section II.B.3 and II.B.4) and the transfers made into the TIM Fee accounts for the offset.

Board Review: The Board shall review this information at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public.

Public Notice to Interested Parties: Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the Director for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The Board may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

General Plan Consistency Finding: Changes to the TIM Fee projects in the CIP require a General Plan Consistency Finding by the Planning Commission or the Board, at its discretion, can make the consistency finding.

E. Five-year TIM Fee Program Review

Schedule: Every five years the Director will prepare a five-year TIM Fee Program review. The five-year program review shall be released to the public and reviewed by the Board on the same schedule as the annual TIM Fee Program report (see Section VII.D).

Content: The primary purpose of the five-year program review is to justify continued collection of the TIM Fee pursuant to the Mitigation Fee Act in Sections 66000-66025 of Government Code (Act). Content shall include:

- ♦ An update of the nexus analysis based on current information.
- ♦ Support the findings required in Section 66001(a) and (b) of the Act.
- ♦ Identify specific capital improvements, or types of capital improvements, for use of the prior year ending fund balance consistent with the nexus analysis and findings made pursuant to the Act.

F. Enforcement

EDC Ordinance Code 12.28.090

Failure of an Applicant to comply with any of the provisions of these administrative procedures is prima facie evidence of an existing major violation and shall be abated by the Director in accordance with the provisions these procedures. Any person in violation will be subject to civil penalties, civil action and/or other legal remedies.

If the Applicant fails to comply with any provisions of these administrative procedures, including failure to timely pay the TIM Fee, the County may take any or all of the following actions:

- ◆ Withhold issuance of the building-related permits.
- ◆ Record a Special Assessment or other lien or liens against the real property which is the subject of the Development Project for the amount of the TIM Fee.
- ◆ Revoke or suspend the temporary certificate of occupancy and/or certificate of occupancy for the Development Project.
- ◆ Take any other action necessary and appropriate to secure payment, with interest accruing from the date of nonpayment.
- ◆ Assess civil penalties against an Applicant and/or associated parcel owner.

VIII. USE OF TIM FEE FUNDS

EDC Ordinance Code 12.28.040, 12.28.080, and 12.28.100

A. Use of TIM Fees for TIM Fee Capital Improvements

Once TIM Fee capital improvements are identified and included in the TIM Fee Program Schedule, the County shall construct the capital improvements based on priorities established by the Board. Funds for these capital improvements shall come from the TIM Fee Program and other non-tax sources as determined by the Board.

The Director shall review the County CIP during CDA's annual budget preparation period. Based on this review the Director shall recommend to the Board funding priorities for the coming fiscal year among the capital improvements included in the TIM Fee Program Schedule.

TIM Fee funds may be used:

- ◆ To pay for capital improvements listed in the TIM Fee Program Schedule, including planning, design, administration, environmental compliance, bridge matching funds as appropriate and construction;
- ◆ To acquire right-of-way for capital improvements listed in the TIM Fee Program Schedule for which funding is expressly provided for right-of-way acquisition;
- ◆ To reimburse the County for construction of such capital improvements listed in the TIM Fee Program Schedule;
- ◆ To reimburse Applicants for Developer-Constructed Facilities pursuant to an adopted Credit and Reimbursement Agreement (see Section V.C).

Funding for a capital improvement is limited to the amount shown in the TIM Fee Program Schedule, unless expressly approved by the Board.

B. Use of TIM Fees for Administrative Costs

The TIM Fee may be used to fund administrative costs directly associated with the TIM Fee Program and not otherwise funded through processing fees or any other funding source. Administrative costs eligible for funding by TIM Fees include:

- ◆ Reasonable administrative or related expenses of the County including costs associated with the annual TIM Fee adjustment, annual TIM Fee Program report, and five-year TIM Fee Program review described in Section VII.
- ◆ Costs reasonably related to preparation and revision of plans, policies, and studies associated with identifying the capital improvements included in the TIM Fee Program Schedule and described in Section VIII.A
- ◆ Nexus studies required to make any findings and determinations required by the Mitigation Fee Act for the TIM Fee Program.

APPENDIX A: GLOSSARY*EDC Ordinance Code 12.28.020*

Term	Definition
Accessory Structures	Structures consistent with the primary use, established or constructed at the same time or after the establishment or construction of the primary use or structure on a lot. (See EDC Ordinance Code Sec. 130.40.030).
Additional Square Feet	The net increase in square feet of building floor area associated with a Development Project. "Net increase" is the floor area of the Development Project less the floor area (a) legally removed by authorized remodeling, demolition or relocation, or by accidental destruction or natural disaster, during the year preceding submittal of the Building Permit application or (b) authorized to be removed prior to or during construction of the Development Project. "Building floor area" is floor area within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Floor area not provided with surrounding walls shall be included if such area is included in the horizontal projection of a roof or floor above.
Additional Dwelling Units	The net increase in the number of Dwelling Units associated with a Development Project. Additional Dwelling Units equal the number of new Dwelling Units less the number of Dwelling Units (a) legally removed by authorized remodeling, demolition or relocation, or by accidental destruction or natural disaster, during the year preceding submittal of the Building Permit application or (b) authorized to be removed prior to or during the construction of the Development Project. Remodels and additions that do not result in an additional Dwelling Unit are not Additional Dwelling Units.
Affordable Housing	A Residential Project that is restricted to occupancy by moderate-income, low-income, and/or very low-income households as defined in the Zenovich-Moscone-Chacon Housing and Home Finance Act in California Health and Safety Code sections 50000 et seq.
Apartment	<ol style="list-style-type: none"> 1) One or more rooms of a building used as a place to live, in a building containing at least one other Unit used for the same purpose; 2) A separate suite, not owner occupied, that includes kitchen facilities and is designed for and rented as the home, residence, or sleeping place of one or more persons living as a single housekeeping unit.

Term	Definition
Applicant	Any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the County for a Development Project.
Approval	An actual use entitlement granted by El Dorado County, not an acceptance of an application as complete.
Board	El Dorado County Board of Supervisors.
Building Permit	The permit required by El Dorado County to do or cause to be done any work regulated by the County’s building codes.
Capital Improvement Program (CIP)	The CIP is a planning document that identifies all capital improvement projects (e.g., roads and bridges) a local government or public agency intends to build, replace or improve over a certain time horizon. The CIP provides a means for the Board to determine the capital improvement projects and funding priorities over a 20-Year horizon as required by the General Plan.
CDA	Community Development Agency.
Change and Intensification of Use	A Nonresidential Project that will change the use of building floor area, as defined in the California Building Standards Code, from the highest TIM Fee Use Category for the current permitted use to a higher TIM Fee Use Category. Change of Intensification of Use can also include a Project which may not require a building permit, however adds traffic to the County roadway network, such as an RV storage facility.
Condominium	A structure of two or more units, the interior spaces of which are individually owned; the balance of the property (both land and buildings) is owned in common by the owners of the individual units.
County	County of El Dorado.
Credit and Reimbursement Agreement	See Section VI.
Developer-Constructed Facilities	Capital improvements included in the TIM Fee Program Schedule that are constructed by an Applicant.

Term	Definition
Development Project	Includes either (1) new construction, whether a new building or an addition to an existing building, (2) Change and Intensification of Use of an existing building as part of a Nonresidential Project, (3) Additional Dwelling Units in an existing building as part of a Residential Project, or (4) any change in land use, regardless of whether or not building permit is required, that adds vehicle trips to the County roadway network, such as a recreational vehicle storage facility, solar farm, athletic field, etc.
Director	El Dorado County CDA Director or designee.
Dwelling Unit	A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), that constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.
Hearing Officer	The person appointed by the Board of Supervisors who is deemed to have sufficient knowledge of the Mitigation Fee Act (Government Code Section 66000-66008) and the administrative process.
Manufactured Housing	Residential structures that are constructed entirely in the factory, and which since June 15, 1976, have been regulated by the federal Manufactured Home Construction and Safety Standards Act of 1974 under the administration of the U.S. Department of Housing and Urban Development (HUD). (See also "Mobile Home" and "Modular Unit")
Mobile Home	<p>A structure, transportable in one or more sections, built on a permanent chassis and designed for use as a Single-Family Dwelling Unit and which</p> <ol style="list-style-type: none"> 1) has a minimum of 400 square feet of living space; 2) has a minimum width in excess of 102 inches; 3) is connected to all available permanent utilities; and 4) is: <ol style="list-style-type: none"> a) tied down to a permanent foundation on a lot either owned or leased by the homeowner; b) tied down to a temporary foundation, when authorized by a Temporary Mobile Home Permit; or c) set on piers, with wheels removed and skirted, in a mobile home.

Term	Definition
Mobile Home Park	A site with required improvements and utilities for the long-term parking of mobile homes, and which may include facilities and services for the residents.
Modular Unit	A factory-fabricated, transportable building or major component designed for use by itself or for incorporation with similar units on-site into a similar structure for residential, commercial, educational, or industrial use. Differs from mobile homes and manufactured housing (in addition to lacking an integral chassis or permanent hitch to allow future movement) being subject to California’s housing law design standards. California standards are more restrictive than federal standards in some respects (e.g., plumbing and energy conservation). Also called Factory-built Housing and regulated by the California State law of that title. (See also “Mobile Home” and “Manufactured Housing”)
Multifamily	A dwelling containing more than two Dwelling Units for rent.
Multiplex	A term encompassing two-family (duplex), triplex, and quadraplex dwelling-type structures.
Nonresidential Project	A Development Project with the following TIM Fee Use Categories: Hotel/Motel/B&B, Industrial/Warehouse, General Commercial, Office/Medical, and Church.
Patio Home	A detached single-family unit, typically situated on a reduced-sized lot, that orients outdoor activity within rear or side yard patio areas for better utilization of the site for outdoor living space.
Quadraplex	Four attached dwellings, available for rent, in one structure in which each unit has two open space exposures and shares one or two walls with adjoining unit or units.
Residential Project	A Development Project with the following TIM Fee Use Categories: Single Family Housing, Multi-Family Housing, Single Family Age Restricted Housing, or Multi-Family Age Restricted Housing.
Second Residential Unit or Secondary Dwelling Unit	A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on a single lot. Also called a “Granny Flat.”
Single Family Attached	A Dwelling Unit occupied, or intended for occupancy by only one household that is structurally connected with at least one other such Dwelling Unit; distinguished from a multifamily dwelling as the unit is separately saleable (e.g., townhouse).

Term	Definition
Single Family Detached	A Dwelling Unit occupied, or intended for occupancy by only one household that is structurally independent from any other such Dwelling Unit or structure intended for residential use.
TIM Fee	The Traffic Impact Mitigation (TIM) Fee imposed under Chapter 12.28 of the El Dorado County Ordinance Code. Fees may be adjusted for inflation pursuant to Section 12.28.050.
TIM Fee Program	The TIM Fee levied by El Dorado County to ensure that Development Projects pay for all or a portion of the costs of providing public infrastructure or services to the Project.
TIM Fee Program Schedule	The Zone boundaries, capital improvements list, and TIM Fee schedule on file with the Director and as adopted by Resolution.
TIM Fee Zone	Any of the several geographic areas where TIM Fees are applicable to a Development Project as shown in the El Dorado County TIM Fee Program Schedule.
TIM Fee Use Category	The land use categories used to calculate the TIM Fee on a Development Project (see Appendix C).
Two-family Dwelling	A structure on a single lot containing two Dwelling Units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both Dwelling Units.
Townhouse	A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, each unit is separated from any other unit by one or more common fire resistant walls, and each unit is separately saleable.
Triplex	A dwelling containing three Dwelling Units, each of which has direct access to the outside or to a common hall.

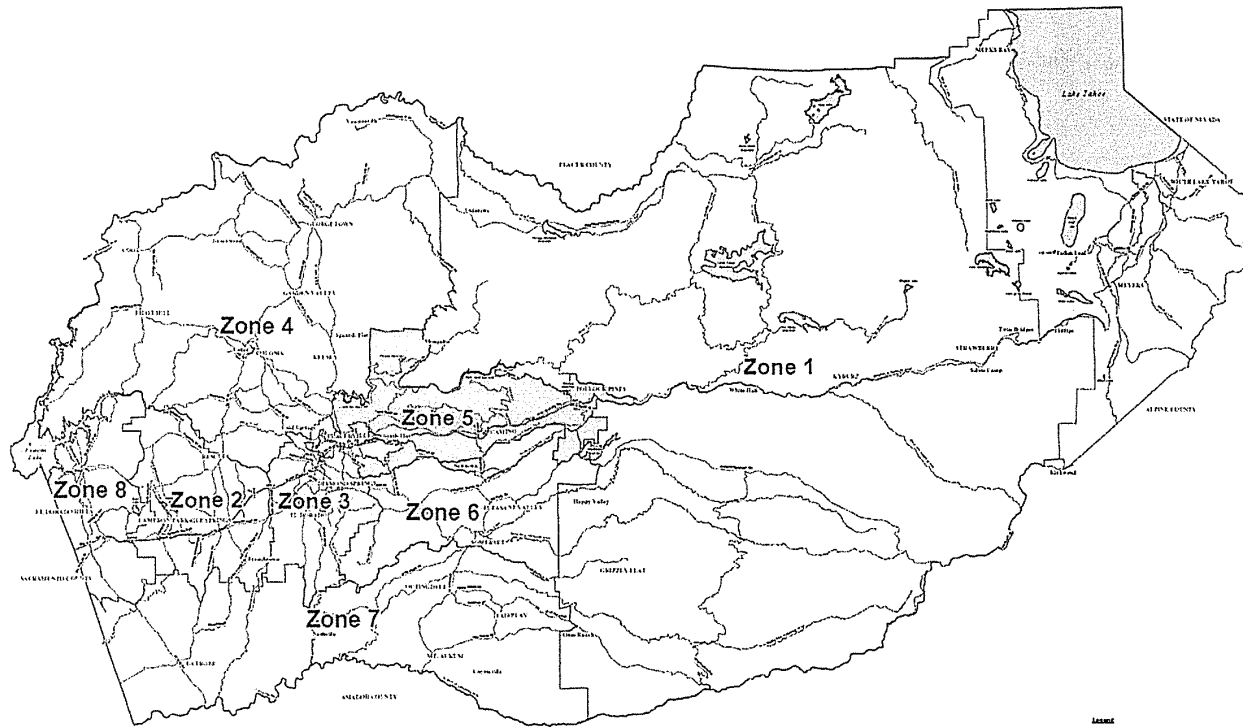
APPENDIX B: USE FEE CATEGORIES

The following table includes examples of zoning designations and the appropriate TIM Fee Use Category. CDA makes the final determination of the appropriate TIM Fee Use Category.

EXAMPLES OF TIM FEE USE CATEGORY PER ZONING CODE THIS IS NOT A COMPREHENSIVE LIST FINAL DETERMINATION TO BE MADE BY CDA	
TIM Fee Use Category	Planning Activity Examples
Single Family Not Age Restricted	Single-Family Dwelling unit, Mobile Home <u>not</u> in a Mobile Home Park, Patio Homes.
Single Family Age Restricted	Single-Family Dwelling Unit in Zones 2, 3 or 8 that meets the requirements for Age Restricted Development.
Multi-Family Not Age Restricted	Apartment, condominium, mobile home in a mobile/manufactured home park, modular unit, townhouse, triplex, two-family dwelling, quadraplex.
Multi-Family Age Restricted	Multi-Family Dwelling Unit in Zones 2, 3 or 8 that meets the requirements for Age Restricted Development.
General Commercial	Grocery store, retail store, gas stations with convenience stores, auto sales and rentals, banks, breweries, day care, restaurants, winery.
Hotel/Motel/B&B	
Church	
Office/Medical	General office, doctor's office, hospital.
Industrial/Warehouse	Light industrial and light manufacturing, printing and publishing, wholesale storage and distribution.

APPENDIX C: TIM FEE ZONES

The amount of the TIM Fee depends on the TIM Fee Zone in which the Development Project is located. The boundaries of TIM Fee Zones are shown on the map on the following page.



18-1215-001
 This map is a proposed TIM Fee Zone Map for El Dorado County, California. It is intended for informational purposes only and does not constitute a final decision or approval. The County reserves the right to modify or cancel this map at any time without notice.



Exhibit C
 Proposed TIM Fee Zone Map
 County of El Dorado
 State of California



LEGEND

TIM Fee Zones

- 1 Grizzly Peak Overlook west of Echo Summit
- 2 Cameron Park/Cherry Springs
- 3 El Dorado/Diamond Springs
- 4 Coloma/Coal/Greengarden
- 5 Pleasanton/Caribou/Potluc Pines
- 6 Pleasant Valley
- 7 Fairplay/Luttrell/Mt. Auburn
- 8 El Dorado Hills

~ Major Roads
 ~ Rivers & Creeks

0 1 2 3 4 Miles
 Not Prepared to Scale Please Contact your District or GIS Unit for Additional Maps.

APPENDIX D: BOARD POLICIES

This appendix includes:

- ◆ Traffic Impact Fee Deferral policy adopted by the Board for Nonresidential Projects (Policy B-3)
- ◆ TIM Fee Offset Program for Developments with Affordable Housing Units (Policy B-14)
- ◆ TIM Fee Credit to Account for Prior Occupancy Use (Policy J-5)



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT FEE DEFERRAL	Policy Number B-3	Page Number: 1 of 3
	Date Adopted: 02/28/1995	Revised Date:

BACKGROUND:

The Board of Supervisors wishes to encourage the development of non-residential uses in El Dorado County. One method to make commercial and industrial development more attractive is to create a system that allows the traffic impact mitigation (TIM) fee to be deferred. Commercial/industrial projects provide benefits in the following four categories:

- (a) *Creation of new jobs* - Local jobs for county residents would create countywide benefits such as an increase in the standard of living for county residents employed in the new industries, increased payroll taxes generated, and a potential overall decrease in reliance on other county services such as those provided by the community services and social services departments.
- (b) *Reverse Commutes* - Vehicles coming into the county from other counties would be traveling in the less congested direction. There would be less pollution from stop-and-go traffic, and the individuals working in the county would likely patronize local businesses during their lunch breaks or other out-of-office business meetings.
- (c) *Increased Property Tax Revenue* - Property tax revenues from commercial property increases as the property is improved. These increased revenues help the county finance other services it is required to provide.
- (d) *Increased Sales Tax Revenue* - Increased sales tax revenues generated from existing commercial businesses that choose to expand, or from new businesses that locate in the county could likewise help the county finance other services it is required to provide, including roadway safety improvements, and other road maintenance work.

POLICY:



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAFFIC IMPACT FEE DEFERRAL	Policy Number B-3	Page Number: 2 of 3
	Date Adopted: 02/28/1995	Revised Date:

1. To further the development of overall business growth and location in the county, the TIM fee shall be deferred for commercial/industrial development located on the county's west slope.

A. Program One: Development on which the TIM fee equals \$10,000 or more is eligible to defer the fee. An account receivable shall be created on the county's books, with the TIM fee fund carrying the notes receivable. The Developer/Builder (DB) will be charged interest on the deferred fee. Future payment of the fee will be secured by a trust deed, a written agreement between county and DB, (or other form of security acceptable to County Counsel) on the land on which the development is to take place. A title company is to be used to process the paperwork. The DB will be required to pay for the title company's costs along with the document recording fee. Interest charged will be the 11th District Cost of Funds plus one point.

The fee repayment obligation shall run with the land and be binding on heirs and successors. If the DB goes into bankruptcy, the agreement is void. The next DB is required to pay the TIM fees upon recommencement of the project, or enter into a new fee deferral agreement.

1. Repayment Timeline: Repayment of the fee is over a five year period. A 20% down-payment is required once the developer has obtained permanent financing, or prior to the final sign off (certificate of occupancy) on the building permit, whichever is earlier. The remainder is to be paid monthly after the initial down-payment, with the final payment due at the end of the five-year period with no prepayment penalty, if he/she wishes to do so.

B. Program Two: Commercial/Industrial projects on which the TIM fee equals \$9,999 or less shall pay the fee once the developer has obtained permanent financing, or prior to the final sign off on the building permit (certificate of occupancy), whichever



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT FEE DEFERRAL	Policy Number B-3	Page Number: 3 of 3
	Date Adopted: 02/28/1995	Revised Date:

is earlier.

Request for fee deferrals as referenced Policy Paragraph 1 are to be directed to the Director of Transportation. Special requests for fee deferrals where the fee equals from \$5,000 up to \$9,999 are to be directed to the Director of Transportation or his designee for determination of eligibility. Such determination shall be made based on financial information submitted to the Department of Transportation.

Primary Department: Department of Transportation

References: None



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number B-14	Page Number: 1 of 6
	Date Adopted: 12/11/2007	Revised Date: 12/17/2013

BACKGROUND:

A goal of the El Dorado County General Plan is to provide housing incentives through programs which assist developers in providing affordable housing opportunities while protecting the public health, safety and welfare of citizens. The Board of Supervisors has established a specific goal of studying means to create affordable housing within the County. The Traffic Impact Mitigation (TIM) fee offset is one potential incentive in the process of developing affordable housing in the unincorporated areas of El Dorado County.

The Board of Supervisors has long recognized that high traffic impact fees, while appropriate to address traffic impacts from development, have a negative effect on efforts to develop housing affordable for lower-income households.

The TIM Fee Program includes a provision to allow for an affordable housing TIM fee offset that provides up to a total of \$1.0 million per year of TIM fee offset for qualifying affordable housing development. The Board of Supervisors has authorized \$1.0 million annually, beginning in 2007, to be used to reduce fees for eligible affordable units. Additional offsets over the annual \$1.0 million may be recommended subject to Board of Supervisors' approval. This Fee Offset will be allocated annually among selected, eligible affordable housing projects that apply. The first cycle of the fee offset requests will be processed in December 2007. This allocation is only for the affordable units in a project. The TIM Fee offset program is not a cash subsidy to developers.

DEFINITIONS:

Very Low-Income Households: A very low-income household is one with total gross income that, at the time of eligibility, does not exceed fifty (50) percent of the median monthly income for El Dorado County, as defined by the U. S. Department of Housing and Urban Development.

Low-Income Households: A low-income household is one with total gross income that, at the time of eligibility, does not exceed eighty (80) percent of the median monthly income for El Dorado County, as defined by the U.S. Department of Housing and Urban Development.



**COUNTY OF EL DORADO, CALIFORNIA
 BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number	Page Number:
	B-14	2 of 6
	Date Adopted:	Revised Date:

Moderate-Income Households: A moderate-income household is one with total gross income that, at the time of eligibility, does not exceed one hundred twenty (120) percent of the median monthly income for El Dorado County, as defined by the U.S. Department of Housing and Urban Development.

Qualifying Household: Qualifying incomes are based upon the total gross income of all household members, ages eighteen (18) and older.

Household Size: Means the total number of people living in a single dwelling unit whether owner-occupied or rented.

Affordable Rental Housing: Rental dwellings for which the total monthly expense (rent plus the standard El Dorado County Housing Authority utility allowance) does not exceed thirty (30) percent of the maximum gross monthly income limit for very low- and low-income households in El Dorado County.

Affordable Ownership Housing: Affordable homeownership housing serves both families and individuals with annual gross incomes at or below one hundred twenty (120) percent of area median income and is housing where the total housing expense (Principal, Interest, Taxes, and Insurance [PITI]) of a household's total gross monthly income, plus other expenses such as homeowner association fees, does not exceed thirty-five (35) percent. Affordable homeownership housing must be deed restricted.

Affordable Sales Price: Affordable sales price is the price at which very low-, low-, or moderate-income households, as defined above, can qualify for the purchase of for-sale units with a total housing expense of no more than thirty-five (35) percent of the gross annual household income of the given income group. For purposes of calculation, housing expenses include PITI and other related assessments.

Deed Restricted: Deed restricted affordable units are single-family units, secondary dwellings, and/or multi-family rental units that are income-restricted for purchase or rent by very low-, low-, or moderate-income households for a specific period of time, secured through an Affordable Housing Agreement. Deed restricted for-sale units are further secured through a Buyer's Occupancy and Resale Restriction Agreement.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number B-14	Page Number: 3 of 6
	Date Adopted:	Revised Date:

Secondary Dwelling: Secondary dwellings may consist of the expansion of an existing single-family dwelling or the construction of a detached single-family residential unit as defined in that portion of the El Dorado County Zoning Ordinance defining: Secondary Dwellings.

POLICY:

Residential developers who are developing five (5) or more units, or homeowners building a secondary dwelling, with housing for very-low-, low- and moderate-income households in the unincorporated areas of El Dorado County are eligible to apply for an offset of their TIM fees. Currently, the Board of Supervisors has authorized \$1.0 million annually to be used to offset fees for eligible affordable units. Funds will be allocated annually for use among selected eligible affordable housing projects.

The TIM fee offset request for projects of five (5) or more units will be reviewed twice each year in February and August, or as otherwise determined. Requests for a TIM fee offset from homeowners building a secondary dwelling can be reviewed at any time throughout the year.

1. TIM fee offset allocations are provided in order to assist very-low-, low-, and moderate-income households to afford ownership or rental housing in the unincorporated areas of El Dorado County. The definitions of those income levels are based on standard affordable housing industry practices as established by the U.S. Department of Housing and Urban Development (HUD).
 - a. Developments of five (5) or more units, where at least twenty (20) percent of the units will be affordable to very-low-, low-, or moderate-income households, are eligible to apply for TIM fee offsets based on the percentage of units designated affordable. **Only the income-restricted units are eligible for a TIM fee offset.**
 - b. Table 1 includes a fee schedule for the potential TIM fee offset an applicant may receive based on the income affordability level of the units that are being provided in each project. For example, if a developer provides at least twenty (20) percent of the units as very-low-income units in a subdivision, they may receive a one hundred (100) percent TIM fee offset for each very low-income unit they produce, up to the maximum offset granted to a project.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number B-14	Page Number: 4 of 6
	Date Adopted:	Revised Date:

Table 1 TIM Fee Offset			
Applies to Ownership Units			
Affordability Level	Very Low	Low	Moderate
20 years	100%	75%	25%
15 years	75%	50%	0%
10 years	50%	25%	0%
Applies to Rental Units			
Affordability Level	Very Low	Low	Moderate
20 years (minimum)	100%	75%	25%

2. New residential developments of five (5) or more units or homeowners building a second unit that provide legal and deed restricted affordable secondary units that do not exceed maximum square feet limitations, or second- dwelling units that do not exceed thirty (30) percent of the primary unit's floor area, and where one (1) of the units on a parcel is owner-occupied, may be eligible for up to a one hundred (100) percent offset of TIM fees for the secondary dwelling.
 - a. Table 2 sets forth the percent of the offset an applicant may receive based on the length of affordability:

Table 2 Second Units			
Existing Homeowner Building a 2 nd Unit		New Construction	
Length of Affordability	% of TIM Offset	Length of Affordability	% of TIM Offset
20 years	100%	Not less than 20 years	100%
15 years	75%		
10 years	50%		

The developer or homeowner must demonstrate that the project can receive all necessary approvals to begin construction within two (2) years of the TIM fee offset approval.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number	Page Number:
	B-14	5 of 6
	Date Adopted:	Revised Date:

PROCEDURE:

1. The Advisory Committee, as defined in the TIM Fee Offset Program Procedure Manual, shall recommend the allocation of TIM fee offsets up to the amount available in the fund. Upon recommendation of the Advisory Committee, and with Board of Supervisors approval, total offsets in excess of the annual balance may be awarded. However, at the sole discretion of the Board of Supervisors, the County reserves the right to not allocate all or any of the TIM fee offset funds available in a given year. Any balance remaining at the end of a fiscal year shall be carried forward to be added to the new allocation for the next fiscal year. It is the desire of the County to fund the most effective projects as possible in a given year in order to most effectively address affordable housing needs.
2. The Advisory Committee shall forward recommendations to the Chief Administrative Officer (CAO). The CAO will provide a recommendation to the Board of Supervisors for developments with five (5) or more units that include a total TIM fee offset allocation for each residential project application for which offsets are recommended.
3. The Board of Supervisors will award tentative approval of the TIM Fee offset twice each year for developments with five (5) or more units. The Board of Supervisors must make a finding that the project will provide a significant community benefit by providing housing that is affordable to very low-, low- and/or moderate-income households. Offsets for projects that fail to proceed according to program timelines will be withdrawn and the offset amount will be placed back in the offset pool.
4. Homeowners building a secondary dwelling are eligible to complete and submit an application for a TIM fee offset at any time throughout the year when at least one of the units on a parcel is owner-occupied. The CAO may approve or disapprove the request for a TIM fee offset for secondary dwellings in accordance with the provisions set forth in this policy and report said offsets to the Board of Supervisors annually.



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: TRAFFIC IMPACT MITIGATION (TIM) FEE OFFSET PROGRAM FOR DEVELOPMENTS WITH AFFORDABLE HOUSING UNITS	Policy Number	Page Number:
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- 5. Failure to obtain a building permit or other similar permit within two (2) years of approval will void the TIM fee offset allocation unless an application for an extension is submitted in writing and is granted by the CAO. Extensions may be granted in one (1) year increments but shall not exceed more than three (3) extensions. Possible reasons for extensions may include County, state or federal issues, or other matters not controllable by the applicant.

PRIMARY DEPARTMENTS:

- Chief Administrative Office
- Community Development Agency
 - Development Services, Transportation, and Environmental Management Divisions
- Chief Administrative Office /Housing, Community and Economic Development Programs

REFERENCES:

Resolution No. 266-2006: Resolution Adopting the 2004 General Plan Traffic Impact Mitigation (TIM) Fee Program and Adopting New TIM Fee Rates.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC FEE CREDIT TO ACCOUNT FOR PRIOR OCCUPANCY USE	Policy Number J-5	Page Number: 1 of 4
	Date Adopted: 11/07/2000	Revised Date:

POLICY:

When calculating a traffic fee for a new development project pursuant to the County's traffic fee ordinances, the Department of Transportation shall determine any prior use of the parcel as evidenced by any pre-existing structure. A credit shall be given in the new fee calculation for any approved, documented prior use in effect after October 1961. Further, said credit shall be limited in dollar amount to the fee for the new development project for which the fee is calculated.

Determination of Prior Parcel Usage:

1. Building Department Records - Department of Transportation staff shall review the Building Department records to determine the previous building size, the previously represented use, and whether or not any traffic fees were previously paid.

To be eligible for credit, any square footage of building area must have been appropriately permitted, inspected and approved by the Building Department. Pre-existing buildings, constructed after October 1961 without a valid permit history, will not be eligible for credit.

2. County Assessor's Records - When Building Department Records do not confirm a previously represented use, Department of Transportation staff shall inform the applicant that Building Department records do not document an eligible use. The applicant may then obtain an "Assessor's Computation" sheet from the County Assessor's office and submit same to staff for further review. This sheet will show what, if any structure's exist on the site, the date that the Assessor first recognized the structure, the structure's use, the building size and other related details. If an "Assessor's Computation" sheet contains adequate information that reflects the



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC FEE CREDIT TO ACCOUNT FOR PRIOR OCCUPANCY USE	Policy Number J-5	Page Number: 2 of 4
	Date Adopted: 11/07/2000	Revised Date:

existence of an creditable structure then staff will consider it as acceptable evidence to document a prior site use for a traffic fee credit.

Determination of Credit Towards Traffic Fee:

When a prior use is determined to be eligible for a credit, staff will proceed to calculate the amount of credit to apply to a current fee calculation. An eligible use shall be credited the corresponding fee amount that the use would be charged under the current fee schedule.

1. Non-Residential Prior Use - For most non-residential uses, the fee is currently, categorized by use and calculated on the basis of documented square footage of pre-existing building floor area. Fees for gas stations are based on number of pumps, for golf courses are based on number of holes and fees for campgrounds are based on number of sites.

In those situations where the prior use is not identified in any of the categories on the adopted fee schedule, then staff will determine the trip generation rates for the eligible use as provided in the most recent edition of the "Trip Generation Manual" published by the institute of Traffic Engineers. Staff will then equate the trip generation rates to a recognized category in the adopted fee schedule to determine the fee credit.

2. Residential Prior Use:

For residential uses, the fee is currently calculated per each building unit as either a single-family use or as a multi-family use.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC FEE CREDIT TO ACCOUNT FOR PRIOR OCCUPANCY USE	Policy Number J-5	Page Number: 3 of 4
	Date Adopted: 11/07/2000	Revised Date:

Appeal Process:

Review by the Director of the Department of Transportation:

1. An applicant who disagrees with staff determination regarding credit may submit a written request for review of said determination by the Director of the Department of Transportation. The applicant is responsible for presenting any and all material in support of the applicant’s position for consideration of credit by the Director at the time of the written request. If the director finds that there was a creditable prior use, then DOT staff will recalculate the Traffic Fee reflecting the appropriate credit.

2. The Director shall make a finding whether or not the evidence presented adequately documents that a building existed and was occupied and used after October 1961. The Director will have thirty (30) calendar days to investigate the request and render a written decision regarding the request. The Director’s decision shall be final unless appealed to the Board of supervisors within ten (10) working days of the Director’s decision, in accordance with the procedures set forth herein, including the standardized form for appeal and accompanied by the appeal fee.

Formal Appeal to the Board of Supervisors:

1. If the applicant chooses to appeal the Department’s decision to the Board of Supervisors, then the applicant shall complete, sign and submit the form titled “Appeal of Traffic Impact Mitigation or Road Impact Fees” together with any relevant documentation and an appeal fee of \$100 to offset the administrative cost to process the appeal.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: TRAFFIC FEE CREDIT TO ACCOUNT FOR PRIOR OCCUPANCY USE	Policy Number J-5	Page Number: 4 of 4
	Date Adopted: 11/07/2000	Revised Date:

2. The applicant, on appeal, shall clearly identify on the appeal form the specific reasons for the appeal. The Board of Supervisors shall consider all issues raised by the appellant, and may in its sole discretion, consider other relevant evidence related to the existence of the prior use, at the time of the hearing.
3. The Department of Transportation shall set the hearing before the Board of Supervisors within forty-five (45) days of receipt of the appeal.
4. In any appeal action brought pursuant to this section, the appellant may withdraw his or her appeal, with prejudice, at any time prior to commencement of the public hearing.
5. A decision by the Board of Supervisors shall be final. If no action is taken by the Board of Supervisors, the appeal shall be deemed to be denied.

APPENDIX E: REIMBURSEMENT GUIDELINES

EL DORADO COUNTY
BOARD OF SUPERVISORS
AGENDA TRANSMITTAL

Exhibit A

AGENDA TITLE: Guidelines for RIF/TIM reimbursement projects		
DEPARTMENT: Transportation <i>see / in RITS</i>	DATE: 1/2/96	<u>CAO USE ONLY</u>
CONTACT: Barbara Ellis	PHONE: 5907	<i>C 701/18/96</i>
<p>DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION: The El Dorado Hills Specific Plan (EDHSP) Public Improvements Financing Plan (PIFP), dated December 28, 1988, proposed means for financing construction of specific basic public improvements required to serve full development of the EDHSP area. Section III.B.4. of the EDHSP PIFP discusses reimbursement and/or credits for e.g. developer advance-funded road impact fee (RIF) improvements. It requires that specific details regarding the implementation of the reimbursement and credit provisions of the EDHSP PIFP be agreed upon by the County and the Developer. The El Dorado County Department of Transportation Guidelines for RIF/Traffic Impact Mitigation (TIM) Fee Reimbursement Projects (Guidelines) describe the process of administration, construction, acceptance, and reimbursement of RIF and TIM fee projects. A copy of the Guidelines is on file with the Board Clerk.</p> <p>The Department of Transportation recommends that your Board approve and adopt the Guidelines.</p>		
<p>CAO RECOMMENDATION:</p> <p style="text-align: center;"><i>CAO</i></p>		
<p>BUDGET SUMMARY:</p> <p>Total Est. Cost \$ <u>-0-</u></p> <p>Funding</p> <p>Budgeted \$ _____</p> <p>New Funding \$ _____</p> <p>Savings* \$ _____</p> <p>Other \$ _____</p> <p>Total Funding Available \$ _____</p> <p>Change in Net County Cost \$ <u>-0-</u></p> <p>*Explain:</p>	<p>Funding Source: () Gen Fund () Other</p> <p><u>CAO Office Use Only:</u></p> <p>4/5's Vote Req'd () Yes <input checked="" type="checkbox"/> No</p> <p>Change In Policy () Yes <input checked="" type="checkbox"/> No</p> <p>New Personnel () Yes <input checked="" type="checkbox"/> No</p> <p>CONCURRENCES:</p> <p>Risk Management _____</p> <p>County Counsel <u><i>yes</i></u></p> <p>Other _____</p>	
<p>BOARD ACTIONS: JAN 23 1996</p> <p style="text-align: center;">APPROVED.</p>		
<p>Vote: Unanimous _____ or</p> <p>Ayes: SUPERVISORS: NIELSEN, SHULTZ, BRADLEY, NUTTING, NIELSEN</p> <p>Noes: NONE</p> <p>Abstentions: NONE</p> <p>Absent: NONE</p>	<p>I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors.</p> <p>Date: _____</p> <p>Attest: DIXIE L. FOOTE, Board of Supervisors Clerk</p> <p>BY: _____</p>	
710-059 REV. 3/6/91		

COUNTY OF EL DORADO
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR ROAD IMPACT FEE/TRAFFIC IMPACT MITIGATION FEE
REIMBURSEMENT PROJECTS

INTRODUCTION

The Board of Supervisors authorizes the Department of Transportation (DOT) to oversee the acquisition and reimbursement of Road Impact Fee (RIF) and Traffic Impact Mitigation (TIM) Fee Projects.

The purpose of these guidelines is to describe the process of administration, construction, acceptance, and reimbursement for RIF and TIM Fee Projects. It is recognized that special circumstances may require deviation and/or modification of these guidelines to satisfactorily complete the projects in compliance with applicable Federal, State, and Local law, previous Agreements, environmental concerns, or other criteria which are equally important and consistent with sound public policy and prudent engineering judgement. The affected County Agency/Department(s) may suggest and the Assessment District Screening Committee aka Bond Screening Committee may approve any deviation and/or modification to these guidelines. It is understood that any applicable agreement between the Developer and the County takes precedence over the guidelines included herein in any area of conflict.

The responsibility within the County for RIF/TIM Projects is assigned as follows:

- a. Project Reimbursement Eligibility - DOT
- b. Plan review and approval - DOT/Construction Unit
- c. Construction Inspection - DOT/Construction Unit
- d. Engineering Review of Reimbursement Request - DOT/Construction Unit
- e. Financial Review of Reimbursement Request - DOT/County Counsel
- f. Reimbursement - Auditor-Controller

1.0 Definitions

- a. Advertisement - Published public notice soliciting bids for the Project, in accordance with public contract law.
- b. Assessment District Screening Committee - also known as the Bond Screening Committee, membership is comprised of key staff from the Department of Transportation, Assessor, Treasurer, Auditor and County Counsel offices.

c. Bid Documents - Plans, specifications, and proposal documents prepared by/under the supervision of the Design Engineer conforming with policies, rules, regulations and laws applicable to the County, suitable for the solicitation and submittal of bids by contractors for construction of the Reimbursement Project.

d. Completed Facilities - Those certain facilities which are determined to be complete by the DOT and ready for acceptance by the County, and are eligible as a Reimbursement Project.

e. Contractor - A contractor who possess the appropriate California contractor license(s) for the work required to be performed in the Reimbursement Project.

f. County Engineer - County Engineer, El Dorado County.

g. Design Engineer (or Engineer of Work) - A licensed California Civil Engineer who has been retained by the Developer for the purpose of Designing and/or supervising construction of the facilities.

h. Developer - An individual, group, corporation, partnership, etc., which meets the requirements of the applicable requirements set forth by the County and which has applied to and has been approved by the County to construct a RIF/TIM Fee Reimbursement Project.

i. Eligible Reimbursement Project - A public road facility which has been determined to be eligible for cost reimbursement from Road Fee funds, as determined by DOT, and as approved within a reimbursement agreement by the Board of Supervisors.

j. Engineer's Estimate - A cost estimate prepared by the Design Engineer and approved by the County Engineer.

k. Facility - The term "Facility" or "Project", if used by itself, shall be taken to mean "RIF/TIM Reimbursement Facility". Facility shall be eligible for reimbursement at such time as it is complete, available for public benefit, and accepted by the County.

l. Guidelines for RIF/TIM Reimbursement Projects (Guidelines) - A framework developed by the County to facilitate the process of administering a RIF/TIM Fee Project.

m. Land Acquisition/Dedication Costs - Those costs associated with acquisitions or dedications of real property upon which public roadway facilities are situated, and which property is either owned by the Developer, or is located within the boundaries of the county approved project (see also off-site easements)

n. Off-Site Easement Costs - Those costs associated with dedications of real property upon which public roadway facilities are situated and which property is located outside the boundaries of the county approved project, and is required by the County to complete the roadway facilities, and is acquired at the Developer's expense.

o. Plans - Final construction drawings prepared by the Engineer of Work and its consultants and approved by the County for construction of the Project.

p. Proposal - A non-publicly advertised private request for proposals to perform public facility work or services, which complies with public contract law regulating fraud and non-collusion.

q. Purchase Price - The amount to be paid by the County for the Facilities in accordance with the provisions of the Reimbursement Agreement.

r. Reimbursement Agreement - An agreement between a Developer and the County of El Dorado, allowing the District to acquire certain public facilities from the Developer and to reimburse the Developer for the costs thereof.

s. RIF/TIM Reimbursement Report - A report prepared by the Engineer of Work as required by these guidelines containing information regarding the public capital facilities proposed for reimbursement.

t. Road Impact Fee (RIF) Reimbursement Project, Traffic Impact Mitigation Fee (TIM) Project - As defined by these guidelines, is a public road facility constructed by a Developer for reimbursement under the provisions of these guidelines and pursuant to the applicable Reimbursement Agreement.

u. Road Facility - Those certain public road facilities which are described in a Reimbursement Agreement.

v. Specifications - Documents prepared by the Engineer of Work or its consultants which describe in detail for construction contract purposes the material and workmanship required to complete the project, including but not limited to, the Standard Specifications for Public Works Construction (APWA), the Uniform Building Code (UBC), applicable DOT Standard Plans and Caltrans specifications, and the contract Special Provisions prepared by the Engineer of Work, which describe in detail for contract purposes, the materials and workmanship required to be performed on the Project.

w. Surety Bonds - Subdivision or construction bonds which provide a financial guarantee that the obligations required by a contract or

agreement will be fulfilled, in conformance with state law and County policy, rules and regulations and ordinances.

2.0 Pre-Construction Procedures

- 2.1 Developer shall submit the proposed Project Description and Engineers Cost Estimate to the County DOT for an eligibility determination. If eligible as a RIF/TIM Fee Reimbursement Project, the Developer shall submit a proposed Reimbursement Agreement to the County for review and Board of Supervisors approval.
- 2.2 Design Engineer prepares bidding or competitive proposal documents for the Project. As applicable, the Developer or County obtains necessary R/W and negotiates all utility relocations/installations. If Public Contract Law advertisement is not used, a minimum of three competitive proposals for construction are required.
- 2.3 Design Engineer prepares and submits plans to appropriate DOT Divisions for approval. The plans shall indicate a reference to the County facilities which are included and a note indicating the general category of facility eligible for reimbursement. The reference to County facilities on the plans is to assist County staff and other responsible parties with an understanding that some or all of the facilities shown on the plans may be eligible for County reimbursement of costs. However, the reference to County facilities indicated on the plans is for general information only and does not constitute approval or disapproval of project eligibility for cost reimbursement. The actual reimbursement eligibility is determined independent of plan notes and plan approval.
- 2.4 Developer pays DOT plan check and inspection fees (normal and special) in accordance with normal subdivision/permit process.
- 2.5 The County Engineer will determine the necessity of construction security, and if required, the amount.
- 2.6 Design Engineer prepares bidding/proposal documents and submits to County Engineer for review and comment as appropriate. The documents must be in conformance with ordinances, law, policies, rules and regulations applicable to the County construction, but may exclude the following provisions:
 - a. Compliance with all applicable Labor Codes for Public Works Contracts including Prevailing Wage Statement except non-collusion affidavit and fraud compliance.
 - b. Public Advertisement.
 - c. DBE program goals.

- 2.7 County Engineer reviews the Bidding/Proposal Documents for the following requirements:
- a. Scope of Work is specifically described and unambiguous and is included within a Reimbursement Agreement and the Project has been designated and approved by the County as a RIF/TIM Fee Reimbursement Project.
 - b. Engineers estimate is reasonable and bidding procedures consistent with these guidelines and bid forms clearly describe each bid item and are formatted substantially similar to the Engineer's Report Cost Breakdown.
 - c. Proposal includes a non-collusion affidavit.
 - d. The number of allotted working days specified in the contract documents are reasonable for the proposed work.
 - e. Liquidated damage clauses, if any, are consistent with County policy.

3.0 Bid/Proposal Procedures

- 3.1 After plans have been approved by appropriate DOT Division(s) and Bid/Proposal Documents have been approved by the County Engineer, Developer may advertise project, or obtain proposals.
- 3.2 If advertisement is used, the Developer shall advertise project at least three times in a newspaper of general circulation published in the County. If the proposal method is used, the Developer shall obtain at least three competitive proposals.

4.0 Project Award

- 4.1 Developer shall provide County Engineer a summary of all bids/proposals and a copy of the low bid proposal submitted for project and the Design Engineer's recommendation for award. Included in the recommendation the developer shall provide the following information:
- a. That there are no pending disputes over the bidding/proposal procedures.
 - b. That all bidders received the same set of bid/proposal documents and all of the addenda issued.
 - c. That all applicable County approvals for the work have been obtained.
 - d. Any conditions to the bid/proposal.

Developer shall retain the original of all bids/proposals received for a minimum of four years.

- 4.2 Within five working days of receipt of the bid/proposals material in Section 4.1, the County Engineer shall review the bid summary and a copy of the low bid and concur in the Developer recommendation, or advise the Developer that additional review time will be required.
- 4.3 In the event the low bid/proposal is not recommended, or the County Engineer cannot concur with the Developer recommendation, or the County Engineer is aware of any irregularities or possible disputes over the bidding procedure, the Developer or County Engineer shall notify the Director of the Department of Transportation. This notification shall be in writing and shall be submitted to the Director within five days after receipt of the bid material as required by Subsection 4.1. The Director will promptly review the bid documents and procedures in conformity with laws, ordinances, policies, rules and regulations applicable to the County and advise the Developer within ten days of the County's decision relative to award of the contract.
- 4.4 No individual bids/proposals will be rejected by the Developer without concurrence of the County Engineer except for failure to comply with the request for bids/proposals. However, the Developer may at his or her discretion, reject all bids/proposals received for a project.
- 4.5 Prior to award of contract, Developer shall obtain written concurrence for award from the County Engineer.
- 4.6 Design Engineer shall provide the following items within 30 days after the Developer has authorized contractor to proceed:
 - a. Itemized summary of all bids/proposals received on the project.
 - b. Signed contracts for the project specifying the award date.
 - c. Notice to Proceed.
 - d. A written statement that the contract award amount is within the estimates included in the Design Engineers Estimate and does not exceed estimated reimbursement funds available from the County. Should the Project bid/proposal exceed the aforementioned estimate or available funds, the Director of DOT shall determine if additional funds are justified or if no additional funds shall be reimbursed for the project.

5.0 Construction

- 5.1 Contractor shall coordinate all inspections on the Project in accordance with normal DOT/Construction Unit procedures.

- 5.2 Developer shall provide County Engineer with copies of all progress payments to the Contractor.
- 5.3 If the Developer desires to be reimbursed for any change order, the Developer shall obtain DOT approval of work and cost prior to consideration of the additional cost for reimbursement.
- 5.4 Revisions to the plans shall be reviewed and approved by the County Engineer in accordance with the normal permit procedure.
- 5.5 For the purposes of these guidelines, the construction shall be considered complete at such time as the Facility is substantially complete and available for public benefit and when the Developer has obtained the following as applicable:
 - a. Approval of DOT/Construction Unit if grading permit is required.
 - b. Approval of all facilities shown on the Plans or included in the Projects by the affected utility companies and/or other affected County Departments.
 - c. Approval of DOT/Construction Unit of all erosion control facilities required by the Plans and/or grading permit.
 - d. Approval by the County Surveyor of all monumentation.
 - e. Approval of DOT/Construction Unit of all street facilities, storm drains, street lighting, traffic signals, etc., shown on the plans.

6.0 Reimbursement

- 6.1 Developer submits a request for reimbursement to the County Engineer after the completion of the Project or any portion thereof (as indicated in Section 5.5). The request shall follow the format provided in Schedule C, "Developer Reimbursement Request Format", and shall contain, but not be limited to, the following:
 - a. Final quantities and final costs on each contract item, certified by the registered design engineer, and the total of all construction costs for the Project accompanied by copies of the general contractors construction contract and any other supporting documentation necessary to justify reimbursement.
 - b. Approved contract change orders with final quantities and/or final costs.
 - c. Itemized breakdown of other reimbursable costs as delineated in the applicable Reimbursement Agreement.

- d. Copies of invoices, vouchers, canceled checks, etc. to support all expenditures by the Developer to be reimbursed.
- e. Copies of Notice of Completion (recorded).
- f. Copies of Final Mechanics Lien Release for the facility.
- g. Documentation that right-of-way has been transferred to the County or, at the discretion of the County, offered to the County by an Irrevocable Offer of Dedication (IOD).
- h. Copies of the recorded transfer of title to the property or copies of the recorded Irrevocable Offer of Dedication (IOD), as appropriate.
- i. Submittal of written certification from other agencies or utilities involved in the reimbursement request, that the facilities were inspected and completed according to approved plans and specifications, and that any utilities or agency cost reimbursements are disclosed in the reimbursement requests.

In addition, the Developer submits to County Engineer a finalized copy of Official Record Plans which incorporates all approved changes, and a copy of the recorded tract map(s).

- 6.2 County Engineer reviews the request for reimbursement and all supporting data in accordance with review procedures. The County Engineer shall be entitled to rely on the authenticity of all supporting data, documents, representations and certifications provided by the Developer and the respective Engineer of Work without independent verification by the County Engineer. All funds reimbursable from other entities shall be itemized and estimated as part of the submittal.

If additional information is required during the review process to comply with Subsection 6.1, County Engineer requests in writing that the Developer supply the supplemental data. If Developer has not submitted all information requested, the County Engineer requests the additional backup.

- 6.3 County Engineer provides the following upon completion of Subsection 6.2:
- a. Upon receipt of all backup information, County Engineer prepares the "draft" Reimbursement Recommendation including cost summary and County Engineer's checklists attached as exhibit, within thirty (30) working days.

- 6.4 The County Engineer will determine that:

- a. Work has been completed as defined in paragraph 5.5.

- b. Competitive bid/proposal requirements have been met.
- c. Approved Facility Plans or Record Drawings have been received and are acceptable.
- d. Final quantities and costs have been reviewed and are acceptable.
- e. Equipment manuals (if applicable) have been received and are acceptable.
- f. Appropriate documentation has been provided (i.e., release of lien, warranty ...).
- g. Developer/Design Engineer's request for reimbursement is acceptable.

If there are questions or problems with the Reimbursement Request, the County Engineer contacts the Developer and Design Engineer directly.

- 6.5 County Counsel reviews the County Engineer's Reimbursement Recommendation to verify compliance with all agreements, and to ensure that copies of all applicable agreements are on file at the County Counsel's offices.

If there are questions or problems with the Reimbursement Recommendation, or if additional backup data is required (i.e., copies of invoices or checks), County Counsel contacts the County Engineer directly. If there are questions regarding scope or quality of completed work, County Engineer contacts the Developer.

Upon completion of financial review, County Engineer submits the original Reimbursement Recommendation along with originals of supporting documentation, to the Auditor-Controller.

- 6.6 The Auditor-Controller reviews the submitted reimbursement payment request and upon completion of review, Auditor-Controller issues warrant.

7.0 Cost Reimbursement Policies

- 7.1 Authority - The authority for general cost reimbursement policies will be set by the Board of Supervisors by approval of these Guidelines. Administration of cost reimbursement policies is assigned to the Director of Transportation. Appeal of decisions of the Director of Transportation shall be directed to the Board of Supervisors.

- 7.2 Eligibility - Cost reimbursement shall be made only for projects, or portions of projects, which are determined to be eligible by the Director of Transportation. Eligible projects are those of County or regional benefit, and are included within the annually adopted 5 year County Capital Improvement project list.

7.3 Reimbursement Limitations - Projects eligible for County reimbursement shall be reimbursed only from available funds of the RIF or TIM fee fund. The ability of the County to fully reimburse eligible costs is dependent upon the amount of uncommitted funds available in the RIF/TIM fee funds. The Director of Transportation will determine the allocation of uncommitted available funds which may be reserved for future, or higher priority projects.

7.4 Reimbursements

- Projects on the 5-year CIP

a. Timing - Cash reimbursement shall be made on a four-year basis. Payments each year shall be 25% of the eligible cost. Initial payment shall be made within 90 days of Board of Supervisors acceptance of the facility. Subsequent payments shall be made within 90 days of the acceptance anniversary. No interest shall be paid within the four-year plan. If sufficient funds are not available to comply with the four-year plan, interest on the remaining balance shall be paid at the County's net pooled funds rate from the fourth year to a maximum of the tenth year. The remaining principal due shall be reimbursed as the designated RIF/TIM funds become available.

b. Credits - Rather than cash reimbursements, the Developer and County may mutually agree to credit RIF/TIM payments toward the reimbursement. Generally, credits may be applied up to a maximum of 50% of required RIF/TIM payments by the Developer. Reimbursement of the remaining balance, after credits have been applied, shall be made over the subsequent four year period. The exact reimbursement term shall, as stated before, be contingent on the availability of sufficient funds. Reimbursements from EDH RIF collections are to be made after the 30% set-aside to the Silva Valley interchange RIF fund. No such set-aside is made from TIM fee revenues.

- Projects not on the 5-year CIP will be reimbursed only by specific agreement with the Board of Supervisors.

7.5 Reimbursement Categories

a. Construction Costs - Eligible and ineligible reimbursement categories shall be as follows:

<u>Eligible are Costs</u>	<u>Ineligible are Costs</u>
<u>Related to:</u>	<u>Related to:</u>
Grading	Landscaping
Base Course/Paving	Lighting
Curb & Gutter	Water, sewer
Sidewalks	P G & E

Storm Drain
 Intersection Facilities
 Safety and Signage

Telephone & other utilities
 Overhead for the above

If cost eligibility is disputed, the County Engineer shall make a written recommendation to the Director of Transportation, who shall decide final eligibility.

b. Non-Construction Costs - Eligible and ineligible reimbursement categories for non-physical facilities shall be as follows:

Eligible are Costs
Related to:

Planning
 Engineering
 Permits
 Fees
 Legal
 Management
 Administration
 Interest on financing
 Off-site Easements

Ineligible are Costs
Related to:

Landscaping
 Lighting
 Water, sewer
 P G & E
 Telephone & other utilities
 Land dedication
 Overhead for the above

No reimbursement shall be made for ineligible non-construction costs. Reimbursement for eligible non-construction costs shall be limited to a maximum of 20% of eligible construction cost. Included within the 20% may be an undocumented allowance of 3% of construction cost for Developer internal project management. Expenditure of the remaining 17% cost shall be documented and approved by the County prior to reimbursement. The County will initially accept non-construction cost documentation consisting of an itemized cost summary showing purpose, receiver, and amounts of expenditures, along with a certification by an authorized Developer official. Additional back-up may be requested by the County.

SCHEDULE C

EXAMPLE REIMBURSEMENT REQUEST LETTER

"DEVELOPER LETTERHEAD"

County Engineer
El Dorado County
Placerville, California 95667

ATTENTION:

SUBJECT: RIF/TIM REIMBURSEMENT PROJECT _____
ROAD IMPROVEMENTS REIMBURSEMENT REQUEST

Dear _____:

As required by the County of El Dorado Guidelines for Road Impact Fee Reimbursement Projects and as authorized by the Reimbursement Agreement between the _____, Company and the County of El Dorado, dated _____ 1995, we are submitting this request for reimbursement of eligible project costs from County RIF/TIM funds.

The work included under this reimbursement request includes the rough grading, storm drains and sewer, pavement, curbs and sidewalks, and traffic signals. All of the work involved was shown on the drawings, listed in Attachment 1, approved by the County of El Dorado.

The total amount requested for reimbursement for the subject work is _____. This reimbursement should be taken from County RIF/TIM funds.

Eligible for Reimbursement

Total Contract Costs=
TIM/RIF Eligible Costs=
Developer Funded Costs=
Reimbursements from other Sources (itemize)=

A further breakdown of original contract amounts, change orders, and eligible and not-eligible for reimbursement costs are provided on Attachment 2. Detailed cost breakdowns, actual installed quantities and engineering back-up, as well as other required items, are provided as

described in the Attachments.

_____ Company certifies to County Engineer and the County of El Dorado, that with reference to the subject work of this reimbursement request, that all County construction requirements for public works have been complied with as set forth in the TIM/RIF Reimbursement guidelines.

To the best of the _____ Company's knowledge, no mechanics liens exist against the property that the work was performed on and whose title will be (or has) transferred to the County of El Dorado. A Title Insurance Policy is attached in the amount of _____ for the property involved, herein.

_____ Company warrants to the County of El Dorado that it will repair, at its own expense, any faulty or damaged work originally performed as part of this project. This warranty expires _____.

Please see attachments for pertinent correspondence.

We hope that we have satisfied all of the requirements for receiving reimbursement for our costs associated with this work. We anticipate hearing from you no later than 90 days after you receive this package.

Please contact _____ at _____ if you have any questions.

Sincerely yours,

Best Developer in Town

Schedule C ATTACHMENTS
TIM/RIF Project

Developer's Reimbursement Request Company

<u>Attachments</u>	<u>Description</u>
1.	Project Drawing List
2.	Contract Breakdown
3.	Other Reimbursable costs Summary
4. (____ Sheets)	Project contract(s) (fully executed)
5. (____ Sheets)	Executed Change Orders and narrative descriptions of the work and why the change was required.
6.	Completed Project Approval letters from various agencies.
7. (____ Sheets)	Contract Bid Line Items with original and actual installed quantities with original and final costs.
8.	Final Cost Breakdown by Road Segments.
9. (____ Sheets)	Engineering Back-Up to Final Quantities and Costs.
10.	Copy of recorded tract map.
11.	Invoice and Payment Summary for construction and non-construction costs.
12.(____ Sheets)	Copies of Paid Invoices
13.	Canceled Checks (If requested by County)
14.	Recorded Notice of Completion
15.	Approved Improvement Plans or Record Drawings (under separate cover)
16.	Mechanics Lien Releases

Attachments

Description

17.(____ Sheets)

Title Transfer Documents or Irrevocable offer of Dedication (IOD) as appropriate.

18.(____ Sheets)

Title Insurance Policy

County Engineer's Procedures
 For RIF/TIM Reimbursement Projects
 County of El Dorado

County Engineer's Checklist for Developer's
 Reimbursement Request

Project Identification: _____

Purpose: The developer's engineer will provide this information to document construction and non-construction costs which are requested for reimbursement by the County. Refer to separate Developer's Reimbursement Request for additional documentation.

Section I - Reference documents to be provided separately from developer's reimbursement request.

Section I:	Construction Documents Reference	Yes/No	By	Date
	A. Construction Documentation Completed	_____	_____	_____
	B. Construction Close-out Completed	_____	_____	_____
	C. Public Facilities Accepted	_____	_____	_____
	D. Property Transfer Completed or Irrevocable offer of dedication with title insurance policy	_____	_____	_____
Section II:	Reimbursement Request			
	A. Cover Letter Per Schedule "C" Guidelines	_____	_____	_____
	1. Includes project description	_____	_____	_____
	2. Summary of all costs	_____	_____	_____
	3. Certifications per Schedule "C"	_____	_____	_____
	4. Authorized Signatures	_____	_____	_____

- | | | | | |
|----|---|-------|-------|-------|
| B. | Expenditure Documentation (For Non-Construction Costs) | | | |
| | 1. Invoice and payment summary | _____ | _____ | _____ |
| | 2. Canceled checks received or District Engineer spot check of files completed | _____ | _____ | _____ |
| | 3. Back-up material received | _____ | _____ | _____ |
| C. | Expenditure Documentation (For Construction Costs) | | | |
| | 1. Summary and certification by Engineer-of-Work for final quantities, cost, including change orders. | _____ | _____ | _____ |
| | 2. Canceled checks received or District Engineer spot check of files completed. | _____ | _____ | _____ |
| D. | District Engineers Determination of whether improvements are eligible for reimbursement. | | | |
| | 1. Item reviewed and determined reimbursable | | | |
| | • Quantities | _____ | _____ | _____ |
| | • Prices | _____ | _____ | _____ |
| | • Invoices and Checks | _____ | _____ | _____ |
| | 2. Determination of no significant deficiencies in the facility | _____ | _____ | _____ |
| | 3. Analysis of reasonable cost. | _____ | _____ | _____ |
| | 4. Recommendation of reimbursement cost. | _____ | _____ | _____ |

Review Completed By: _____ Date: _____

County Engineer's Procedures
 For RIF/TIM Reimbursement Projects
 County of El Dorado

County Engineer's Checklist for Construction Documents

Project Identification: _____

Purpose: The developer's engineer will provide this information which will be retained in county files to document compliance with county requirements for reimbursement projects. Additional documents may be required.

Section I - Reference documents to be provided separately from developer's reimbursement request.

	Location/Person	Yes/No	By	Date
A. As - Bid Plans	_____	_____	_____	_____
As - Bid Specifications	_____	_____	_____	_____
As - Bid Engineers Cost Estimate	_____	_____	_____	_____
B. Approved Record Drawing	_____	_____	_____	_____
C. Recorded Property Maps, Deeds, Etc...	_____	_____	_____	_____

C. Construction Phase

- | | | | | |
|-----|--|-------|-------|-------|
| 1. | Copy of Executed Change Orders Received
_____ Through # _____ | _____ | _____ | _____ |
| 2. | Final Change Order (Payment) and Progress Payments | _____ | _____ | _____ |
| 3. | Post Construction Security Copy | _____ | _____ | _____ |
| 4. | Warranties and Guarantees Received (With listing) | _____ | _____ | _____ |
| 5. | O/M Manuals Received (Listing) | _____ | _____ | _____ |
| 6. | Real Property Acceptance Letter and Listing of Property | _____ | _____ | _____ |
| 7. | Other Agency Acceptance Letters (Utilities, etc.) | _____ | _____ | _____ |
| 8. | Notice of Completion Record Copy | _____ | _____ | _____ |
| 9. | Final Mechanics Lien Release | _____ | _____ | _____ |
| 10. | Design Engineers Verification Letter that all construction completed per approved plans of specifications, in compliance with county local requirements, no outstanding claims or liens, cost data is accurate and complete. | _____ | _____ | _____ |

Review Completed By: _____ Date: _____

Section II - Documents to be contained in Developer's Reimbursement Request

A. Data Book:

	Yes/No	By	Date
1. Loose-Leaf Binder	_____	_____	_____
2. Table of Contents	_____	_____	_____
3. Narrative Description of Contracts	_____	_____	_____
4. Engineers, Inspectors, Contractors, Agencies Info.	_____	_____	_____
5. Key Project Dates	_____	_____	_____
6. Cost Summary	_____	_____	_____
7. County Engineers Checklist Complete for Each Contract	_____	_____	_____
8. List of Reference Documents and Location	_____	_____	_____

B. Advertisement and Award Phase:

1. Copy Certified Ad (3 week min.), or Proposal Solicitation Letters	_____	_____	_____
2. Copy Bid Addenda (If any) # _____	_____	_____	_____
3. Summary of Bids/Proposals	_____	_____	_____
4. Design Engineers Review and Recommendation to Award	_____	_____	_____
5. Copy of Low Bid	_____	_____	_____
6. Explanation of Any Controversy or Alteration to Bid Documents	_____	_____	_____
7. List and Explanation of Any Non-Bid Items	_____	_____	_____
8. Copy of Contact, Insurance Certificates, Security, Etc. (As applicable)	_____	_____	_____

**EL DORADO COUNTY
BOARD OF SUPERVISORS
AGENDA TRANSMITTAL
Meeting of May 20, 2003**

AGENDA TITLE Guidelines for RIF / TIM Reimbursement Projects	
DEPARTMENT: Transportation	DATE: May 8, 2003 <u>CAO USE ONLY</u>
CONTACT: Matt Boyer, Director	PHONE: 621-5900
DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:	
1. Amend the adopted "Guidelines for RIF/TIM Reimbursement Projects" to suspend Section 7.0 "Cost Reimbursement Policies," as pertains to the El Dorado Hills / Salmon Falls Road Impact Fee. 2. Direct the Bond Screening Committee to recommend appropriate adjustments to the Guidelines for future consideration of the Board of Supervisors. In the interim, authorize staff to negotiate reimbursement agreements in the context of the concerns expressed herein.	
CAO RECOMMENDATION:	
Financial impact? () Yes (X) No	Funding Source: () Gen Fund () Other
BUDGET SUMMARY: Total Est. Cost \$ <u>0</u> Funding Budgeted \$ _____ New Funding \$ _____ Savings \$ _____ Other * \$ _____ Total Funding Available \$ _____ Change in Net County Cost \$ <u>0</u> * Explain	CAO Office Use Only: 415's Vote Req'd. () Yes () No Change in Policy () Yes () No New Personnel () Yes () No CONCURRENCES: Risk Management _____ County Counsel _____ Other _____
BOARD ACTIONS:	
Vote: Unanimous _____ Or Ayes: Noes: Abstentions: Absent: Rev. 2/96 j:\agenda\win95	I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors. Date: _____ Attest: DIXIE L. FOOTE, Board of Supervisors Clerk By: _____

2

COUNTY OF EL DORADO **DEPARTMENT OF TRANSPORTATION**



CONSTRUCTION DIVISION:
2441 Headington Road
Placerville CA 95667
Phone: (530) 642-4988
Fax: (530) 642-4936

MATTHEW C. BOYER
Director of Transportation

Internet Web Site:
<http://co.el-dorado.ca.us/dot>

MAIN OFFICE:
2850 Fairlane Court
Placerville CA 95667
Phone: (530) 621-5900
Fax: (530) 626-0387



May 8, 2003

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Dear Board Members:

Title: Guidelines for RIF / TIM Reimbursement Projects

Meeting Date: May 20 , 2003

Requested Actions:

1. Amend the adopted "Guidelines for RIF/TIM Reimbursement Projects" to suspend Section 7.0 "Cost Reimbursement Policies," as pertains to the El Dorado Hills / Salmon Falls Road Impact Fee.
2. Direct the Bond Screening Committee to recommend appropriate adjustments to the Guidelines for future consideration of the Board of Supervisors. In the interim, authorize staff to negotiate reimbursement agreements in the context of the concerns expressed herein.

Reason for Recommendation:

Background

On January 23, 1996 the Board adopted "Guidelines for RIF/TIM reimbursement projects". A copy of these guidelines is attached. Each time DOT begins to discuss reimbursement terms with a specific developer, these Guidelines, and past reimbursement agreement terms, are looked to as starting points. However, as is explained herein, current circumstances require consideration of a new approach to reimbursements that is different from the existing guidelines and past agreements, at least as relates to the El Dorado Hills / Salmon Falls Road Impact Fee.

These guidelines accomplish many things including specifying the terms under which developers are reimbursed from future traffic impact fees for transportation projects that are advance constructed. The guidelines (page 1) recognize "that special circumstances may require deviation and/or modification of these guidelines to satisfactorily complete the projects..." in compliance with applicable laws, agreements, or "other criteria which are equally important and consistent with sound public policy..."

Page 1 of the Guidelines states that the "Bond Screening Committee may approve any deviation and/or modification to these guidelines."

The Bond Screening Committee includes the Assessor, Auditor-Controller, Chief Administrative Officer, County Counsel, Director of Transportation, and Treasurer-Tax Collector. While some of these Committee members may not have a direct interest in the subject of impact fee reimbursements, the time-sensitivity of the matter suggests that the Board may wish to take advantage of an existing procedure rather than create a new one. Also, the subject of advanced road projects has related to the formation of Community Facilities District bond issuances that are at the core of the Bond Screening Committees' purpose.

While a comprehensive review of these guidelines might be appropriate at some future date, the Department of Transportation believes that changing one particular component of the guidelines is needed more imminently – specifically that related to cost reimbursements.

Section 7.0 of the Guidelines define "Cost Reimbursement Policies".

- Section 7.1 establishes that "authority for general cost reimbursement policies will be set by the Board of Supervisors by approval of these guidelines."
- Section 7.2 states that eligible projects are those of County or regional benefit that are also in the 5 year Capital Improvement Program.
- Section 7.3 states the County's ability to reimburse is dependent upon the amount of uncommitted funds available in the impact fee programs, and indicates that the Director of Transportation will determine the allocation of uncommitted available funds that may be reserved for future or higher priority projects.
- Section 7.4 establishes the typical timing under which projects identified in the 5 year Capital Improvement Program will be reimbursed, generally with zero interest and over a four-year period with 25% repaid each year. (Note: the introduction on Page 1 acknowledges that the specific terms of any Board – approved reimbursement agreement takes precedence over these guidelines).

Areas of Concern

Sections 7.2 through 7.4 are not fully reflective of existing circumstances. Moreover, these policies are incomplete and do not address several current circumstances, particularly as relates to the El Dorado Hills / Salmon Falls Road Impact Fee area.

- ✓ How should the County handle reimbursements for projects not in the 5-year CIP?
- ✓ There is, and will continue to be, an increasing amount of advanced projects compared with the projected stream of new impact fees. If the County fully commits

the stream of new fees to reimburse project advances how will the County deliver projects that are needed but not conditions of any specific development?

- ✓ The guidelines imply an overly optimistic situation with respect to near-term RIF cash flow as compared to the cost of road improvements needed to maintain acceptable traffic flows.

As DOT staff has described on a number of occasions, the County has entered a period of time when a number of RIF road improvements are necessary in a short period of time to alleviate specific points of congestion. From a cash-flow perspective, the El Dorado Hills / Salmon Falls Road Impact Fee (RIF) is unable to keep pace with the need for new projects and this circumstance is projected to exist for a number of years. **From a practical standpoint, the County may not have any funds to provide reimbursements for a number of years and still ensure delivery of critical congestion-relieving projects.**

A related issue is crediting the cost of eligible fee program projects against the payment of impact fees. Example: a development owes traffic impact fees of \$200,000, and is required to advance construct a \$500,000 road improvement. Often the County will grant fee credits for the improvements such that no impact fees would be paid, and the reimbursement owed would be \$300,000.

To the extent that the County commits to repay existing advances with impact fee receipts more quickly than is perhaps necessary, or grants fee credits to minimize the outstanding balance on an advance, the County is further disadvantaged in building other critical road improvements in a timely manner.

The cash situation in the RIF, and eventually other fee programs, is such that the County may need to reconsider providing fee credits for road improvements. As an alternative, the County may need to consider requiring both full payment of traffic impact fees and advanced construction of appropriate road projects (subject to reimbursement), to the extent allowable within the County's legal authorities.

It should be noted that this cash flow issue is not related to whether the current impact fee schedules are sufficient. Inherent in any comprehensive fee-based financing system are these problems.

- ✓ There will be a "lag" between the time fees are paid and the time road improvements are delivered with cash until the theoretical end of the program when the fees associated with the last building permit allow for construction of the last road improvement; or,
- ✓ There will be a time when the sum of advanced-funded road improvements causes significant cash shortages until the theoretical end of the program when the fees associated with the last building permit allow for the final re-payment of the last remaining advance.

- ✓ Inherent in this agenda item is a suggestion that the County needs to move from the former of these two scenarios to the latter.

As each new improvement is completed, the County will have additional road capacity for a future period of time. A revision to the policies that front-loads road building while deferring reimbursements will help to mitigate the problems inherent in the current system.

Long-term the County may need to consider alternative structures for financing road improvements that complement the comprehensive impact fee programs without modifying the obligations of new development under the provisions of Measure Y.

Pending Reimbursement Agreements

Several new reimbursement agreements are currently being discussed with developers and are at various stages.

- ✓ White Rock Road Improvements, between 5th Avenue to Latrobe Road, (AKT Development and Creekside Greens/Lennar).
- ✓ Silva Valley Parkway connection to White Rock Road, including upgrades to White Rock Road (Serrano Associates).
- ✓ White Rock Road – west, adjacent to Euer Ranch (AKT/Northridge Development).
- ✓ El Dorado Hills Boulevard at Wilson Boulevard, traffic signal (Sterling Ranch Associates).
- ✓ El Dorado Hills Boulevard at Olson, traffic signal (AKT Development).

Some of the financing terms of the pending agreements listed above are defined in prior approvals.

Other road projects are likely in the next year or two that will receive reimbursements pursuant to the terms of existing reimbursement agreements.

Other discretionary land use decisions are pending that could lead to new conditions of approval, and eventually result in the need for additional reimbursement agreements.

Recommendations

The Department of Transportation recommends that the Board suspend Section 7.0 of the reimbursement guidelines and refer the matter to the Bond Screening Committee. It is further recommended that your Board direct that the Bond Screening Committee recommend appropriate revisions Section 7.0 of the guidelines in light of current circumstances.

As your Board must ultimately approve all reimbursement agreements, and consistent with the existing Guidelines, the terms of any specific agreement take precedent over the Guidelines, the most important aspect of this recommendation is to provide notice to potentially affected parties that the County will be extremely limited in its ability to enter into a series of new reimbursement agreements modeled after past practice.

Summary of the Purposes of the Recommendations

In summary, the primary purposes of these recommendations are as follows.

- ✓ Ensure that DOT, the Board of Supervisors, other County Departments, and other interested parties, have a common understanding of financing issues related to the RIF program and to receive Board direction that an amendment to the current guidelines is necessary and appropriate.
- ✓ Continue to strengthen the County's financial position in the El Dorado Hills / Salmon Falls Road Impact Fee program area to meet upcoming obligations in the delivery of all key RIF projects.
- ✓ Ensure an appropriate sharing of long-term financial responsibility, consistent with existing approvals and entitlements, with the development community.
- ✓ Set the stage for the establishment of a more realistic, predictable, but equally "level" playing field, for all future reimbursement agreements.
- ✓ Ensure that private parties desiring to enter into future reimbursement agreements have a more-clear upfront understanding of the issues described herein that will impact the possible range of financial terms of any advance and reimbursement.

Options

- ✓ Alternatively, the Board could adopt changes to the Guidelines at this time. This is not recommended as the specific language should be carefully considered and staff is not prepared with a specific recommendation at this time.
- ✓ The Board could also direct (specified) staff to return at a future date with revisions for your consideration without referral to the Bond Screening Committee.
- ✓ The Board could determine that no changes are necessary to the existing guidelines, particularly as the current guidelines are non-binding and require that all reimbursement agreements be presented to your Board for approval.
- ✓ The Board could take no action, or could continue the item to a future meeting.

One other consideration is the involvement of non-County stakeholders in the development of proposed new reimbursement policies. Typically, DOT makes exhaustive efforts to involve stakeholders in the development of new plans and policies. In this case, it is not

clear that individual stakeholder involvement would be constructive as there are already fiscally inter-woven considerations. However, it would appear to be in the collective interests of the stakeholders to support the expeditious preparation and adoption of new reimbursement guidelines that provide for greater certainty while preserving evenhandedness.

Fiscal Impact:

There is no fiscal impact associated with this item, although the intent is to lead to an improvement to the County's financial position in the El Dorado Hills / Salmon Falls Road Impact Fee program.

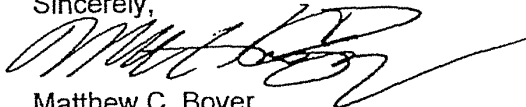
Net County Cost:

There is no net County cost associated with this item.

Action to be Taken Following Approval:

Staff will implement the Board's direction, if any.

Sincerely,



Matthew C. Boyer
Director of Transportation

Attachment

cc: Bond Screening Committee
El Dorado Hills / Salmon Falls Road Impact Fee "stakeholders"
Planning Commission members
Conrad Montgomery, Planning Department



County of El Dorado

Legislative File Number 08-0738 (version 2)

Transportation Department recommending Chairman be authorized to sign Reimbursement Agreement for the Improvements and Grading of Bass Lake Road between the County and Serrano Associates, LLC and the Assignment and Assumption of Plans and Specifications (AGMT 08-1736); and recommending the Board approve the reimbursement approach used for this agreement as a standard for future reimbursements to be presented for Board approval where the County is not constrained by prior agreements.

FUNDING: 2004 General Plan TIM Fee Program, Local Road Component, Zone 8 (EDH TIM) fund.

BUDGET SUMMARY:		
Total Estimated Cost		\$ 1,811,500
Funding		
Budgeted	\$ 1,811,500	
New Funding	\$	
Savings	\$	
Other	\$	
Total Funding Available	\$ 1,811,500	
Change To Net County Cost		\$ 0

Fiscal Impact/Change to Net County Cost:

Payments to be made according to this reimbursement agreement total approximately \$1,811,500 and are to be paid on a ten year schedule where the first payment includes a catch-up amount for three years of payments for a total of \$543,450. The November 2008 scheduled payment and each of the six subsequent annual payments will be \$181,150 each. No interest is being paid on this debt except in the case where the County is unable to make a scheduled annual payment and where the payment can not be converted to fee credits. Funding for this reimbursement has been included in the 2008 DOT Five-Year CIP.

Background:

Standard Approach for Reimbursement Agreements

On May 20, 2003, the Board suspended Section 7.0 of the Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects" (Guidelines) for only those projects within the EDH TIM area due to funding issues. The Department is proposing to use the subject reimbursement agreement with Serrano as the standard

template for subsequent reimbursement agreements within the EDH TIM area. It is important to note that reimbursement agreements funded from the West Slope TIM area have not been impacted by the Board's decision to suspend Section 7.0. The key differences of this agreement as compared to the previous standards are as follows:

- ü Ten year reimbursement with no interest

The original standard provided for reimbursement over four years with no interest. Current cash flow projections support a ten year period for reimbursement where these amounts are reflected in the current Five-Year CIP, 2008.

- ü Initial payment to be made within 90 days of acceptance of improvement (or open for public use)

This is consistent with the original standard.

- ü Where County can not make the annual payment due to cash flow issues the amount of insufficiency will accrue interest at the Treasurer's pooled rate of funds

This is consistent with the original standard.

- ü The insufficiency described above may be converted to credits to be applied to future TIM fees if requested by developer.

This is a new approach and is considered by the Department to be in the best interests of the County as interest costs to the TIM fee program would be avoided. The subject agreement (Serrano) also makes provisions to allow this same option to be incorporated into subsequent agreements with other developers in the EDH TIM, thereby waiving prior rights to TIM fee revenues by that credit portion. The Department is also recommending that this provision be included as a standard for all reimbursement agreements including those funded from West Slope TIM revenues.

The Department will be presenting other reimbursement agreements to the Board for developer funded improvements in the El Dorado Hills area that will include these same provisions if the Ten-Year Approach is approved by the Board:

Promontory for Olson Signal, approx. \$490,000

West Valley for Latrobe Road Connector to White Rock Study, approx. \$330,000

Hovnanian for White Rock Road Widening at Four Seasons, approx. \$ 5.1M

If the Board approves the Ten-Year Approach presented here in concept the three agreements noted above will be developed with these provisions. As noted earlier, the Guidelines have not been suspended related to TIM fee zones 1 - 7 and those agreements will typically include a four year reimbursement. The recently adopted 2008 DOT Five-Year CIP also assumes a four-year payment schedule in the TIM area (zones

1 - 7) consistent with the policy.

Specifics Related to Proposed Serrano Reimbursement Agreement

The Reimbursement Agreement for the Improvements and Grading of Bass Lake Road Between the County and Serrano Associates, LLC (Reimbursement Agreement) incorporates the Ten-Year Approach described above.

As a condition of TM01-1375 and TM01-1376, Serrano Associates, LLC was required to construct Serrano Parkway easterly to a connection point with old Bass Lake Road. Subsequently, Bass Lake Road was realigned such that the connection point was to be moved to the west. To make the connection complete it was necessary for Serrano to construct a segment of the new Bass Lake Road alignment where that segment was included in the County's Five-Year CIP (# 71353) and therefore eligible for reimbursement from the EDH TIM. See attached Exhibit A for a drawing of the Bass Lake Road segment that is the subject of this agreement. Pulte Homes also constructed a segment of new Bass Lake Road from the Serrano segment to Hollow Oak Road to complete the connection.

Serrano constructed the Serrano Parkway extension and the new Bass Lake Road segment where the improvements were completed and open to the public on August 31, 2005. It is recommended that the first payment begin with the day that is 90-days after the date of first public use (November 29, 2005). The initial payment is therefore recommended to cover three annual catch-up payments (November 2005, November 2006, and November 2007) with no interest and would be made within 30 days of execution of this Agreement. Subsequent payments (each being 10% of the total reimbursement amount) are scheduled for payment on November 29th of each year until the reimbursement amount is paid in full. The creation of this agreement, along with several others, was delayed while the Department reevaluated TIM fee cash receipt projections taking into account the down turn in the housing market. Workload with competing needs further delayed the completion of this agreement with the result that a three year catch up payment is now being recommended.

The reimbursement agreement also includes indemnity provisions that will protect the County related to the design and construction of the new Bass Lake Road segment as well as the Serrano Parkway extension.

Specifics Related to Assignment and Assumption Agreement

A separate Assignment and Assumption Agreement is required as a means of securing design immunity for the entire project to include both the new Bass Lake Road segment and the Serrano Parkway extension. The execution of the assignment agreement is a prerequisite to the payment of any reimbursement amounts.

Action to be taken following Board approval:

- 1) Chairman to sign "Reimbursement Agreement for Improvements and Grading of

Exhibit A

Bass Lake Road between the County and Developer”

- 2) Chairman to sign “Assignment and Assumption Agreement”
- 3) Subsequent reimbursement agreements in Zone 8 will include the deal points described here as the Ten-Year Approach where not in conflict with prior agreements.

Contact:

Diana Buckley, x5972

Concurrences:

45. 08-0738 Transportation Department recommending Chairman be authorized to sign Reimbursement Agreement for the Improvements and Grading of Bass Lake Road between the County and Serrano Associates, LLC and the Assignment and Assumption of Plans and Specifications (AGMT 08-1736); and recommending the Board approve the reimbursement approach used for this agreement as a standard for future reimbursements to be presented for Board approval where the County is not constrained by prior agreements.

FUNDING: 2004 General Plan TIM Fee Program, Local Road Component, Zone 8 (EDH TIM) fund.

Attachments: [AGMT 07-1610 Serrano Reimbursement Blue.pdf](#)
[AGMT 08-1736 Serrano Assignment and Assumption Blue.pdf](#)
[AGMT 07-1610 Serrano - Exhibit A.pdf](#)
[Serrano - Bass Lake Reimb Agmt - Signed](#)
[Serrano - Bass Lake Assign & Assump - Signed](#)

This matter was added to the Consent Calendar and approved.

Yes: 5 - Dupray, Baumann, Sweeney, Briggs and Santiago

46. 08-0999 Transportation Department recommending award of bid for hauling services to the lowest responsive, responsible bidder; and authorize the Chairman to sign the Agreement for Services with such bidder in the amount of \$150,000 contingent upon review and approval by County Counsel and Risk Management.

FUNDING: Road Fund.

Attachments: [Award Letter for Hauling Services.pdf](#)
[Letter from DOT Johal Enterprises, Inc. att'd 7-1-08.pdf](#)

A motion was made by Supervisor Briggs, seconded by Supervisor Santiago to award the bid to the lowest responsive, responsible bidder, Johal Enterprises, Inc. in the amount of \$150,000 for hauling services.

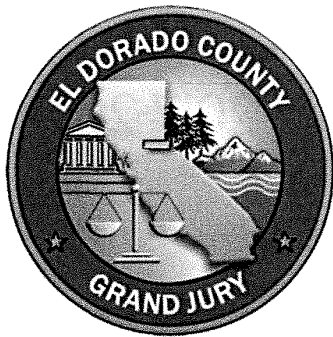
Yes: 5 - Dupray, Baumann, Sweeney, Briggs and Santiago

EL DORADO COUNTY
GRAND JURY 2017-2018



FINAL REPORT

JUNE 2018



EL DORADO COUNTY GRAND JURY 2017 - 2018

FINAL REPORT
JUNE 2018

HONORABLE WARREN CURT STRACENER, SUPERVISING JUDGE

JURORS

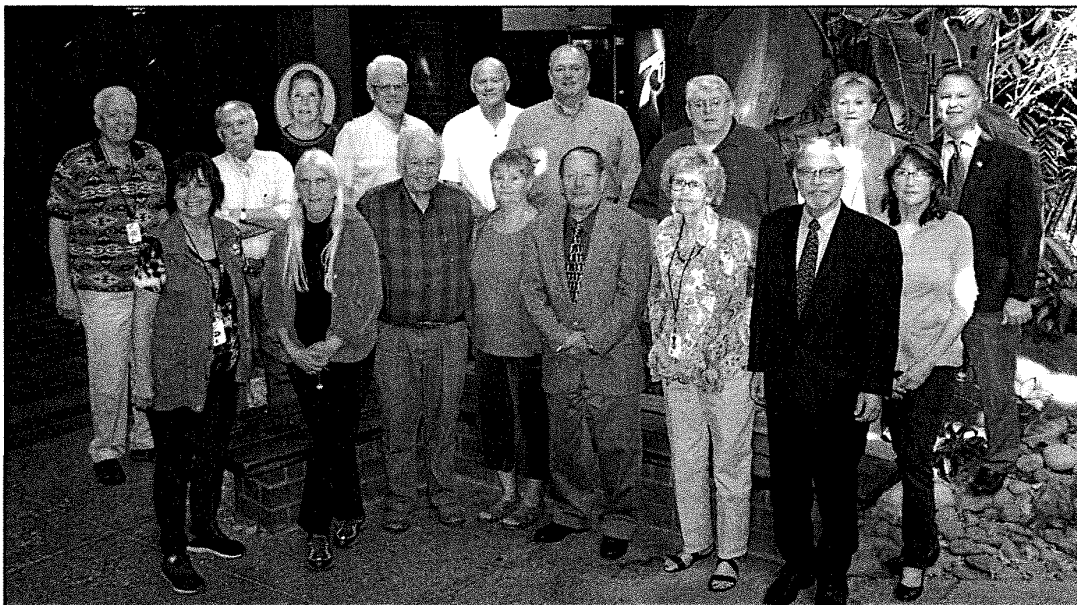
TOM SIMPSON, FOREMAN
RICHARD COFFIN
RENEE ESTEN
STEVE HUTCHINGS
REBECCA REED

ROGER BERGER
JACK CUMMINGS
RENEE FINELLI
DAVID KANE
SUE ROBBINS

CAROL BURROUGHS
BRYAN DILTS
DAVID HULME
BILL KNOX
RAY TESSLER

TAFFY WARNER

COLLEEN YOUNG



BACK ROW: ROGER BERGER, RAY TESSLER, CAROL BURROUGHS (INSET), BILL KNOX, STEVE HUTCHINGS, DAVID KANE,
TOM SIMPSON, RENEE ESTEN, JACK CUMMINGS
FRONT ROW: REBECCA REED, TAFFY WARNER, RICHARD COFFIN, SUE ROBBINS, DAVID HULME, COLLEEN YOUNG,
BRYAN DILTS, RENEE FINELLI
INSET: CAROL BURROUGHS



EL DORADO COUNTY GRAND JURY 2017-2018 FINAL REPORTS

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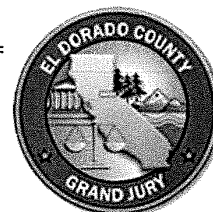
PREFACE

FOREMAN'S LETTER TO PRESIDING JUDGE SUZANNE N. KINGSBURY
LETTER FROM PRESIDING JUDGE SUZANNE N. KINGSBURY

FINAL REPORTS

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2017-2018 GRAND JURY



June 20, 2018

Honorable Suzanne N. Kingsbury, Presiding Judge
California Superior Court, County of El Dorado

Dear Judge Kingsbury,

It is my honor and privilege to present the 2017-2018 Civil Grand Jury Final Report. It represents the yearlong collaborative effort of dedicated El Dorado County citizens with whom I am proud to have been associated.

The Grand Jury concept is alive and well. Nineteen individuals can come together, determine worthwhile topics, perform earnest investigations and write meaningful reports. The process coalesces successfully despite individual abilities, distinct personalities, and disparate backgrounds. I commend each juror for a job well done.

Thank you to Grand Jury Supervising Judge Honorable Warren Stracener for appointing me Foreperson. I especially want to thank Judge Stracener for realizing that the unusual requests I made on behalf of the entire Jury will benefit future grand juries.

I want to express my appreciation for the invaluable assistance of several individuals. Senior Deputy County Counsel Paula Frantz provided general guidance, invaluable legal assistance and helped make our reports logically and legally correct. Keely Cleland in the Auditor-Controller's Office guided me through the labyrinth of County financial requirements and answered every obscure question I had. Superior Court Administrative Analyst Suzanne Thurman combined with Judge Stracener to make the initial Jury available, trained and ready to go. Her indispensable knowledge provided an invaluable interface with Judge Stracener. She is, indeed, a guiding force of the Grand Jury.

They all made my service more successful than I imagined possible. Future Grand Juries will always have a head start to success with the assistance of these dedicated individuals.

Serving as Foreperson has been a personally rewarding experience — I look forward to serving again.

Respectfully,

Tom Simpson

Tom Simpson, Foreperson

cc: Honorable Warren C. Stracener

The Superior Court

STATE OF CALIFORNIA
COUNTY OF EL DORADO
1354 JOHNSON BOULEVARD, STE. 2
SOUTH LAKE TAHOE, CA 96150
(530) 573-3064 - FAX (530) 544-6532

SUZANNE N. KINGSBURY
PRESIDING JUDGE

June 19, 2018

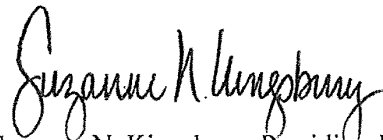
To The Members of the 2017/2018 Grand Jury,

On behalf of the El Dorado County Superior Court, I would like to express my appreciation for your hard work and for your dedication. During the past year, in your role as members of our civil grand jury, you have provided independent oversight of the operation of city and county government and special districts and school districts. You have inspected adult and juvenile correctional facilities which operate within our county. You have reviewed processes and procedures and looked for ways in which government can operate more efficiently or transparently. You have received complaints from members of the public which have required investigation and fact finding.

The time and effort involved in order for you to serve as grand jurors is significant. Despite long hours and nominal remuneration, you have worked tirelessly to conduct thorough investigations and provide comprehensive reports and recommendations. Without your selfless commitment to public service, many important issues would not be brought to light. You, and your predecessors, have helped make El Dorado County a better place.

Thank you so much for your service,

Very truly yours,



Suzanne N. Kingsbury, Presiding Judge

EL DORADO COUNTY 2017-2018 GRAND JURY

CARRYING THE WORK OF THE GRAND JURY FORWARD

Case 17-10 • June 30, 2018

SUMMARY

The El Dorado County Grand Jury investigates county government during its one-year term. It also investigates city governments, agencies and districts within the county. Reports are published with findings of fact and recommendations to improve government services. Subject agencies are required by law to respond to those findings and recommendations when requested.

The current Grand Jury reviewed responses to reports from the 2016-17 and 2015-16 Grand Juries. This review is intended to ensure that the work of prior Grand Juries is not disregarded or ignored. In most cases responses were timely and complied with provisions of the California Penal Code. Further, most follow-up actions specified in responses had either been accomplished or were in the process of being done. Exceptions are noted in this report.

The Grand Jury commends those local agencies and districts that provided timely and compliant responses to the reports of the prior Grand Juries, as well as their evident commitment to implementing recommendations for improving programs and services.

BACKGROUND

The Grand Jury investigates local government operations and reports the results. State law requires that reports contain findings of fact which may include issues, inefficiencies and problems identified along with recommended ways to address those issues. Grand jury reports may be published and released at any time during the grand jury term. The time involved in conducting investigations, evaluating information gathered and writing reports dictates that they are most frequently published near the end of the grand jury term.

Responses to reports are typically received after a grand jury has completed its term, when jurors have been discharged and a subsequent jury is in place. The grand jury that issues a report cannot always review its responses nor even determine if the required responses have been made. A succeeding grand jury may choose to conduct an independent review to assess those responses, ensuring that required and appropriate actions have been taken.

METHODOLOGY

- Reviewed the California Penal Code sections relevant to report responses, findings and recommendations.
- Reviewed the 2016-17 and 2015-16 El Dorado County Grand Juries' reports and responses.
- Communicated with several responding agencies after reviewing their replies.
- Interviewed County officials.
- Reviewed responding agencies meeting agendas and minutes.

DISCUSSION

Responses to reports published by the 2016-17 and 2015-16 Grand Juries were reviewed to determine:

- Did they comply with provisions of the California Penal Code?

The Code requires that subject agencies or individuals respond to each finding when requested, and must agree, disagree or partially disagree with each. Reasons for disagreement must be stated.

The Code also requires a response to each recommendation when requested and must specify one of several actions. If the recommendation has been implemented, a summary of the implementation must be given. If the recommendation will be implemented in the future, a time frame must be specified for completion. Should an agency respond that further study is required to accomplish a recommendation, the study must be completed within six months. When a response claims the recommendation is not warranted or is not reasonable, an explanation must be provided.

- Have the actions promised in a response been completed?

2016-2017 REPORTS AND RESPONSES

Most of the 2016-17 responses reviewed were found to be satisfactory, though a few were not.

Georgetown Divide Public Utility District Case No. 2016-17-007

The Georgetown Divide Public Utility District (GDPUD) response did not comply with the Penal Code in two respects:

- Responses to several Findings in the Grand Jury's report were not in compliance with Penal Code Section § 933.05(a). If respondent does not totally agree with a finding the response must be *disagrees* either wholly or partially with an explanation.
- Responses to recommendations did not include time frames for implementation required by California Penal Code §933.05(b)(2). When additional analysis is required, Penal Code §933.05(b)(3) requires that it be done within six months.

This Grand Jury requested that GDPUD resubmit a response that would fully comply with the Penal Code. GDPUD subsequently submitted an amended response that satisfied the Penal Code requirements. The original response from GDPUD, the Grand Jury's request to GDPUD and its amended response are attached to this report.

Cameron Park Airport District Case No. 2016-011

The Cameron Park Airport District (CPAD) Board of Directors and the Airport Manager failed to submit responses. The Grand Jury wrote to CPAD (copy attached) about its failure and requesting an immediate response.

The Grand Jury received an email (copy attached) from the Airport Manager indicating CPAD was unaware of the time limits for responses, and that responses would be completed and delivered to the Superior Court, which oversees the Grand Jury.

Responses from the Airport Manager and the CPAD Board were received (copies attached), however, the Grand Jury determined that they did not comply with the Penal Code in two respects:

- Responses to certain Findings and Recommendations were combined. Also, responses did not contain specific wording set forth in the Penal Code.
- Some responses did not include required time frames.

A second letter was sent to CPAD requesting a fully compliant response. The Grand Jury has not received an amended response.

2015-2016 REPORTS AND RESPONSES

This Grand Jury was able to determine that responding agencies had, for the most part, accomplished their pledged actions, with several exceptions.

El Dorado County Compliance with Americans with Disabilities (ADA) Act Case No. 15-07

El Dorado County Findings and Recommendations response to the 2015-16 Grand Jury report about County ADA compliance was found to conform to the Penal Code.

The Grand Jury reviewed a number of actions promised in the response by the County, requesting and receiving confirmation that the actions had been accomplished.

El Dorado Hills Community Services District (EDHCSD) Landscape and Lighting Assessment Districts (LLAD) Case No. 15-03

The preceding Grand Jury found an initial response from EDHCSD was inadequate and requested an amended response. The amended response arrived after the preceding jury was disbanded and was reviewed by the current Grand Jury.

Although the amended response to Findings and Recommendations complied with the Penal Code, a number of actions promised were reviewed. All had been accomplished except the formation of a citizens' LLAD advisory group. EDHCSD reported that a community participant, who had volunteered to lead the effort to form an advisory group, had withdrawn. They have initiated efforts to form a citizens' advisory group with a public meeting on the matter held on February 27, 2018.

Mosquito Fire Protection District Dysfunction Case No. 15-01

The Mosquito Fire Protection District (MFPD) responded during the 2015-16 Grand Jury term. The current Grand Jury verified that the response complied with the Penal Code and confirmed that the actions detailed had been taken to the satisfaction of this Grand Jury.

FINDINGS

- F1. Most agencies responded properly and met their timelines.
- F2. A few agencies either did not understand or did not adhere to the Penal Code requirements for responding to Grand Jury reports.
- F3. The CPAD response for report 2017-011 was not timely nor was it fully compliant with the Penal Code.
- F4. CPAD has not submitted an amended response to the Grand Jury for report 2017-011.

RECOMMENDATIONS

- R1. CPAD should amend its response to the 2016-17 Grand Jury report to comply with Penal Code requirements.
- R2. Grand juries should make available resources for agencies to use in creating proper responses, such as templates or detailed instructions.

ATTACHMENTS

- A. GDPUD original response
- B. GJ letter to GDPUD requesting amended response
- C. GDPUD amended response
- D. GJ letter to CPAD requesting response after no response received within time requirement
- E. CPAD email response to GJ letter
- F. CPAD original response
- G. GJ letter to CPAD requesting amended response

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- Response to Findings F3 and F4 and Recommendation R1 from Cameron Park Airport District Manager.
- Response to Findings F3 and F4 and Recommendation R1 From Cameron Park Airport District Board of Directors.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion or the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# [*Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.*]

Response: [*Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted of reasonable, with an explanation.*]

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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 2017-2018

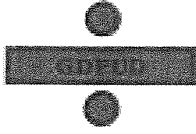
ATTACHMENTS

June 2018

Carrying the Work of the Grand Jury Forward
El Dorado County 2017-2018 Grand Jury

9

18-1215 Public Comment
PC Rcvd 08-16-18



ATTACHMENT A

GEORGETOWN DIVIDE
Public Utility District

P.O. BOX 4240

GEORGETOWN, CALIFORNIA 95634-4240

PHONE (530) 333-4355

FAX (530) 333-3442

gd-pud.org

June 14, 2017

El Dorado County Grand Jury
PO Box 472
Placerville, California 95667

RE: 2016-2017 El Dorado County Grand Jury Case No. GJ 2016-17-007

Dear El Dorado County Grand Jury,

On May 17, 2017, the El Dorado County Grand Jury ("Grand Jury") released a report summarizing its review of actions by the Georgetown Divide Public Utility District ("GDPUD" or the "District") over the last six years. The report titled "Positive Changes and Continuing Challenges" listed eight (8) findings and provided five (5) recommendations on how GDPUD can conquer the challenges of aging infrastructure, inadequate revenues, over-worked staff, and a lack of leadership.

As required by California Penal Code Section 933, the GDPUD Board of Directors ("Board") hereby submits its response to the findings and recommendations of the Grand Jury Report.

Below are the eight (8) findings from the Grand Jury Report, along with the Board response to each in italics:

F1. The District water rates are insufficient to support current operations and infrastructure and maintenance.

The Board agrees with this finding.

F2. Total revenues are not adequate to support operations and fund needed capital improvement reserves.

The Board agrees with this finding.

F3. The District loses significant revenue due to outdated water meters.

The Board agrees that revenue is lost due to outdated water meters.

F4. The District also loses water and revenue due to leaks in the aging infrastructure.

The Board agrees with this finding.

F5. Employee compensation is too low for an agency this size, making recruitment and retention difficult.

The Board lacks sufficient information to form an opinion on this finding.

F6. The current staffing levels are insufficient, which impairs the District's ability to operate efficiently.

ATTACHMENT A

The Board agrees with this finding.

F7. The District cannot depend on new hookups and ratepayers to supplement revenues as population growth has slowed on the Divide, necessitating the need for the District to look internally for revenue.

The Board agrees that the District needs to thoroughly evaluate revenue sources, including those other than connection fees and rates. However, the rates are the primary mechanism by which the District funds operations and capital improvements.

F8. The Jury found no evidence that either the District Board or staff is "preparing the ground" with their customers for what may be steep increases in their bills.

The Board agrees that at the time the Grand Jury investigation was performed, minimal work had been done on a new rate study. Since that time, the District has accomplished the following related to a new rate study:

- *Retained Rural Community Assistance Corporation ("RCAC") to perform a rate study.*
- *Held two public meetings of the District Finance Committee meeting to review the methodology and policy questions for the rate study.*
- *Held one public Board meeting to review the methodology and policy questions for the rate study.*
- *Additional public meetings will be held to educate the public before any Proposition 218 hearing.*

The five (5) recommendations from the Grand Jury Report are listed below with the Board responses in italics.

R1. Once the water rate study is submitted to the Board, the District must initiate a voter-approved rate increase process as soon as possible.

The Board is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Additional public meetings will be held to educate the public before any Proposition 218 hearing.

R2. Along with replacing the aging water meters, the District must upgrade their aging infrastructure and prioritize maintenance and capital improvement projects.

The Board is implementing this recommendation. The District has received construction bids to replace all water meters and upgrade from paper meter reading to electronic meter reading, however the District does not have sufficient reserves or revenue to be able to borrow funds to complete this project. Rates must be increased to fund or finance any infrastructure improvements.

R3. The District must offer competitive salaries to attract qualified professional staff.

This recommendation requires further analysis. The Board does not have enough information at this time to make a determination of the appropriateness of current salaries. The District has limited reserves and revenue to fund personnel costs. To ensure sustainability of the District, rates must be increased to fund any additional personnel costs, including costs associated with a determination of competitive salaries.

ATTACHMENT A

R4. The District must review staffing levels and fill key positions with permanent staff to ensure continuity of operations.

The Board agrees with this recommendation. However, the District has limited reserves and revenue to fund additional staff beyond the current level of staffing. To ensure sustainability of the District, rates must be increased to fund any additional personnel costs.

R5. The District must undertake a public information program to inform its customers of impending changes in their water rates and consumption recording.

The Board is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Additional public meetings will be held to educate the public before any Proposition 218 hearing.

The current Board has made long term sustainability a key goal for the District. The Board appreciates the findings and recommendations of the Grand Jury, and makes it a priority of the Board to address the findings and incorporate the recommendations into the current Board's goals.

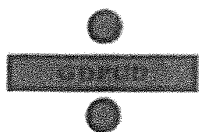
Sincerely,

Londres Uso
President

EL DORADO COUNTY GRAND JURY 2017-2018

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ATTACHMENT A



GEORGETOWN DIVIDE
Public Utility District

P.O. BOX 472

GEORGETOWN, CALIFORNIA 95634-472

PHONE (530) 333-4306

FAX (530) 333-0447

gd-pud.org

June 14, 2017

El Dorado County Grand Jury
PO Box 472
Placerville, California 95667

RE: 2016-2017 El Dorado County Grand Jury Case No. GJ 2016-17-007

Dear El Dorado County Grand Jury,

On May 17, 2017, the El Dorado County Grand Jury ("Grand Jury") released a report summarizing its review of actions by the Georgetown Divide Public Utility District ("District") over the last six years. The report titled "Positive Changes and Continuing Challenges" listed eight (8) findings and provided five (5) recommendations on how the District can conquer the challenges of aging infrastructure, inadequate revenues, over-worked staff, and a lack of leadership.

As required by California Penal Code Section 933, as the General Manager of the District, I hereby submit my response to the findings and recommendations of the Grand Jury Report.

Below are the eight (8) findings from the Grand Jury Report, along with my response to each in italics:

F1. The District water rates are insufficient to support current operations and infrastructure and maintenance.

I agree with this finding.

F2. Total revenues are not adequate to support operations and fund needed capital improvement reserves.

I agree with this finding.

F3. The District loses significant revenue due to outdated water meters.

I agree that revenue is lost due to outdated water meters.

F4. The District also loses water and revenue due to leaks in the aging infrastructure.

I agree with this finding.

F5. Employee compensation is too low for an agency this size, making recruitment and retention difficult.

The District has not reviewed or evaluated sufficient information to form an opinion on this finding.

F6. The current staffing levels are insufficient, which impairs the District's ability to operate efficiently.

I agree with this finding.

ATTACHMENT A

F7. The District cannot depend on new hookups and ratepayers to supplement revenues as population growth has slowed on the Divide, necessitating the need for the District to look internally for revenue.

I agree that the District needs to thoroughly evaluate revenue sources, including those other than connection fees and rates. However, the rates are the primary mechanism by which the District funds operations and capital improvements.

F8. The Jury found no evidence that either the District Board or staff is “preparing the ground” with their customers for what may be steep increases in their bills.

I agree that at the time the Grand Jury investigation was performed, minimal work had been done on a new rate study. Since that time, the District has accomplished the following related to a new rate study:

- *Retained Rural Community Assistance Corporation (“RCAC”) to perform a rate study.*
- *Held two public meetings of the District Finance Committee meeting to review the methodology and policy questions for the rate study.*
- *Held one public Board meeting to review the methodology and policy questions for the rate study.*

The five (5) recommendations from the Grand Jury Report are listed below with my responses in italics.

R1. Once the water rate study is submitted to the Board, the District must initiate a voter-approved rate increase process as soon as possible.

The District is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Additional public meetings will be held to educate the public before any Proposition 218 hearing.

R2. Along with replacing the aging water meters, the District must upgrade their aging infrastructure and prioritize maintenance and capital improvement projects.

The District is implementing this recommendation. The District has received construction bids to replace all water meters and upgrade from paper meter reading to electronic meter reading, however the District does not have sufficient reserves or revenue to be able to borrow funds to complete this project. Rates must be increased to fund or finance any infrastructure improvements.

R3. The District must offer competitive salaries to attract qualified professional staff.

This recommendation requires further analysis. The District does not have enough information at this time to make a determination of the appropriateness of current salaries. The District has limited reserves and revenue to fund personnel costs. To ensure sustainability of the District, rates must be increased to fund any additional personnel costs, including costs associated with a determination of competitive salaries.

R4. The District must review staffing levels and fill key positions with permanent staff to ensure continuity of operations.

ATTACHMENT A

I agree with this recommendation. However, the District has limited reserves and revenue to fund additional staff beyond the current level of staffing. To ensure sustainability of the District, rates must be increased to fund any additional personnel costs.

R5. The District must undertake a public information program to inform its customers of impending changes in their water rates and consumption recording.
The District is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Additional public meetings will be held to educate the public before any Proposition 218 hearing.

Long term sustainability is a key goal for the District. I appreciate the findings and recommendations of the Grand Jury, and it is a priority of the District to address the findings and incorporate the recommendations into the District's goals.

Sincerely,



Steven Palmer, PE
General Manager

EL DORADO COUNTY GRAND JURY 2017-2018

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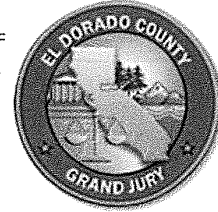
ATTACHMENT B

STATE OF CALIFORNIA

GRAND JURY
El Dorado County

P.O. Box 472
Placerville, California 95667
(530) 621-7477 Fax: (530) 295-0763
Grand.jury@edcgov.us

2017-2018



September 14, 2017

Steven Palmer P.E, General Manager
Londres Uso, President, Board of Directors
Georgetown Divide Public Utility District
P.O. Box 4240
Georgetown, CA 95634

RE: 2016-2017 Grand Jury Case no. GJ 2016-17-007 Responses

Gentlemen:

We received your responses to the Grand Jury report GJ-2016-17-007. The responses are not in compliance with California Penal Code Section 933.05 et seq. Specifically:

- 1) Your responses to findings F3, F5, F7, and F8 are not in compliance with Penal Code Section 933.05 § (a) in that they qualify the responses. If the respondents do not totally agree with the finding the responding agency or individual should respond with disagrees wholly or partially, and provide an explanation.
- 2) Your responses to our report's recommendations do not include timeframes. California Penal Code § 933.05(b)(2) requires that you provide a timeframe for implementation. California Penal Code § 933.05(b)(3) necessitates your inclusion of you analysis to be prepared, not to exceed six months.

Attached is an excerpt of the Code section for your reference with the specific sections highlighted with emphasis added as underlined.

Please provide your response within 60 days for the individual and 90 days for the governing board to:

Honorable Suzanne N. Kingsbury
El Dorado County Superior Court
1354 Johnson Blvd
South Lake Tahoe, CA 96150

Regards,

Tom Simpson, Foreman
El Dorado County 2017-2018 Grand Jury

cc: Judge. Kingsbury
Attachment (1)

ATTACHMENT B

Attachment:

933.05.

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

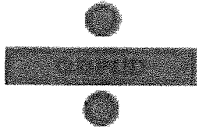
(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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. (CAL PENAL CODE § 933.05 et seq)



ATTACHMENT C

GEORGETOWN DIVIDE
Public Utility District

P.O. BOX 4240

GEORGETOWN, CALIFORNIA 95634-4240

PHONE (530) 333-4355

FAX (530) 333-0447

gd.pud.org

October 3, 2017

El Dorado County Grand Jury
PO Box 472
Placerville, California 95667

RE: 2016-2017 El Dorado County Grand Jury Case No. GJ 2016-17-007

Dear El Dorado County Grand Jury,

On May 17, 2017, the El Dorado County Grand Jury ("Grand Jury") released a report summarizing its review of actions by the Georgetown Divide Public Utility District ("GDPUD" or the "District") over the last six years. The report titled "Positive Changes and Continuing Challenges" listed eight (8) findings and provided five (5) recommendations on how GDPUD can conquer the challenges of aging infrastructure, inadequate revenues, over-worked staff, and a lack of leadership.

As required by California Penal Code Section 933, the GDPUD Board of Directors ("Board") submitted its response to the findings and recommendations of the Grand Jury Report in a letter dated June 14, 2017. The District recently received a letter dated September 14, 2017 from the Grand Jury, stating that the District's response was not in compliance with California Penal Code Section 933.05 et seq. The District is submitting this revised letter to more clearly demonstrate compliance with California Penal Code Section 933.05 et seq.

Below are the eight (8) findings from the Grand Jury Report, along with the Board's revised responses to each in italics:

F1. The District water rates are insufficient to support current operations and infrastructure and maintenance.

The Board agrees with this finding.

F2. Total revenues are not adequate to support operations and fund needed capital improvement reserves.

The Board agrees with this finding.

F3. The District loses significant revenue due to outdated water meters.

The Board partially disagrees with this finding that "significant" revenue is lost due to outdated water meters. The Board agrees that revenue is lost due to outdated water meters. The exact amount of revenue lost is difficult to estimate. A July 2014 report prepared by MC Engineering, Inc. estimated that the lost revenue associated with residential meters is about \$31,500 and will increase by 0.25% per year. This is 1.7% of the District's estimated Fiscal Year 2017/2018 annual revenue from water sales of \$1,839,000. However, the value of this study is limited as it relied on data from available

ATTACHMENT C

literature and the age of the residential water meters. The study did not test any residential meters.

F4. The District also loses water and revenue due to leaks in the aging infrastructure.
The Board agrees with this finding.

F5. Employee compensation is too low for an agency this size, making recruitment and retention difficult.

The Board partially disagrees with this finding. A salary and compensation survey has not been completed recently. The District has recently had success recruiting and retaining employees, though it has struggled with recruitment and retention in the past.

F6. The current staffing levels are insufficient, which impairs the District's ability to operate efficiently.

The Board agrees with this finding.

F7. The District cannot depend on new hookups and ratepayers to supplement revenues as population growth has slowed on the Divide, necessitating the need for the District to look internally for revenue.

The Board partially disagrees with this finding. The Board acknowledges that the District needs to thoroughly evaluate revenue sources, including those other than connection fees and rates. However, the rates are the primary mechanism by which the District funds operations and capital improvements.

F8. The Jury found no evidence that either the District Board or staff is "preparing the ground" with their customers for what may be steep increases in their bills.

The Board partially disagrees with this finding that the District Board or staff is not "preparing the ground" for potential rate increases. The Board acknowledges that at the time the Grand Jury investigation was performed, minimal work had been done on a new rate study. Since that time, the District has accomplished the following related to a new rate study:

- *Retained Rural Community Assistance Corporation ("RCAC") to perform a rate study.*
- *Held two public meetings of the District Finance Committee meeting to review the methodology and policy questions for the rate study.*
- *Held one public Board meeting to review the methodology and policy questions for the rate study*
- *The General Manager and one Board member attended and made presentations regarding the water rate update at the September 5, 2017 meeting of the Georgetown Chamber of Commerce, and at the September 12, 2017 meeting of the Georgetown Rotary.*
- *The Operations Manager and one Board member attended and made a presentation regarding the water rate update at the September 5, 2017 meeting of the El Dorado County Rural Community Coalition.*
- *Held the first of two public workshops regarding updating the water rates on September 18, 2017 at the Georgetown Elementary School. This workshop focused on educating and informing customers on the state of District facilities and financial needs; and gathering meaningful input that will shape rate calculation. The meeting*

ATTACHMENT C

was advertised via billing inserts, customer email database, Facebook, and District website.

- *The second public workshop will be held on October 12, 2017 at the Cool Community Hall. The second workshop will involve a discussion of the feedback from the last meeting, and presentation of rate calculations for a few different scenarios.*
- *Two more Board meetings are planned before the Proposition 218 hearing.*

The five (5) recommendations from the Grand Jury Report are listed below with the Board responses in italics.

R1. Once the water rate study is submitted to the Board, the District must initiate a voter-approved rate increase process as soon as possible.

The Board is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Informational meetings have been held with the Georgetown Chamber of Commerce, El Dorado County Rural Community Coalition, and Georgetown Rotary. The first of two public workshops was held on September 18, 2017, and additional public meetings will be held to educate the public before any Proposition 218 hearing. The tentative timeline for the water rate study adoption and Proposition 218 process is:

- *September and October 2017: Engage in public outreach and hold informational meetings regarding the rate study.*
- *October 2017: Rate study issued and 45-day public notice issued for Proposition 218 Public Hearing*
- *December 2017: Public Hearing for Proposition 218 held and Board action on new rates*

R2. Along with replacing the aging water meters, the District must upgrade their aging infrastructure and prioritize maintenance and capital improvement projects.

The Board is implementing this recommendation. The District has received construction bids to replace all water meters and upgrade from paper meter reading to electronic meter reading, however the District does not have sufficient reserves or revenue to be able to borrow funds to complete this project. Rates must be increased to fund or finance any infrastructure improvements. This infrastructure improvement is currently planned for fiscal year 2018-2019, provided rates are increased to cover the cost of such improvements.

R3. The District must offer competitive salaries to attract qualified professional staff.

This recommendation has not yet been implemented, but will be implemented in the future. The District has limited reserves and revenue to fund personnel costs, including costs related to determining appropriate salaries to attract qualified professional staff. Following the proposed Proposition 218 process currently scheduled to be completed in December 2018, the District will turn to the process of determining the appropriateness of current salaries for several positions at the District as part of its budgeting process for fiscal year 2018-2019.

R4. The District must review staffing levels and fill key positions with permanent staff to ensure continuity of operations.

The Board has implemented a portion of this recommendation but it will not be fully implemented at this time because the cost of this recommendation is currently unreasonable. The General Manager reviewed the staffing levels and presented the

ATTACHMENT C

Board with a recommended organizational chart with the Draft Fiscal Year 2017/2018 budget. Due to limited reserves and revenue, that organizational chart was not adopted and an organizational chart with reduced staffing levels and reduced budget was adopted instead. The Approved Fiscal Year 2017/2018 Budget includes one new professional position, Water Resources Manager, and one reclassified position, Management Analyst. The recruitment to fill these positions is currently underway. The District does not have sufficient reserves and revenue to fund additional staff beyond that newly approved level of staffing. Should the District be able to increase rates, staffing levels may be increased in the future.

R5. The District must undertake a public information program to inform its customers of impending changes in their water rates and consumption recording.
The Board is implementing this recommendation. A water rate study is underway, and the methodology has been presented in public meetings to the Finance Committee and the Board. Additional public meetings will be held to educate the public before any Proposition 218 hearing. As discussed above, public outreach activities began in September 2017 and will continue to take place through December 2017. If the rates are successfully adopted, public outreach will continue through the implementation of the new rates in 2018.

The current Board has made long term sustainability a key goal for the District. The Board appreciates the findings and recommendations of the Grand Jury, and makes it a priority of the Board to address the findings and incorporate the recommendations into the current Board's goals.

Sincerely,

Londres Uso
President

ATTACHMENT D

STATE OF CALIFORNIA

GRAND JURY
El Dorado County

P.O. Box 472
Placerville, California 95667
(530) 621-7477 Fax: (530) 295-0763
Grand.jury@edcgov.us

2017-2018



November 30, 2017

Cameron Park Airport District
Board of Directors
Mr. Gary Millsaps, Airport Manager
3374 Mira Loma Drive
Cameron Park, CA 95682

Gentlemen:

A 2016-2017 El Dorado County Grand Jury report, case number GJ 2016-011, Cameron Park Airport District, Ceiling and Visibility Limited, released on May 16, 2017, was delivered to you before that date. That report requested responses to the report's findings and recommendations from both the District Board of Directors the Airport Manager, as provided in California Penal Code section 933 et seq.

Neither of those responses have been received by either the Superior Court or the Grand Jury. The statutory time allotted for responding elapsed in August.

Please provide your immediate reply to this letter denoting when the Court will receive those responses. Email is acceptable. Provide your written report responses to:

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe, CA 96150

Sincerely,

Tom Simpson, Foreperson
El Dorado County 2017-2018 Grand Jury
tom.simpson@edcgov.us

cc: El Dorado County Superior Court (CourtAdmin@eldoradocourt.org)

Enclosure

ATTACHMENT D

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

3/16/2018

Edcgov.us Mail - EDC Grand Jury Report GJ2016-011
ATTACHMENT E



Tom Simpson <tom.simpson@edcgov.us>

EDC Grand Jury Report GJ2016-011

1 message

Airport Manager <manager@cameronparkairport.com>
To: tom.simpson@edcgov.us

Mon, Dec 11, 2017 at 10:57 AM

Good morning Mr. Simpson,

I sincerely apologize for the delay in providing my response to the Grand Jury Report GJ2016-011..I frankly was unaware of the 90 day time limit for response.

My response document has been completed for some weeks now but I am awaiting the response document from the Cameron Park Board to mail all to the Court in one package. I will mail my response pronto.

I will re-emphasize to the Board members that their response needs to be completed ASAP and get it to the Court no later than the end of this week.

Regards,

Gary Millsaps, Airport Manager

Cameron Park Airport District

530-676-8316 - manager@cameronparkairport.com

EL DORADO COUNTY GRAND JURY 2017-2018

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ATTACHMENT F



3374 Mira Loma Drive, Cameron Park, CA 95682 — 530-676-8316 — manager@cameronparkairport.com

DATE: December 15, 2017

TO: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court

FROM: Guy R. Hooper, President, Cameron Park Airport District Board of Directors

This report is submitted as the Cameron Park Airport District Board of Directors' response to the Findings and Recommendations reported by the El Dorado County Grand Jury's Report on the Cameron Park Airport District, Case No. GJ 2016-011.

Each Finding and related Recommendations are addressed in a single paragraph where possible.

Finding 1: We have no disagreement with the basic finding, but the term "highly susceptible" is probably overdone. The district is "susceptible" to outside economic trends, but it should be noted that the district was able to rebuild its finances in the aftermath of the economic recession that began in 2007 and continued for some years. Cameron Park Airport District (CPAD) is currently solvent and has a consistent budget surplus that is used to defray not only operating expenses but to fund capital improvement projects such as street and airport maintenance. However, external events or changed circumstances that impact general aviation operational tempo could impact CPAD's financial situation negatively. CPAD has options to increase taxes and has certain assets that could forestall insolvency.

Finding 2 and Recommendation 1: CPAD is pursuing completion of its Airport Master Plan (AMP) in order to compete for federal level capital improvement grants. The AMP is a complex engineering document that ordinarily costs over \$100,000 to properly complete. CPAD's Airport Manager, however, has extensive planning experience having been part of the Denver International AMP project. Consequently, CPAD is doing most of the AMP writing in-house. Due to the detailed nature of creating the AMP, it is not possible to complete the AMP within 6 months. The process is likely to take in excess of a year.

Finding 3 and Recommendations 2 & 3: CPAD has considerable community expertise in operating the airport during periods when the Airport Manager position is unfilled. The typical hiring cycle to bring a new manager on board is on the order of one month. If such a situation were to occur where the airport was left without an Airport Manager, CPAD would solicit temporary contractor support from agencies that have qualified personnel for hire. Additionally, there are people within the district who have volunteered in the past and would volunteer again in the future to serve as a temporary fill-in for the position. The District has directed the current Airport Manager to find an "Assistant" who would gain experience during those periods where the Airport Manager is absent for leave, vacation, illness or other circumstances. Once this position is filled, our first option (if the Airport Manager position were to be unfilled) would be to bring in the Assistant Airport Manager until a new hire could be found.

Finding 4: The Board concurs that the current Airport Manager is superbly qualified and has brought a level of professionalism to the airport operations that has not previously existed.

ATTACHMENT F

Finding 5 and Recommendation 8: The Board concurs with the recommendation to enhance its website and has done so with the new website going "live" in December 2017.

Finding 6 & Recommendation 7: This finding is cured with the new website which publishes board agendas. Previously, the district posted Agendas in two places with the appropriate lead time required by the Brown Act. The Board of Directors have all received Brown Act training as provided by the County of El Dorado Hills in the past 6 months and this training is documented at the county.

Finding 7: This finding is cured with the new website which has links to agenda documents.

Finding 8: The district is composed of 125 "parcels" with approximately 100 residences and 25 undeveloped parcels. In an unknown number of cases, the residences are owned by out-of-state residents who are not eligible to serve on the CPAD Board of Directors. The current board has had no trouble filling 2 recent vacancies and there has been no period in the past 10 years where there were not a full board of 5 elected members. Notwithstanding the small number of potential and interested candidates, CPAD remains strongly connected with the community and does not anticipate a problem recruiting future board members. However, this does not distract from the finding which emphasizes that new ideas come from new board members, and that the community at large needs to remain engaged with its local government. The Board of Directors does not concur that perceived community lack of interest reaches a level where the future of the district is uncertain.

Recommendation 4: The board consistently reaches out to new residents to make them aware of how the board operates and make it clear that new members on the board are welcome. In the past 6 months, 3 new families have moved into the district and each family has attended the regular and/or special meetings of the district.

Recommendation 5 & 6: We want to evaluate the effectiveness of the website before tasking our Airport Manager to create a social media presence or write a newsletter.

We believe that this document responds fully to the Grand Jury request for responses. We are available for follow-up if required through the District Office at 530-676-8316.

Sincerely,



Guy R. Hooper
President, Board of Directors
Cameron Park Airport District
3374 Mira Loma Drive
Cameron Park, CA 95682

ATTACHMENT F



3374 Mira Loma Drive, Cameron Park, CA 95682 — 530-676-8316 — manager@cameronparkairport.com

December 12, 2017

Honorable Suzanne N Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd
Suite 2
South Lake Tahoe, CA 96150

Judge Kingsbury,

Enclosed please find the Airport Manager's response to the findings and recommendations contained in the El Dorado County Grand Jury's report, GJ 2016-011.

It is hoped the responses are thorough and address the findings and recommendations and satisfies the Court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Millsaps', is written over a horizontal line.

Gary Millsaps, Airport Manager
Cameron Park Airport District

ATTACHMENT F



3374 Mira Loma Drive, Cameron Park, CA 95682 — 530-676-8316 — manager@cameronparkairport.com

This report is submitted as the Cameron Park Airport Manager's response to the Findings and Recommendations reported by the El Dorado County Grand Jury's Report on the Cameron Park Airport District, Case No. GJ 2016-011.

Each Finding and Recommendation addressing like information will be co-jointly addressed.

As to Finding F1:

The Cameron Park Airport District continues to remain solvent—not due to Federal monies—but due to ongoing efforts to reduce costs of operations, efficient use of enterprise-driven revenues and careful budget management. To date, the District has decreased its basic services costs (electrical service, phone service, etc.) by approximately one-third. This has been accomplished by replacing outdated equipment with more energy efficient devices; taking advantage of pricing programs offered by the service companies; ensuring the services meet the needs of the operation with no un-needed services added on; and continually evaluating alternative programs offered by service vendors that could prove more cost-effective to the District. The District is also planning to increase the current Special Tax levied on each parcel within the District soon. The District is also carefully increasing the Hangar and Tie-down rental rates as they had gone unchanged for too many years.

Federal grant monies, known as the Airport Improvement Program (AIP), are derived from the Federal Aviation Fuel Tax dollars paid on every gallon of avgas and jet fuel sold in the US. These grant funds are made available via a competitive process and are mandated for major capital improvements, not day-to-day operations funding.

As to Finding F2 & Recommendation R1:

While it is true the lack of a current Airport Master Plan does hinder the District's ability to obtain Federal grant monies, developing such a plan is a complex task. In general, it is accomplished through several task blocks including: developing an FAA approved Airport Layout Plan (in progress); an inventory of the current facility; a full financial accounting of its current state; analysis of the land space and its potential for future use; an analysis of the current value the facility has for the community it serves; regional socioeconomic characteristics; forecasts of aeronautical activities; etc.

Once the data gathering and analysis is complete, several community outreach meetings are scheduled to take the case to the people and obtain feedback from not only the District residents but the regional population as a whole.

ATTACHMENT F

Draft copies of the plan are then generated and circulated for comment; after which the finalized report is submitted to the FAA Regional office for acceptance.

As shown, this task cannot be completed within a six-month time frame and the District begs the Court's indulgence that it be given more time to complete the Airport Master Plan.

As to Finding F3 and Recommendations R2 & R3:

The District will indeed need to find a replacement for the current Manager sometime in the future. As with most airports, this is usually accomplished through a job advertising and recruitment process followed by careful vetting of the candidates. This is an accepted practice nationwide and serves the industry well. One of the focuses of the current Manager is thoroughly documenting a comprehensive set of policies and procedures so whenever a new manager is brought on-board, there is continuity of processes in place.

If the Cameron Park Airport was a larger facility, adding an Assistant Manager would be prudent; however, the day-to-day workload does not warrant such action and would prove to be a further burden on the budget of the District. Using intern help is also questionable as the periods and times the intern would be available might be limited, rendering them unable to respond to significant events, be responsive to the user-base and able to answer the hard questions. Managing even a small GA airport involves many disciplines, which could be taught, by the time such intern training was completed, the interns term-of-service will likely have expired.

As to Finding F5, F6 & F7 and Recommendations R5, R6 & R8:

The District is developing a website which will be online in December 2017. It has taken some time to ensure the site meets all the requirements of statutory code for such websites. With the completion of this task, the Board Meeting Agendas, Minutes, Resolutions and other governance documents will be available online. All this information is currently available by request via email, phone or written request and is maintained in the Airport Manager's office. Currently, the Board Meeting Agendas and Minutes are emailed to the residents more than 72 hours prior to any meetings scheduled and the agendas are posted on three publicly accessible bulletin boards posted around the District. The District is still evaluating the need and effort to maintain a "social media" presence as it has an active email list that reaches 98% of the District's residents and is used very frequently by the management, Board members and the residents themselves.

As to Finding F8 and Recommendation R4:

In meeting and communicating with the residents, the Airport Manager regularly encourages them to attend the Board Meetings and get involved with the governance of their District and regularly shares the email information received from the El Dorado County Elections Office.

ATTACHMENT F

As to Recommendation R7:

The Airport Manager has studied several of the excellent online resources for governing bodies to remain compliant with the Brown Act. The Manager has also taken an online four-part examination produced by California Special Districts Association, scoring a 98% on the examination.

I sincerely hope these responses prove useful and fulfill the expectations of the El Dorado County Grand Jury and Superior Court members.

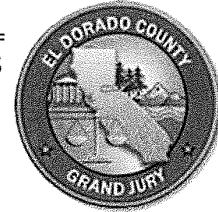
ATTACHMENT G

STATE OF CALIFORNIA

GRAND JURY
El Dorado County

P.O. Box 472
Placerville, California 95667
(530) 621-7477 Fax: (530) 295-0763
grand.jury@edcgov.us

2017-2018



January 16, 2018

Guy R. Hooper, President, Board of Directors
Gary Millsaps, Airport Manager
Cameron Park Airport District
3374 Mira Loma Drive
Cameron Park, CA 95682

Gentlemen:

Thank you for your recent responses to Grand Jury Report *Cameron Park Airport District, Ceiling and Visibility Limited*, case number 2016-011. The Grand Jury has reviewed them. While they appear to address the issues presented in the report, you have combined responses to both findings and recommendations. We cannot determine with certainty what text applies to which finding or recommendation.

Responses to findings and recommendations cannot be combined. California Penal Code section 933.05 et seq. specifies that each report finding, and each report recommendation be responded to individually. Moreover, each one must include one of several specific wordings, that are different for findings and recommendations. Additionally, the Penal Code requires inclusion of an implementation timeframe for recommendations that have not yet been implemented.

Please correct your responses and send them via email to the El Dorado County Superior Court at courtadmin@eldoradocourt.org.

You may find this response to previous Grand Jury report useful:

[https://www.edcgov.us/government/grandjury/report 2015-2016/documents/Mosquito Fire Protection District Response to El Dorado Grand Jury.pdf](https://www.edcgov.us/government/grandjury/report%202015-2016/documents/Mosquito%20Fire%20Protection%20District%20Response%20to%20El%20Dorado%20Grand%20Jury.pdf)

California Penal Code section 933.05 et seq. is enclosed for your reference, with highlighting added to relevant portions. Please contact me with any questions or concerns.

Sincerely,

Tom Simpson, Foreperson
El Dorado County 2017-2018 Grand Jury
grand.jury@edcgov.us

cc: El Dorado Superior Court (courtadmin@eldoradocourt.org)

Enclosure

ATTACHMENT G

933.05.

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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. (CAL PENAL CODE § 933.05 et seq)

EL DORADO COUNTY GRAND JURY 2017-2018

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EL DORADO COUNTY 2017-2018 GRAND JURY

CAMERON PARK COMMUNITY SERVICES DISTRICT

Case 17-01 • June 30, 2018

The Grand Jury investigated multiple claims of employee harassment, disruptive behavior at board meetings, a U.S. Department of Labor investigation and fiscal concerns at the Cameron Park Community Services District.

BACKGROUND

Cameron Park is an unincorporated community in El Dorado County, California, about 30 miles east of Sacramento and 70 miles west of South Lake Tahoe. Located along the US Highway 50 corridor on the western slope of the Sierra Nevada, it covers about nine square miles and has approximately 19,000 residents.

A Community Services District is a form of independent local government providing various services in unincorporated areas of a county. The Cameron Park Community Services District (CPCSD or District) was formed in 1961. It is led by a five-member elected Board of Directors and an appointed general manager. Today, the CPCSD administers fire and emergency services, parks and recreation, lighting and landscaping, solid waste disposal and recycling for residents and enforces covenants, conditions and restrictions (CC&R's) of various homeowners associations.

The CPCSD came to the attention of the Grand Jury when citizens claimed the Board failed to act upon complaints of bullying and harassment of District employees by the General Manager. In March 2017, the District was investigated by the U.S. Department of Labor for failing to properly pay overtime to employees. The Grand Jury looked for significant systemic issues that might continue to hamper the District's ability to govern and provide services to its residents.

METHODOLOGY

- Reviewed prior grand jury reports about this, and other, special districts.
- Interviewed District officials, employees, Cameron Park residents and El Dorado County officials.
- Attended Board meetings and a workshop.
- Examined District facilities.
- Reviewed reports from El Dorado County agencies on specific aspects of CPCSD.
- Reviewed District policies and procedures.
- Reviewed the District Five-year Strategic Plan.
- Reviewed District annual budgets.
- Reviewed District Board of Directors meeting agendas and minutes.
- Reviewed the District website as well as other websites pertinent to the operation of special districts in California.
- Reviewed the U.S. Department of Labor document, *Back Wage Compliance and Payment Agreement*, regarding non-payment of District employees for overtime worked.

DISCUSSION

Overall, the Grand Jury found the district is making progress towards correcting the issues investigated.

Board Meetings

The Grand Jury learned of disrespectful and disruptive behavior by members of the public at Board of Directors meetings. Grand Jurors who attended meetings observed directors maintaining a professional and respectful demeanor despite occasional citizen discord and outbursts.

Board meetings observed by the Grand Jury met California public meeting requirements, including advance posting of board meeting agendas on the District website and allowing public input at meetings. Adopted minutes of prior board meetings are posted on the website. Board meetings were conducted in a professional and organized manner by District directors and staff.

Reports of Sheriff Deputies at board meetings were investigated. An incident where a County Deputy Sheriff was called in response to public disruption at a board meeting in November 2015 was documented. The Deputy removed a disruptive member of the audience. On at least one other occasion Sheriff Deputies were preemptively stationed at a board meeting in anticipation of potential disturbances.

The District recently implemented videotaping of board meetings. Video recordings are available via the District website.

Directors

Some observers maintain that the timing of past director resignations were orchestrated by the Board of Directors to facilitate the appointment of selected individuals to positions on the Board rather than open elections. A review of the election and appointment of District directors since 2000 did not find any unusual patterns of resignations and appointments. Though there were a few appointments, a far greater number of directors were selected through the normal election process, some serving two or more four-year terms.

Two board members resigned in 2017 at about the same time the General Manager resigned. The Grand Jury determined that both resignations were for personal reasons and unrelated to any issues on the board. Two new directors were sought. A public process to solicit and interview applicants was conducted by the District. New directors were appointed in September 2017.

Training

The Grand Jury found formal training or orientation is not provided to new directors upon assuming office. New directors are provided binders containing the District's policies, procedures and information on the District's programs. Although District policy 4090 defines training for elected directors, it is general in nature and only encourages training for directors. It does not require training, nor does it address mandatory ethics and sexual harassment training required under California law.

District staff advised the Grand Jury that training on public meeting laws, requirements for elected public officials, good governance and other related topics would be useful to both new and existing directors.

The District has access to a variety of training opportunities. Membership in the California Special Districts Association (CSDA) includes a Special District Leadership Academy session on essential governance responsibilities. The District scheduled a series of public workshops on special district governance and operations starting in early February 2018. They will be attended by District board members and staff and are open to the public. The initial workshop was conducted with the assistance and support of CSDA staff.

Public Outreach/Community Involvement

The General Manager resigned in April 2017 amid citizen claims that the board failed to act upon complaints of bullying and harassment of district employees by the General Manager.

The District conducted a public workshop in Fall 2017 to obtain community input regarding the selection of a new general manager. Input from this meeting was used to help determine the desirable qualifications and characteristics used in the recruitment. Recruitment was conducted with the assistance of a professional executive recruitment firm. A new General Manager was found and subsequently hired in November 2017.

Employee Morale

The Grand Jury investigated poor employee morale and loss of long term employees in key positions. Employee morale clearly declined under the previous general manager. A U.S. Department of Labor investigation initiated by a CPCSD employee, found that District employees were due significant back pay for overtime worked. Employee complaints prompted the District to hire a firm specializing in employment law to investigate the complaints. While the nature of those complaints are confidential personnel matters and not subject to grand jury investigation, it appears that employee turnover seems to have been a symptom of a greater organizational morale problem. Recent indications show that employee morale is improving under new management.

Recordkeeping

District finances are somewhat in disarray. More than two years elapsed without an audit by an independent certified public accountant as required by district policy. An audit was underway at the time that this investigation was conducted by the Grand Jury.

Separate from the regular financial audit process, the District hired a certified public accounting firm to perform forensic accounting to determine and correct problems and uncertainties with past financial records. While the Grand Jury did not delve into the details of this process, the accounting firm has been working on financial records since July 2017 and continues as of the writing of this report. The Board took a major step toward improving financial record-keeping when they approved hiring a Finance Director / Human Resources Manager at the January 17, 2018 board meeting. The position was subsequently filled in March.

Revenue

Revenue is a continuing challenge as it is with many government agencies. Most revenue comes from sources beyond the District's control such as property taxes. One source that can be influenced is rental of District facilities for public use. The District website has a facilities rental page identifying the many facilities available for rent along with complete rental information and an application.

Additional revenue comes from district programs and activities fees. The District publishes a brochure of programs and activities that is delivered to residents, as well as publicizing the programs and activities via its website, social media and local print media. The calendar shows the programs and activities offered are robust and varied.

Strategic Plan

The District adopted a five-year Strategic Plan in February 2016. It provides a roadmap for policy and decision making over a five-year period. It identified nine strategic elements where the District would focus time and resources over the next five years and to provide a roadmap for decision making.

- A. Optimize Reserve Programs
- B. Increase Revenues
- C. Increase Participation in Programs and Facilities Usage
- D. Continue to Follow Existing Top-Level Plans
- E. Maintain and Improve Fire Service
- F. Enhance Our Relations with the County and the Community
- G. Strengthen Community Partnerships
- H. Address Deferred Maintenance Needs
- I. Stay Ahead of Best Practices for Administration of the District

The Grand Jury determined that the plan might provide a reasonable guide for good governance, administration, policy and decision making. However, there is little evidence that it has been widely followed, considered or referenced by the board and staff since it was adopted.

Website

Review of the Strategic Plan led the Grand Jury on a partially successful journey through the District website, www.cameronpark.org, to find reports and documents referenced in the Strategic Plan. While the website was updated with professional contract assistance in the recent past, it is still missing links to important documents. The website is current on things like board meeting agendas and minutes, district budgets, financial audit information and other matters of public interest. The District does not have an employee with training and skills in website design and administration to keep the website up to date.

FINDINGS

- F1. District Board meetings were conducted in a professional manner, even when confronted with disruptive and disrespectful behavior from members of the community.
- F2. The Grand Jury determined that there were no unusual patterns in the resignations and appointments of directors.
- F3. District Policy 4090 about training is inadequate in that it does not require training for directors, even for topics where California State law requires training.
- F4. The California Special Districts Association Leadership Academy is a valuable training opportunity for newly-appointed or elected district officers and newly-appointed general managers.
- F5. The District has taken a number of positive steps to enhance public outreach and encourage community involvement.
- F6. Employee morale is improving under the new leadership in District staff and the Board.
- F7. There are significant deficiencies with the District's financial record keeping.
- F8. There may be opportunities to increase revenue-generating use of District facilities.
- F9. The District Strategic Plan is not being used to guide policy decisions.
- F10. The District website is missing links to important district documents.

RECOMMENDATIONS

- R1. The District should amend Policy 4090 no later than October 31, 2018 to mandate training for directors and managers. Mandatory training should, at a minimum, include the topics on ethics and harassment required by State law.
- R2. Newly-appointed directors and the general manager should attend the California Special Districts Association Leadership Academy no later than December 31, 2018.
- R3. District staff should develop a written plan by October 31, 2018, designed to increase rental revenue from district facilities.
- R4. The Board should review and update the Strategic Plan as needed by October 31, 2018.
- R5. No later than October 31, 2018, the District should provide resources and training for staff to update and maintain the district website.

ATTACHMENTS

- A. CPCSD Policy 4090 – *Training, Education and Conferences.*
- B. U.S. Department of Labor *Back Wage Compliance and Payment Agreement.*

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

In accordance with California Penal Code §933 and §933.05 responses to Findings F3, F7, F8, F9 and F10 and all Recommendations are requested from The Cameron Park Community Services District Board of Directors.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# [*Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.*]

Response: [*Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.*]

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# [*Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.*]

Response: [*Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.*]

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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

Cameron Park Community Services District

POLICY HANDBOOK

POLICY TITLE: Training, Education, and Conferences
POLICY NUMBER: 4090

4090.1 Members of the Board of Directors are encouraged to attend educational conferences and professional meetings when the purposes of such activities are to improve District operation. Hence, there is no limit as to the number of Directors attending a particular conference or seminar when it is apparent that their attendance is beneficial to the District.

4090.1.1 "Junkets" (a tour or journey for pleasure at public expense), however, will not be permitted.

4090.2 It is the policy of the District to encourage Board development and excellence of performance by reimbursing expenses incurred for tuition, travel, lodging and meals as a result of training, educational courses, participation with professional organizations, and attendance at local, state and national conferences associated with the interests of the District. Cash advances or use of District credit cards for these purposes is not permitted.

4090.2.1 The Business Manager is responsible for making arrangements for Directors for conference and registration expenses, and for per diem. Per diem, when appropriate, shall include reimbursement of expenses for meals, lodging, and travel. All expenses for which reimbursement is requested by Directors, or which are billed to the District by Directors, shall be submitted to the Finance Division Manager, together with validated receipts.

4090.2.2 Attendance by Directors of seminars, workshops, courses, professional organization meetings, and conferences shall be approved by the President of the Board of Directors prior to incurring any reimbursable costs.

4090.2.3 Expenses to the District for Board of Directors' training, education and conferences should be kept to a minimum by utilizing recommendations for transportation and housing accommodations put forth by the General Manager and by:

4090.2.3.1 Utilizing hotel(s) recommended by the event sponsor in order to obtain discounted rates.

4090.2.3.2 Directors traveling together whenever feasible and economically beneficial.

4090.2.3.3 Requesting reservations sufficiently in advance, when possible, to obtain discounted air fares and hotel rates.

ATTACHMENT A

4090.3 A Director shall not attend a conference or training event for which there is an expense to the District if it occurs after they have announced their pending resignation, or if it occurs after an election in which it has been determined that they will not retain their seat on the Board. A Director shall not attend a conference or training event when it is apparent that there is no significant benefit to the District.

4090.4 Upon returning from seminars, workshops, conferences, etc., where expenses are reimbursed by the District, Directors will either prepare a written report for distribution to the Board, or make a verbal report during the next regular meeting of the Board. Said report shall detail what was learned at the session(s) that will be of benefit to the District. Materials from the session(s) may be delivered to the District office to be included in the District library for the future use of other Directors and staff.

ATTACHMENT B

U.S. Department of Labor

Wage and Hour Division
Federal Building
2800 Cottage Way
Room W-1836
Sacramento, CA 95825-1886
916-978-6123
916-978-6125



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

IN THE MATTER OF: :
Cameron Park Community Services District
Case ID 1804805

BACK WAGE COMPLIANCE AND PAYMENT AGREEMENT

This agreement is entered into March 08, 2017 by and between the Secretary of Labor, United States Department of Labor, (hereinafter referred to as "the Secretary"), and Cameron Park Community Services District dba Cameron Park Community Services District (hereinafter referred to as "the employer").

The Secretary, through Investigator De La Torre of the Wage and Hour Division, United States Department of Labor, conducted an investigation of the employer's business under FLSA. The investigation covered the employer's operations from 01/20/2015 to 01/19/2017.

As a result of that investigation monetary violations were found resulting in 5 due back wages in the amount of \$15,372.12.

In order to resolve this matter, the parties to this Agreement stipulate and agree to the following:

1. The employer represents that it is presently in full compliance with all applicable provisions of the FLSA, and will continue to comply therewith in the future.
2. The employer agrees to pay the back wages due the employees in question in the amounts shown for the periods indicated on the Summary of Unpaid Wages attached hereto and made a part hereof.
3. Cameron Park Community Services District agrees to pay directly to the employees the amounts due (less legal payroll deductions) on or before 03/24/2017 and to deliver to the Secretary's representative by 03/31/2017 evidence of payment including any signed WH-58 receipt forms the Employer has received at that time.
4. The Employer agrees to provide the Secretary's representative with a listing of all unlocated employees, their last known address, social security number (if possible), and their gross and net amounts due no later than 04/23/2017. The District Office will notify the Employer when a person has been located to issue a check.
5. In the event that any employees cannot be located, or refuse to accept the back wages, the employer agrees to deliver to the Secretary's representative a cashier's or certified check, payable to "Wage and Hour Division - Labor" to cover the total net due all such employees on or before 06/22/2017. After three years, any monies which have not been distributed because of inability to locate the proper persons or because of their refusal to accept payment shall be covered into the Treasury of the United States as miscellaneous receipts.
6. The employer agrees to provide the Secretary's representative no later than 06/22/2017 any

ATTACHMENT B

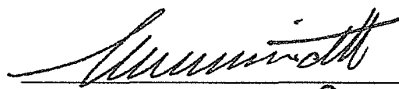
- remaining signed WH-58 receipt forms not yet provided to Wage and Hour or a cancelled check (or some reasonable facsimile) for every person the employer has paid per this agreement.
7. The employer hereby waives all rights and defenses which may be available by virtue of statute of limitations, including but not limited to section 6 of the Portal-to-Portal Act (29 U.S.C. 255).
 8. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U. S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed.
 9. In the event of default, the Department intends to pursue additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.
 10. Any rights to challenge or contest the validity of this Agreement are hereby waived.
 11. By entering into this agreement, the Wage Hour Division does not waive its right to conduct future investigations under the Fair Labor Standards Act and to take appropriate enforcement action, including assessment of civil money penalties, with respect to any violations disclosed by such investigations.

Approved by the following parties

Cameron Park Community Services District
BY ITS OFFICER

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Name: Jim Cabal
Title: General Manager
Dated: 3/8/17


Richard E. Newton *for:*
District Director
Dated: 3/8/2017

EL DORADO COUNTY GRAND JURY 2017-2018

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EL DORADO COUNTY 2017-2018 GRAND JURY

EL DORADO IRRIGATION DISTRICT *CALIFORNIA PUBLIC RECORDS ACT COMPLIANCE*

Case 17-09 • June 30, 2018

The El Dorado Irrigation District (EID) Board of Directors requested that the Grand Jury investigate possible violations of the California Public Records Act by one of its members.

Note

The Grand Jury is keenly aware of political and personality disputes, both real and perceived, related to this issue. Our investigation and this report focused solely on legalities and good governance.

BACKGROUND

In 1968 California enacted the Public Records Act (CPRA), Government Code §§6250 through 6276.48¹, which requires that governmental records be made accessible to the public upon request. It is incumbent upon the governmental agency having custody of requested records to make reasonable attempts to locate them, and if they exist, supply them to the requester.

Though the fundamental precept of the CPRA is access to records, it exempts certain records from disclosure² such as criminal investigative reports, most personnel records and privileged documents. If an agency improperly withholds records, a member of the public may seek a court order to enforce the right to inspect or copy the records sought³. An agency may adopt regulations establishing procedures for requesting public records that allow for faster, more efficient access to records⁴.

On March 2, 2017, the California Supreme Court in *City of San Jose v. Superior Court of Santa Clara County (San Jose)*⁵ held that “when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA or Act)”. Although the legality of a specific kind of search was not before the Court, it did provide guidance about how to strike the balance between privacy and disclosure.

In September 2017, the El Dorado Irrigation District (EID) adopted Board Policy 3075 (BP3075) *Public Records Act Requests* (Attachment A), which established that the district shall respond to public records requests in accordance with the CPRA and case law interpreting the CPRA. The policy specifically states that ‘written records sent, received, or stored in a personal electronic account or on a personal device of a District employee or officer may be considered “public records” subject to disclosure under the CPRA’.

¹ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6250.&lawCode=GOV

² Gov. Code §6254

³ Gov. Code §§6258 and 6259

⁴ Gov. Code §§6253(e), 6253.4

⁵ <http://www.courts.ca.gov/opinions/archive/S218066.PDF>

One month later, in October, EID approved Administrative Regulation 3075 (AR3075), *Responding to Public Records Act Requests* (Attachment B). It established uniform procedures for responding to requests for public records. It includes employee and officer training, procedures for responding to all CPRA requests and additional procedures for responding to CPRA requests regarding personal accounts or devices.

In January 2018, the Grand Jury received a complaint from EID alleging a Director of their Board was wrongfully failing to follow Board policy and regulations and was violating the law.

METHODOLOGY

- Interviewed past and present El Dorado Irrigation District (EID) officers
- Reviewed the following documents:
 - California Public Records Act
 - City of San Jose v. Superior Court of Santa Clara County (*San Jose*)
 - California Public Records Act Compliance Manual for Special Districts⁶
 - EID policies and supporting regulations
 - EID public records requests, responses and related correspondence
- Listened to recordings of relevant EID board meetings
- Conferred with legal counsel

DISCUSSION

El Dorado Irrigation District (EID) responds to public records requests on a regular basis. Most are for specific District business documents such as board minutes and contracts. Since March of 2017, in the aftermath of the *San Jose* case, EID received several public records requests seeking records sent from or received on the private electronic devices used by EID officers. One of those requests has come under scrutiny, both in EID public board meetings and local media.

On March 9, 2017, EID received a public records request seeking records including internet postings, text messages, emails and attachments sent from or received on private electronic devices used by Director Greg Prada. The timeframe identified in this request was from December 2013 to the date the District provided the public records.

EID forwarded a copy of the request to Director Prada requesting he search his own personal files, accounts and devices for public records. The Director responded that he had searched his personal computer and found no communications involving the conduct of EID official public business that would be disclosable under his interpretation of the *San Jose* case. On March 31st, EID notified the requester of the availability of the records from their email server and Director Prada's response.

⁶ www.bwslaw.com/tasks/sites/bwslaw/assets/.../2015-Public-Records-Act-Guide.pdf

After reviewing that information, the requester contested Director Prada's compliance with the Public Records Act. He requested that EID require the Director to submit an affidavit describing the scope and methodology of his search.

In response, EID noted that the CPRA does not require an affidavit. They further explained that while the *San Jose* case noted approval of a procedure adopted in Washington State requiring an employee to submit an affidavit, the California Supreme Court had not interpreted the CPRA to require such an affidavit. EID went on to say that the District had not yet formally adopted internal policies for records retained on private accounts and devices, but such policies were currently being developed.

In September 2017, EID adopted Board Policy 3075, *Public Records Act Requests*. Supporting Administrative Regulation 3075, *Responding to Public Records Act Requests*, was approved in October 2017. AR3075 includes specific procedures for responding to CPRA requests regarding personal accounts or devices. Those procedures require that the subject of the request "perform a reasonable search of his/her personal accounts and/or personal devices", "document their search methodologies, criteria, and terms", and "complete and sign a declaration" (Attachment C).

Early in November, EID received a request to *renew* the March CPRA request. This request was forwarded to Director Prada. The Director responded that he would not reply to this request, unless and until EID provided him with outside counsel. He also contended that AR3075 only applies to requests prospectively⁷.

EID responded to Director Prada that the recently-adopted policy and procedures did apply prospectively from the time of their adoption. But in accordance with the CPRA, EID must produce all responsive records in existence at the time of the request, even if such records were created prior to adoption of AR3075. EID also asked the Director to notify them if he would like to schedule an open-session agenda item asking the District Board of Directors to approve hiring and funding outside counsel to represent him.

On November 17, 2017, EID notified the requester of the availability of records from their email server, noting that the search had been limited to records created after March 9, 2017, since the District already provided all responsive records before that date. They also informed him that the request had been forwarded to Director Prada but, to date, the District had received no records from the Director.

The District received no further communication from Director Prada related to the November CPRA request. Specifically, the Director did not pursue approval for outside counsel, did not search his personal devices, and did not submit a declaration related to the search.

⁷ Relating to or effective in the future

The Grand Jury determined that Director Prada's action had placed EID at risk of potential litigation by the requester for failure to fully comply with the CPRA as interpreted in *San Jose*, and did not comply with EID Board Policy 3075 and Administrative Regulation 3075. While the act of an individual Director can place an agency at legal risk, there is little an agency can do to limit this risk. If an individual Director knowingly violates the law or has a different view of his/her legal duty, there is no direct remedy to bring a recalcitrant Director to compliance. EID initiated one of the few alternatives available – It asked the Grand Jury to investigate.

After conducting this investigation, the Grand Jury carefully examined the various actions it might take. One is the issuance of this report. Another is provided in California Penal Code §919 and Government Code §3060 - §3075, whereby the Grand Jury can prepare an accusation of willful misconduct in office against the noncompliant Director and submit it to the County District Attorney, who could then take potential criminal or civil action.

The Grand Jury thoroughly considered preparing and delivering such an accusation and consulted with the County District Attorney. The Grand Jury concluded that, while the conduct in question did constitute nonfeasance, we were not going to file an accusation at this time based on this single violation of the EID newly adopted policy. However, repeated flagrant disregard of California Public Records Act or other laws and regulations could result in an accusation being filed in the future.

FINDINGS

- F1. Director Prada did not comply with EID Board Policy 3075 and Administrative Regulation 3075.
- F2. Director Prada inappropriately followed his own interpretation of the proper application of the Supreme Court's decision in *San Jose* rather than the official interpretation by the EID Board.

RECOMMENDATIONS

- R1. The EID Board of Directors should consider censure of Director Prada advising him that future violations of BP3075 or AR3075 would be considered willful misconduct in office.
- R2. The EID Board of Directors should consider formally requesting Director Prada to fully comply with Board Policy 3075 and Administrative Regulation 3075 by supplying a properly executed declaration in response to the November 2017 Public Records Act request.

ATTACHMENTS

- A. El Dorado Irrigation District Board Policy BP3075
- B. El Dorado Irrigation District Administrative Regulation AR3075
- C. El Dorado Irrigation District California Public Records Act Form - Declaration Regarding Search of Personal Accounts or Devices

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- **Response to all findings and recommendations from The El Dorado Irrigation District Board of Directors.**

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# [*Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.*]

Response: [*Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.*]

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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.

ATTACHMENT A

BP 3075 Public Records Act Requests

Adopted: September 11, 2017

The District shall respond to requests for public records in accordance with the California Public Records Act (CPRA), Government Code section 6250 et seq, and the case law interpreting the CPRA. The Office of General Counsel shall be responsible for overseeing and responding to such requests pursuant to the CPRA.

By law, written records sent, received, or stored in a personal electronic account (such as a personal e-mail account) or on a personal device (such as a personal computer, smartphone, or tablet) of a District employee or officer may be considered “public records” subject to disclosure under the CPRA, if, at a minimum, they relate in some substantive way to the conduct of the District’s business. Communications that are primarily personal and contain no more than incidental mentions of District business, generally will not be considered public records.

District employees and officers shall use their District accounts for communications that relate to District business. District employees and officers shall avoid using private electronic accounts when conducting such communications. The General Manager and General Counsel shall adopt and oversee administrative regulations to carry out the purposes of this Policy.

District employees and officers shall forward emails that relate to the District’s business received on private accounts to their respective eid.org accounts for appropriate District retention. Employees and officers that communicate on social media about District business shall adhere to the administrative regulation adopted hereunder when responding to public record requests.

ATTACHMENT B



AR 3075 Responding to Public Records Act Requests

Approved: October 24, 2017

AR 3075.1 Purpose

This administrative regulation seeks to establish uniform procedures for responding to requests for public records made pursuant to the California Public Records Act (CPRA), Government Code section 6250 et seq.

AR 3075.2 Employee and Officer Training

To ensure that District employees and officers have a sufficient understanding of what constitutes a “public record” under the CPRA, the District will arrange for each District employee and officer to receive training regarding responding to requests for public records under the CPRA. Within sixty (60) days of employment or swearing in as a District officer, all officers and employees will receive training regarding the CPRA and this training shall include training regarding the standards for distinguishing between “public” records and “private” records. (*See City of San Jose v. Superior Court* (2017) 2 Cal.5th 608).

AR 3075.3 Procedures For Responding To All CPRA Requests

The District’s Office of the General Counsel shall be responsible for responding to CPRA requests. The General Counsel shall designate a person in charge of receiving requests, conducting searches for public records, and responding to such requests. In performing these duties, the District shall adhere to the following procedural steps:

1. The General Counsel, or his/her designee, shall assign a unique tracking number to the request, based on the year received and in a sequential format for each request (e.g. “2017-001 CPRA”).
2. The General Counsel, or his/her designee, shall identify custodians of the records that respond, or potentially respond, to the relevant request and provide a copy of the request to the identified custodians.
3. The custodians shall conduct a reasonable search for records that respond, or potentially respond, to the request.

ATTACHMENT B

4. The General Counsel, or his/her designee, shall determine, generally within 10 days from receipt of the request, whether the request seeks disclosable public records in the District's possession and promptly notify the person making the request of the determination. In "unusual circumstances," as defined under Government Code section 6253, the General Counsel, or his/her designee, may extend the time limit for such a determination by up to 14 days, by providing written notice to the person making the request of the extension and the reasons for the extension.
5. When dispatching the determination described in AR 3075.3(4) above, and if it is determined that the request seeks disclosable records, the General Counsel, or his/her designee, shall either provide the records that respond to the request if available at that time, or state the estimated date and time when the records will be made available.
6. The General Counsel, or his/her designee, shall compile potentially responsive records and determine whether such records, or portions of records, should be withheld or redacted consistent with the CPRA.
7. The General Counsel, or his/her designee, shall promptly provide all responsive public records, not otherwise exempt from disclosure, to the requester, in accordance with the CPRA.
8. The District shall retain a copy of records produced in response to the request, either in hard-copy or electronic form, consistent with the District's records retention policy.
9. The General Counsel, or his/her designee, shall maintain an index of CPRA requests, identifying tracking number, requester name, date request received, and date responsive records were provided.

AR 3075.4 Additional Procedures for Responding To CPRA Requests Regarding Personal Accounts or Devices

If a Public Records Act request seeks records sent or received on an electronic personal account or personal electronic device of a District employee or officer (*see City of San Jose v. Superior Court* (2017) 2 Cal.5th 608), the District shall adhere to the following additional procedural steps:

1. The General Counsel, or his/her designee, shall provide a copy of the request to the District employee(s) or officer(s) described in the request.
2. The General Counsel, or his/her designee, shall advise the District employee(s) or officer(s) who is the subject of the request, as necessary or appropriate, regarding exemptions under the CPRA and what constitutes a "public record" subject to disclosure under the CPRA. Because the General Counsel is the attorney for the District and not any individual officer or employee, the General Counsel, at his/her discretion, may hire a special outside counsel to advise any individual officer or employee who is the subject of the request. Alternatively, an officer or employee that is a member of the District's Board of Directors, may seek the advice of independent counsel, and seek reimbursement for the costs associated there with, subject to approval of the Board.

ATTACHMENT B

3. The District employee(s) or officer(s) who is the subject of the request shall, within ten (10) calendar days of the District's receipt of the request, perform a reasonable search of his/her personal accounts (such as a personal e-mail account or social media account) and/or personal devices (such as a personal computer or phone) for any written records, including e-mail communications or text messages, that substantively relate to District business and are responsive to the CPRA request.
4. To protect the privacy of its officers and employees, the District shall not search the private accounts or devices of any District employee or officer, unless requested in writing by that employee or officer.
5. District employee(s) or officer(s) shall document their search methodologies, criteria, and terms, when conducting searches on their own private accounts and devices.
6. District employees and officers shall provide all potentially responsive records (written records that relate in some substantive way to District business and are not primarily personal) to the Office of General Counsel, and shall complete and sign a declaration, on a standard declaration form that is prepared by the Office of the General Counsel, attesting that the employee or officer completed a reasonable search of his/her accounts and devices and provided all potentially responsive records to the District. The declaration shall be a public record. Whenever an employee or officer withholds a potentially responsive record based on a determination that it is either not a public record, or not responsive to the request, the employee or officer shall describe, in the declaration required herein, additional facts sufficient to show that the withheld records are not public records, and are instead, personal materials.
7. Once the Office of the General Counsel has received public records from an employee or officer, the General Counsel, or his/her designee, shall determine whether any of the records, or portions thereof, should be withheld or redacted consistent with the CPRA.
8. Complete any remaining procedural steps for CPRA requests, as listed above in AR 3075.3.



El Dorado Irrigation District

CALIFORNIA PUBLIC RECORDS ACT FORM – DECLARATION REGARDING SEARCH OF PERSONAL ACCOUNTS OR DEVICES

Use of Form: This form will be used by an El Dorado Irrigation District (District) employee or officer to document any search they conduct of their personal electronic account(s) or personal electronic device(s) in response to a request received by the District pursuant to the California Public Records Act (CPRA), Government Code section 6250 et seq., for public records contained on personal accounts or devices.

“Public Record” vs. Personal Communication: A District employee or officer should consider a communication contained on a personal electronic account or personal electronic device to be a “public record” that may be subject to disclosure under the CPRA if the communication substantively relates to the District’s business. In contrast, a communication that is primarily personal and contains no more than incidental mention of District business should be considered a private communication that is not subject to disclosure under the CPRA. (*See City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.)

FORM – TO BE COMPLETED BY DISTRICT EMPLOYEE OR OFFICER
WHOM CONDUCTED THE SEARCH

I, _____ (name), declare that the following facts are within my personal knowledge:

1. I am _____ (position/title) for the El Dorado Irrigation District (District).
2. On _____ (date), _____ (name) of the District’s Office of General Counsel contacted me regarding a request received by the District for public records contained on personal electronic accounts or personal electronic devices, and provided me with a copy of the request.
3. A copy of the request is attached to this form.
4. I have reviewed the request for public records, attached hereto.
5. I have reviewed this form, including the paragraph explaining the difference between “public records” and personal communications.

ATTACHMENT C



6. I have received training regarding what constitutes a “public record” under the CPRA and that training included training regarding the standard for distinguishing between a “private” record and a “public” record.
7. After reviewing the attached public records request, as well as this form, and as informed by my training regarding the CPRA, on _____(date), I conducted a search of my personal e-mail accounts and personal electronic devices for any records substantively related to the District’s business that may be responsive to the public records act request.
8. The search I conducted of my personal e-mail accounts and personal electronic devices consisted of the following steps: (describe search conducted)

9. On _____(date), I provided copies of any potentially responsive records that I determined were substantively related to the District’s business to _____ (name) in the District’s Office of General Counsel.
10. Any potentially responsive records that I did not produce to the Office of General Counsel from my personal e-mail accounts or personal electronic devices were withheld by me based on my determination that those communications were primarily personal in nature. The following describes facts sufficient to show that the withheld records are not public records, and are instead, personal materials:

11. _____

12. (Reserved for additional facts, as applicable):

ATTACHMENT C



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, 20__, at _____ (location), California.

(Signature)

EL DORADO COUNTY GRAND JURY 2017-2018

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EL DORADO COUNTY 2017-2018 GRAND JURY

EL DORADO COUNTY FIRE PROTECTION CONSOLIDATION

Case 17-04 • June 30, 2018

SUMMARY

Proposition 13 significantly reduced revenues for local governments including fire protection districts. Many El Dorado County (EDC) fire protection districts have struggled to survive while continuing to provide service to their districts. Compelling reasons to consolidate fire agencies in El Dorado County exist, from cost savings to operational efficiency. Yet, the fear of losing local control might cause some districts to be reluctant. The El Dorado County Board of Supervisors should take the lead to move toward consolidation of all county fire agencies. Total or partial consolidation of fire protection agencies will take time. But, more importantly, it will first take the will to start.

BACKGROUND

In the late 1970's Californians were frustrated with increasing property tax assessments, especially when the State general fund had a surplus of approximately \$5 billion. In June 1978, California voters approved Proposition 13 limiting the real estate tax rate to one percent of assessed valuation. The resulting 53 percent reduction in tax revenues in 1978-1979 significantly affected local governments.

The California Legislature passed implementing legislation providing block grants to local agencies. Apportionment schedules for the distribution of those funds were based on the current budget of each agency. They can only be changed by a County Board of Supervisors when a consolidation of local agencies happens. The legislature then passed AB8 in 1979, permanently allocating a portion of these funds as block grants.

Facing serious financial difficulties in 1992, the Legislature created the Educational Revenue Augmentation Fund (ERAF), shifting ten percent of county, city and special district AB8 funds to local schools. However, any special district providing service across two or more counties was exempt from the 10 percent shift. The El Dorado Hills County Water District (El Dorado Hills Fire Department) provides service to a portion of Sacramento County and is therefore exempt. Similarly, the Lake Valley Fire Protection District serves a part of Alpine County and is also exempt. Any district that dissolves and the territory is annexed by either the El Dorado Hills County Water District or the Lake Valley Fire Protection District would most likely be exempt. The State Controller's Office has historically viewed that the statutes for this type of expansion of territory by a multi-county agency do not provide for a recalculation of the base ERAF calculations. That has been exemplified with the expansion of the Sacramento Metropolitan Fire District in Sacramento County.

Some El Dorado County fire protection districts felt the impact of Proposition 13 more than others. Over the years, the Board of Supervisors provided supplemental funding to fire protection districts. However, that funding has diminished in recent years, and remains uncertain as the county faces budget issues of its own. Budgetary issues, including the impact of Proposition 13

revenue limitations and ERAF revenue shifts have caused small districts across the state to consider cost-saving measures, including consolidation. Consolidation can achieve economies of scale, including the elimination of high paid executive positions. There are several types of consolidation. A *merger* occurs when a district consolidates with a city. Some consolidations are partial. In an *administrative consolidation*, departments remain legally separate but consolidate administrative or staff functions like sharing a fire chief. In a *functional consolidation*, a department performs special functions, like training, for others. An *operational consolidation* happens when departments join both administrative and functional operations. Lastly, *full consolidation*, or *reorganization*, is where one agency dissolves and is then annexed by another becoming one agency.

Some El Dorado County fire protection districts with existing funding constraints have successfully reorganized to maintain or improve service levels. Other fire protection districts are sharing administrative and/or functional operations without a full consolidation. The voters of some districts have passed special taxes to increase revenues for fire protection. Some districts have reduced service.

The El Dorado Local Agency Formation Commission (LAFCO) is the local agency charged with reviewing and approving boundary service areas for county agencies including fire protection districts. In 2010, LAFCO retained Citygate Associates, LLC, to conduct a fire and emergency services planning study. In part, this study made an in-depth examination of a possible countywide fire system.

Prior El Dorado County Grand Juries have recommended consolidation to save money. The 2007-2008 Grand Jury found that consolidation could provide an annual cost saving of more than \$1.2 million. In a separate report, the same Grand Jury recommended the Garden Valley Fire Protection District consider consolidation. The 2015-2016 Grand Jury recommended that the Mosquito Fire Protection District pursue consolidation of services with other fire protection districts.

This investigation tried to determine the pros and cons of consolidating fire protection services, why agencies may be reluctant to consolidate and how the county might motivate consolidation.

METHODOLOGY

- Reviewed prior El Dorado County Grand Jury reports about fire protection districts.
- Reviewed special district budgets relating to fire protection.
- Reviewed the Citygate Associates, LLC, May 13, 2010 *Fire and Emergency Service Study* for the El Dorado LAFCO.
- Interviewed elected El Dorado County officials.
- Interviewed El Dorado County career firefighters.
- Interviewed a representative from the El Dorado County Fire Chiefs Association.
- Interviewed past and current El Dorado County fire protection district board members.
- Interviewed experts on successful consolidations in El Dorado and other counties.
- Interviewed a representative from the El Dorado Local Agency Formation Commission (LAFCO).
- Interviewed a representative from the Fire Districts Association of California.
- Obtained legal guidance from the Office of County Counsel.

DISCUSSION

Unlike many other counties, El Dorado County does not have direct responsibility for fire service. That responsibility resides with 10 separate fire protection districts, the City of South Lake Tahoe Fire Department, and two community services districts. In addition, the California Department of Forestry and Fire Protection (CALFIRE), provides fire protection service throughout El Dorado County. Historically, the Board of Supervisors has taken a keen interest in fire service in the County. The Fire Advisory Board provided advice on fire-related issues to the Board of Supervisors; that Board is now inactive.

The El Dorado County Fire Chiefs Association of fire chiefs across the County coordinates fire service and advises the Board of Supervisors. The County has a centralized dispatch system for fire response and a robust mutual aid agreement among all County fire agencies. Two or more different agencies often respond to the same fire emergency.

In the 2010 Citygate Associates study, six fire agencies were identified as being in *Best Condition* meaning "...they had a suitable and stable revenue base..." to provide adequate fire services. Two were listed as being in *Modest Condition with Stretched Services* meaning while they have a larger revenue base, "...they are stretched quite thin across a large geographical area and so are not able to provide equity of coverage throughout their District". Since the Citygate report, one of these agencies has operationally merged with a *Best Condition* agency. Six agencies were listed as being in *Unstable Condition*, meaning they "...are small and providing very modest service on an unstable revenue base...". Again, since the Citygate report, one Fire Protection agency in the *Modest Condition* has dissolved and been annexed by a *Best Condition* agency. The financial status of the agencies identified in the 2010 study remains substantially the same today.

In 2002, the Legislature passed SB1207 requiring volunteer firefighters to meet the same California Occupational Safety and Health Administration (OSHA) training and safety standards as career firefighters. That legislation has added additional financial burdens to small rural fire protection districts that rely on volunteer firefighters.

The Fire District Association of California is a non-profit, statewide organization whose primary function is to help fire districts become more successful and effective. A representative from that association advised the Grand Jury that the condition of fire protection agencies in El Dorado County is similar to many other rural counties in the state. Fire protection districts originated as principally volunteer organizations with low budgets. Proposition 13 and subsequent legislation set low appropriation schedules for these districts based on these budgets as they existed in 1978. Increasing populations with a corresponding increase in homes and other structures and new state mandates requiring higher training standards for volunteer firefighters have made it increasingly difficult to operate a volunteer organization.

Individuals interviewed by the Grand Jury were nearly unanimous in support of consolidating fire protection agencies in El Dorado County. Some argued for a complete consolidation of all county fire agencies while others proposed an east slope and west slope two-district consolidation. A few proposed a three-district solution; east, west and the southern portion of the county. There was a consensus that any consolidation effort will be difficult and will take years to accomplish.

Many reasons support consolidation. The primary reason noted was cost saving. Consolidation would eliminate some redundant operations and personnel. There would also be cost savings when ordering supplies and equipment in larger quantities.

Another often cited benefit is standardization of training, equipment and practices, increasing operational efficiency and firefighter safety. As noted previously, it is typical for multiple agencies to respond to a single incident. In many cases, the firefighters responding do not know each other, have not worked together as a team and have trained to operate differently. This lack of coordination results in less efficiency and could reduce safety of firefighters and the public. In addition, consolidation has the potential to provide better service to certain areas by staffing stations on a 24-hour basis. Lastly, the Grand Jury was advised that consolidation would increase firefighter opportunities for advancement within a larger organization.

Conversely, there are many reasons fire protection agencies would be reluctant to consolidate. One is fear of losing local control. For the most part, fire agencies are proud of their organizations and may resist change even when it could have benefits to the community. Communities are also proud of their local fire services. Differences in training, staffing and even the markings on firefighting apparatus as well as patches on firefighter's shoulders, could deter consolidation efforts. Community support is necessary to achieve any consolidation. Under LAFCO rules a simple majority of voters can stop the consolidation process.

Another potential obstacle to consolidation is labor union resistance. Labor unions might oppose consolidation because of possible position reductions, staffing levels at different districts and firefighter station assignment. SB 239 took effect in 2016 impacting functional, administrative or operational consolidations when a labor contract is initiated to consummate a consolidation. In these instances, SB 239 allows labor unions to effectively veto consolidation efforts. However, there are specific situations where labor unions would support a consolidation if it benefited rank and file firefighters.

Disparity in tax revenue is the most significant obstacle to consolidation. Local agency share of tax revenue is based on revenues in 1978. Fire agency boards are reluctant to consolidate unless the consolidation is at least revenue neutral. The disparity among AB8 funding in County fire agencies means it is extremely difficult, if not impossible, for all consolidations to be revenue neutral. While the Board of Supervisors can adjust AB8 rates upon consolidation, there are limits on how this can be accomplished, and many factors must be considered.

The Grand Jury examined several successful consolidations in and outside El Dorado County. All had one commonality; one person, usually a fire chief, developed a plan to unify the boards, the public, firefighters, and unions while working through the LAFCO consolidation process. Without a plan and a driving force, no consolidations would have taken place.

The key to successful consolidation is achieving consensus. While the Board of Supervisors can initiate consolidation through LAFCO, they cannot mandate consolidations. Yet, the Board of Supervisors is uniquely positioned to set the vision for fire protection organizations, activate the Fire Advisory Board and staff it with individuals knowledgeable about county fire protection and how successful consolidations have taken place. The Board of Supervisors could charge the Fire Advisory Board to develop a long-term consolidation plan, encourage fire agencies to consolidate and support consolidation efforts as needed through the adjustment of AB8 allocations.

One possible outcome is to consolidate all county fire protection agencies over time, under the El Dorado Hills County Water District. This would potentially avoid an ERAF shift of up to \$1.6 million annually from individual fire agencies. However, it would obviously affect local schools' funding. It could also result in additional costs since El Dorado Hills County Water District is more expensive to operate than other fire protection districts. A cost analysis study comparing consolidating under El Dorado Hills Water District versus other county fire agencies would be prudent before a final decision can be made.

The County may never achieve meaningful consolidation. Nevertheless, that should not deter the County from trying. Neither should the complexity of consolidation efforts. The road forward will take leadership, planning, persistence and time. It will first take the will to start.

FINDINGS

- F1. Many fire protection districts in El Dorado County provide modest service with an unstable revenue base.
- F2. Consolidating fire protection agencies could provide safer, more efficient and more comprehensive fire service.
- F3. The Board of Supervisors, in conjunction with LAFCO, is best positioned to champion fire agency consolidation.
- F4. The Fire Advisory Board, if reactivated, could help the Board of Supervisors with consolidation.
- F5. Consolidation needs to be a well-planned effort and will take many years to accomplish.
- F6. Consolidation is unlikely without adjustment of AB8 allocations.
- F7. Firefighter professionals in the County favor consolidation.

RECOMMENDATIONS

- R1. The Board of Supervisors should take the lead to consolidate County fire protection agencies.
- R2. The Board of Supervisors should reactivate the Fire Advisory board.
- R3. The Board of Supervisors should direct the Fire Advisory Board to develop a plan for consolidation of fire protection agencies.
- R4. The Board of Supervisors should resolutely work to persuade agencies to implement the plan.
- R5. The Board of Supervisors should be open to reasonable AB8 allocation adjustments to support consolidation.

WEB ATTACHMENT

2010 Citygate Fire and Emergency Service Study for the El Dorado LAFCO
<https://www.edlafco.us/citygate-fire-study>

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- Response to findings F3, F4, F5, F6, and all recommendations from El Dorado County Board of Supervisors.
- Response to finding F3 from El Dorado County Local Agency Formation Commission.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# [*Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.*]

Response: [*Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.*]

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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 2017-2018 GRAND JURY

HOW EL DORADO COUNTY CAN NAVIGATE THE CALPERS CRISIS

Case 17-06 • June 30, 2018

California's giant pension agency, California Public Employees Retirement System (CalPERS), finds itself in the headlines, and that is not necessarily a good thing for El Dorado County, since its employees are covered by the CalPERS retirement system. Reports of underperforming investments and increased costs passed along to member employers are common. City and county governments face budget shortfalls, or in some cases, bankruptcy. While El Dorado County does not appear to be in imminent danger, addressing CalPERS issues will be an increasing challenge for the County's executive management and elected leaders.

CalPERS increases mandatory contribution levels to make its trust fund healthy enough to cover pension obligations to millions of state and local government workers. City and county governments, school districts, special districts and other public agencies in the CalPERS family struggle to find a balance between rising CalPERS expenses and ongoing government program costs.

Balancing a budget is difficult, and El Dorado County's (EDC) budget is no exception. When operating costs outpace revenues, the outcome is predictable, even during a predominately healthy economy. The County's obligation to pay pension costs is growing over time, redirecting resources from ongoing County service needs including public safety, road maintenance, and human services. Without change, the ability to provide for the health, safety, and welfare of citizens may be compromised.

The Grand Jury seeks to bring the challenge of balancing rising pension expenses and ongoing County program costs into focus, using layman's terminology to better understand the CalPERS process, and provide suggestions to address a growing fiscal concern. Of course, El Dorado County is not alone, but is the situation actually that bad? Is our County at risk? The Grand Jury believes that without quickly and intelligently implementing steps to slow the growth of the County's CalPERS debt, the problem will get much worse. Of course, there is not much this County can do to address the Statewide issues, but EDC needs to take steps that are within its control.

METHODOLOGY

The Grand Jury Reviewed:

- "Understanding CalPERS", an overview document published by CalPERS
- CalPERS Website
- Federal and State laws related to CalPERS
- Annual CalPERS Actuarial Valuation Reports for El Dorado County
- News articles related to CalPERS
- Grand jury reports about CalPERS from other California cities and counties
- El Dorado County 2002-2003 Grand Jury Report
- El Dorado County budget and financial documents

In preparing this report, the Grand Jury had difficulty locating information pertinent to making its recommendations. Although the flow of information regarding the pension status has improved between County staff and the Board of Supervisors (BOS), the Grand Jury feels the County could improve the communication flow with the public. It is particularly important to provide complete and accurate information to the public when an issue involves huge numbers like a "\$346 million unfunded liability". Without complete information to put that number into context, it is easy for the public to react with a sense of doom.

The Grand Jury Interviewed:

- Representatives of the County Chief Administrative Office
- Representatives of County Human Resources
- Representatives of the County Auditor's Office
- County Board of Supervisors
- CalPERS management staff

The Grand Jury Attended:

- County Board of Supervisors Meetings
- El Dorado County Audit Committee Meetings

NOTE: Unless otherwise specified, references to statistical data in this report are contained in the 2015-16 actuarial report provided by CalPERS. The most recent data available is current through June 30, 2016 and is available at these internet links:

<https://www.calpers.ca.gov/docs/actuarial-reports/2016/el-dorado-county-miscellaneous-2016.pdf>

<https://www.calpers.ca.gov/docs/actuarial-reports/2016/el-dorado-county-safety-2016.pdf>

BACKGROUND

CalPERS is the largest public pension fund in the nation with approximately 3,000 employers representing more than 1.9 million members. The system administers pension benefits for all state employees and employees of other governmental agencies such as counties, cities, special districts, and school districts. Thirty-nine of 58 California counties are CalPERS members, including El Dorado County.

CalPERS is an independent agency with sole authority to administer retirement funds of contracting agencies. It is a significant component of public employee compensation intended to guarantee employees a predictable income in retirement that is protected by California Law¹. The cost of benefits is tied to date of hire, salary, and negotiated cost-sharing between the employee and the employer. CalPERS is responsible for collecting both employee and employer contributions, placing them in a pension trust, managing the investment of those funds and distributing them to employees after retirement. The objective is to accumulate sufficient assets to pay benefits over the remainder of employees' lifetimes.

¹ California Public Employee Retirement Law (PERL) January 1, 2016

Employer contributions to CalPERS are determined by actuaries utilizing complex financial models to estimate the amount of contributions needed to fund each employer's future pension plan obligations. CalPERS has sole authority to determine assumptions used in the financial models, including lifespan estimates and projected return on investments. CalPERS provides annual actuarial reports to member employers.

Failure to collect and set aside adequate funds, or investing in underperforming assets, causes a gap between funds available and funds needed for retiree benefits, referred to as Unfunded Accrued Liability (UAL). It is the responsibility of employers to compensate CalPERS for pension under-funding. Recent calculations place the UAL for EDC at approximately \$346 million.

HISTORY OF CALPERS

CalPERS was created in 1932 as a public-sector pension system. CalPERS acts as a common investment and administrative agent for public entities within the State of California that provide retirement and disability benefits with annual cost of living adjustments and death benefits to plan members and beneficiaries. Retirement benefits are based upon a defined benefit pension plan where an employer promises future benefit payments based on an agreed-upon formula.

In 1932, the usual retirement age was 65 years with a life expectancy of 66. After 40 years of work, the qualifying pension was about 57% of ending salary. Pensions were funded by contributions from employers, contributions from employees, and money gained from investing those contributions. Over the years, the CalPERS retirement benefit increased when cost of living adjustments were added, life expectancy improved, retirement age lowered, and pension formulae changed. Current life expectancy is 87 years for women and 85 years for men. CalPERS continues to update baseline data used in formulas that impacts established pension contracts, adjusting projected return rates on investments.

In 1992, California voters approved Proposition 162, the Pension Protection Act. It gave CalPERS authority to administer the system to assure prompt delivery of benefits to participants. CalPERS also retained the exclusive authority to determine the amount of an agency's contributions needed to fund its obligations.

In the late 1990s, CalPERS held assets well in excess of its future pension obligations, largely because of a healthy economy and strong stock market. Investment gains typically account for 60% of CalPERS pension funding. Changes in the economic environment have a significant impact on the pension fund. CalPERS analyzes changes over a broad timeframe to determine trends, then adjusts employer contributions accordingly.

The robust market in the 1990s provided impetus for several changes to CalPERS' methodology that would prove damaging in the long term. In 2001, the Governor signed SB400 into law, reducing the age at which many State employees were eligible to retire. More significantly, the legislation provided retroactive increases in the formula used to calculate retirement benefits, and authorized retirement eligibility at earlier ages for many State employees. SB400 also authorized local agencies, including cities and counties, to amend their retirement ages and their benefit formulae. These enhancements were embraced by governmental agencies to attract, reward and retain employees. Many employers, including EDC, took the opportunity to provide enhanced retirement benefits to employees.

Retroactive benefits triggered an immediate increase in funds needed from employers. Previously-calculated contributions were no longer able to balance member accounts that were now underfunded. A higher salary base compounded the immediate impact on debt or liability. This single decision resulted in a debt threshold that continues to grow unabated, despite best intentions.

In 2012, the Legislature took its first significant step to remedy the funding problem. It adopted AB340, the California Public Employees' Pension Reform Act (PEPRA), which took effect in January 2013. The law limited future pension manipulation, such as golden handshakes and retroactive raises, which reined in some excesses but didn't address pension contracts before January 2013. This is due, in part, to the "California Rule" which guarantees government workers the pension formula that was in place the day they were hired, unless the employees have bargained to change their formula in exchange for something of equal value. The current interpretation of the California Rule is facing legal challenges, with a ruling pending from California's Supreme Court.

CALPERS TODAY

The value of CalPERS assets was hurt by the dot.com bubble bursting in the early 2000s, followed by the recession in 2008. CalPERS suffered a 24% decline in the value of its holdings in 2009 alone. As a result, the robust health of member accounts dwindled and crossed the threshold into indebtedness. The larger the increases various agencies had granted employees, the larger their UAL. EDC had not offered its employees as generous a pension formula as many other counties, so its unfunded liability is not as great.

A gap happens when funds needed to pay benefits exceed the funds available. It is also referred to as an unfunded liability. Simply, it is that part of benefits, a liability, without sufficient funds to pay it. It applies not only to current funding but more importantly, to projected funds and benefits in the future. Projections are made for distinct points in the future. Liabilities are recalculated into a single value called an Unfunded Accrued Liability (UAL), representing the total dollar amount that is due to CalPERS, based on assumptions made at the time of its calculation. Of course, projections can, and do, change, and so does the UAL. It is important to know that it is the responsibility of member agencies to fund those gaps in funding (UALs), not CalPERS.

CalPERS obligations and Unfunded Accrued Liability (UAL) should be of significant concern to all member agencies, including El Dorado County. As of June 30, 2016, 1,295 of the 1,511 public agencies participating in CalPERS had pension plans funded at less than 80% of full funding. EDC's pension plan is currently funded at 64%. Fortunately, the UAL debt is not due immediately and is incorporated into annual payments calculated by CalPERS. The problem is exacerbated by accumulating interest, adding to the continued UAL growth.

CalPERS is required to review and update its actuarial assumptions at least every four years. The actuarial review includes a *look back* period commencing in 1997 to track data and identify trends. The results provide a basis for future projections. In addition to updating the mortality tables and cost of living adjustments, CalPERS actuaries analyze the rate of return on the investment portfolio. CalPERS may employ the best and brightest staff to create and implement an investment strategy to make money for their clients, but they cannot control the outcome. The rate of return on investments from year to year is not immune to a volatile stock market or broader changes in the economy that affect investment growth. The rate of return on investments has a significant impact on the calculation of employer contributions.

On the surface, adjusting assumptions to determine current life expectancy, modifying retirement eligibility factors, incorporating cost of living adjustments, and accounting for the rate of return on investments does not seem significant, much less catastrophic. It is important to understand that every adjustment affects employers since they retain final responsibility for funding the pension plan.

The effects for EDC extend beyond County employees because every dollar EDC must pay to fund retirement is a dollar that otherwise could be spent on County services. In 2016, CalPERS reduced its projected earnings from 7.5% to 7% because of underperforming investments. The staggering effect of this single adjustment resulted in increases passed on to CalPERS employers. For El Dorado County, the increase is millions of dollars over the next few years.

CalPERS notifies member agencies in writing of annual employer contributions for a 3-year period. This allows long-term budget planning and establishes the minimum amount of an employer contribution. The notification includes options for agencies to make accelerated payments to reduce the UAL.

The required employer contribution or payment to CalPERS has two components: normal cost and UAL. Normal cost represents the annual cost of service accrual for active employees during the upcoming fiscal year. It is shown as a percentage of payroll and paid as part of the payroll reporting process. The UAL is the amortized dollar amount needed to fund past service credit earned for members currently receiving benefits, active members, and for members entitled to deferred benefits, as of the valuation date. The UAL portion is calculated into a monthly minimum payment but can be paid in a lump sum at the beginning of the fiscal year, eliminating the ongoing accrual of interest on this segment of the UAL.

EL DORADO COUNTY

CalPERS data through June 2016 reveals that El Dorado County contracts with CalPERS to provide benefits for approximately 4,000 County employees, distributed between 1,900 active personnel and 2,100 retirees.

The EDC Auditor-Controller has frequently shared his concerns with both the Board of Supervisors (BOS) and local media, about the alarming growth rate of the County's unfunded pension obligation. He has cited CalPERS data that indicates that EDC's unfunded liability is \$346 million. Discussions with several County Administrators and Supervisors revealed the unanimous opinion that the County CalPERS contribution is one of the most important fiscal issues facing El Dorado County.

As early as 2002, the County was aware of the need to increase contributions to compensate for CalPERS liabilities. A 2002-03 Grand Jury report outlined several shortcomings in El Dorado County's budget for fiscal year 2002-03. Contributions to CalPERS had not been adjusted to reduce the rising pension liabilities. The Grand Jury feels it is important to better understand what, if anything, has changed since the earlier Grand Jury Report.

In 1999 and 2000, like many other California agencies, EDC opted to grant retroactive raises and benefits to a number of their personnel. This decision resulted in EDC having unfunded liability for pensions. CalPERS calculates a percentage of the UAL to be paid annually. As noted above, this amount is added to the normal cost of pension payments and billed to the County as a mandatory minimum payment.

In Fiscal Year 2002-2003, El Dorado County's required contribution to CalPERS was \$7,732,954. In 15 years, the contribution has reached over \$30 million. The table below shows annual CalPERS payments and a corresponding increase of employer contributions.

Annual EDC CalPERS payments

<u>FISCAL YEAR</u>	<u>REQUIRED EMPLOYER CONTRIBUTION</u>	<u>INCREASE FROM PREVIOUS YEAR</u>	<u>UAL PORTION</u>
2015-16	\$25,809,088	N/A	\$12,916,158
2016-17	\$27,784,630	\$1,975,542	\$14,607,206
2017-18	\$30,533,664	\$2,749,034	\$17,112,172
2018-19	\$35,110,135	\$4,576,471	\$20,516,816
2019-20*	\$40,092,998	\$4,982,863	N/A

*Projected

It is important to note that El Dorado County has never defaulted on a CalPERS payment. Historically, EDC has paid the employer contribution monthly. However, because the County is paying only the minimum required UAL payment, the UAL continues to grow, largely due to interest. The pension funding level now stands at 64%, and the UAL has mushroomed to \$346 million. The County may no longer be able to absorb the increased costs without impacting the level of services to all residents.

In 2016, CalPERS notified EDC about payment requirements for 2016-17, 2017-18, and 2018-19. In the 2017-18 County budget, funds were set aside to meet this obligation. The UAL portion of EDC's contribution went up significantly during that period, increasing by \$1.7 million (13%) in 2016-17, \$2.5 million (17%) in 2017-18, and \$3.4 million (20%) in 2018-19.

There is a potential to save interest by prepaying the UAL mandatory payment. EDC has not yet taken the pre-payment option.

In February 2018, CalPERS announced a policy change realigning the UAL debt payment schedule from 30 to 20 years. Taking effect in 2019, it revises rates to speed up the rate of debt (UAL) payment. This policy means substantially higher annual payments will start in 2021. It will save EDC money over time, but payment increases will squeeze budgets over the next few years, possibly resulting in draconian reductions in services.

DISCUSSION

To deal with what the Grand Jury sees as a growing sense of concern over the County's pension debt, various strategies might be considered, from those that do nothing beyond meeting CalPERS requirements, to leveraging the UAL and cutting the debt. EDC could reevaluate the method in which payments are made, and either continue making the minimum monthly payments for the employer contribution or pay the UAL at the beginning of the billing cycle, potentially saving hundreds of thousands of dollars in interest annually and paying off the UAL sooner.

EDC could continue to earmark funds in the budget to offset increases in upcoming fiscal years. The County could commit some of any year-end budget surpluses for CalPERS. The funds could be deposited into a pension trust for use restricted to pension-related costs including, but not limited to, paying annual pension increases or paying down the UAL. The County could evaluate the benefits and risks of trust funds managed and invested by a pension investment firm. These ideas are not new, and some have been implemented by EDC on a limited basis.

While, in theory, EDC could buy out of the CalPERS system and establish its own pension plan, the current cost provided by CalPERS would be \$1 billion, making this option untenable.

It is evident to the Grand Jury that EDC has no viable option to fix the problem without significant impact to the County's budget, at least in the short-term. However, in our view, El Dorado County should implement and commit to a strategy as soon as possible to maximize its reductions to the UAL, so that the UAL shrinks instead of continuing to grow to the point there is no way to repay it.

The CAO has been active in restoring County fiscal health. We observed that he was abreast of the current CalPERS status and actively involved in the California State Association of Counties (CSAC) and other organizations that share information and strategies. In addition, he is collaborating with departmental heads to identify funds necessary for mandatory pension payments for 2017-18 and 2018-19 and has also supported redirecting the current year-end budget surplus to address CalPERS UAL reduction and consideration of alternate investment strategies.

The Grand Jury is satisfied that the County has implemented several operational changes since the 2002-03 Grand Jury report, including the recent establishment of a Budget Policy that includes direction to set aside additional funding for pension-related costs. The CAO expressed concern regarding the escalating UAL and had clearly devoted significant time and effort to address spiraling costs.

Discussions with Supervisors confirmed their awareness of this issue's importance, and they were unified in implementing solutions. The Grand Jury is concerned that the driving force is the vision and goals of an individual, primarily the CAO. Although the current Board supports the direction recommended by the CAO, the Board is subject to periodic changes due to elections and term limits. It is imperative that goals be formalized to provide a framework for continued restoration of the County's fiscal health.

FINDINGS

- F1. The unfunded CalPERS liability for El Dorado County is \$346 million as of July 2016.
- F2. El Dorado County pays annual CalPERS payments monthly, resulting in interest charges payable to CalPERS.
- F3. El Dorado County pays only the minimum amount due to CalPERS; it does not make additional payments to reduce the UAL.
- F4. El Dorado County has an established policy to set aside additional funding for post-employment benefits, but not specifically for CalPERS obligations.
- F5. Historically, El Dorado County has not provided information to the public about its CalPERS obligation in a way that clearly illuminates the scope of the pension obligation.

RECOMMENDATIONS

- R1. El Dorado County should establish a policy to escalate contributions to reduce the UAL.
- R2. El Dorado County should evaluate pre-paying the annual CalPERS contribution by paying the UAL portion annually rather than monthly to lessen interest charged by CalPERS.
- R3. El Dorado County should create a dedicated trust to assure that funds set aside in the budget for CalPERS costs are used for that purpose.
- R4. El Dorado County should fund the CalPERS trust account to the maximum extent possible.
- R5. As part of the yearly budget process, El Dorado County should report the details of its CalPERS obligation in simple and understandable terms prominently on the County's website and in a press release, so that citizens can understand the extent of future CalPERS obligations.

ATTACHMENT

- Glossary

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- Response to all recommendations from El Dorado County Chief Administrative Officer.
- Response to all recommendations from El Dorado County Board of Supervisors.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# *[Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.]*

Response: *[Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.]*

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

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(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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.

GLOSSARY

Actuary: A person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields. An actuary estimates how much money must be contributed to a pension fund each year in order to support the benefits that will become payable in the future.

Actuarial Assumptions: Assumptions made about certain events that will affect pension costs. Assumptions generally can be broken down into two categories: demographic and economic. Demographic assumptions include such things as mortality, disability, and retirement rates. Economic assumptions include: investment return, salary growth, payroll growth, inflation rates, and health care inflation rates.

Actuarial Valuation: A mathematical analysis of the financial condition of a pension plan which requires making economic and demographic assumptions in order to estimate future liabilities. The assumptions are typically based on a mix of statistical studies and experienced judgment.

Amortization: An accounting term that refers to the process of allocating the cost of an intangible asset over a period of time. It also refers to the repayment of loan principal over time.

Assets: Employer contributions and accumulated earnings on the investment of these contributions to be used to pay retirement benefits to retired employees.

Benefit Formula: The formula used to determine the amount of a benefit that an eligible participant receives upon retirement. Each formula specifies a percentage rate based on the member's age at retirement, and either statute or a collective bargaining agreement specifies which formula will be applicable to an individual member. The retirement benefit calculation typically includes three factors: a percentage rate based on the age at retirement and benefit formula applicable to the member, the member's length of credited service, and the member's highest average compensation for a one-year or three-year period. Typically, retirement formulas are titled in such a way as to describe how a retirement benefit would be calculated, such as "2% at age 55." In this case, the retirement benefit for a member retiring at age 55 would be: 2% (the formula percentage) X years of service X average monthly pay rate for either one or three years.

Defined Benefit (DB) Plan: A traditional pension. A plan designed to provide eligible participants with a specified lifetime benefit at retirement. The benefit is based upon the following three factors: a percentage rate based on the member's age at retirement and benefit formula applicable to the member, the member's length of credited service, and the member's final compensation. Defined benefit plans also typically provide disability and death benefits. The plans are funded by member contributions, employer contributions, and income earned from the investment of accumulated contributions.

Fiscal Year (FY): A term of one year, typically beginning on the 1st day of July extending through the last day of June.

Fully Funded: A specific element of pension cost (for example, past service cost) is said to have been fully funded if the amount of the cost has been paid in full. A retirement plan is fully funded when the funded ratio equals 100% or greater.

Funding Level: The relationship, usually expressed as a percentage, between the actuarial value of a plan's assets and its actuarial liability. The amount of funds in the account.

Liabilities: The obligations of a plan to pay amounts of money either immediately or in the future.

Normal Cost: The present value of future pension benefits earned during the current accounting period.

Unfunded accrued liability (UAL): The amortized dollar amount needed to fund past service credit earned for members currently receiving benefits, active members, and for members entitled to deferred benefits, as of the valuation date.

Valuation Date: The effective date for an actuarial valuation of a pension plan.

EL DORADO COUNTY 2017-2018 GRAND JURY

OVERSIGHT OF SPECIAL DISTRICT MITIGATION FEES

Case 17-12 • June 30, 2018

SUMMARY

A lawsuit against El Dorado County and special districts in El Dorado Hills raised concerns over how fees developers pay for roads, parks and fire services are being managed, administered and spent. The County has responsibility to collect, administer and manage many fees. This report focuses on County oversight and administration of its Traffic Impact Mitigation (TIM) fees and its involvement with special district fees, which were the subject of the lawsuit.

The California Mitigation Fee Act (MFA) governs the establishment and accountability of impact fees such as TIM and special districts fees. The Fees offset the impacts of new development on public facilities such as roads, parks, and fire. Strict reporting requirements are required to demonstrate the need and continuation of the fees. The lawsuit alleges that the reporting requirements were not followed. Thus, the fees are no longer needed and the fees should be returned to the property owners from whom the fees were collected.

The County is currently doing a good job handling TIM fees. However, the County's past record from past administrations show that it did not comply with its own ordinance regarding the administration of the special district fees. The County has since adopted a revised version of its mitigation fee ordinance to reflect the State MFA.

The County Administrative Office (CAO) oversees the administration of the Special District Fees. Unlike the TIM Fees, there are no policies or procedures specific to County's administration of Special District Mitigation Fees. Policies and procedures need to be formalized.

BACKGROUND

A civil lawsuit, in December 2015, against El Dorado County was filed by El Dorado Hills residents alleging that the County, El Dorado Hills Community Services District, and El Dorado Hills Water/Fire District failed to comply with the MFA. Specifically, the County failed to file a series of five-year nexus reports as mandated by the MFA and, therefore, is mandated to return the unexpended fees to the property owners. It was alleged that approximately \$30 million in unexpended funds remain in various *special districts* accounts collected from property owners during the building permit process. With its mandate to promote government accountability, the Grand Jury reviewed the County's administration and management practices regarding the reporting requirements of these fees under the Mitigation Fee Act.

METHODOLOGY

- Reviewed the Mitigation Fee Act.
- Interviewed County personnel and reviewed policies and practices.
- Reviewed El Dorado Superior Court Case #PC-20150633, Austin vs. County of El Dorado.

DISCUSSION

Mitigation Fee Act

Prior to 2017 the County collected and administered mitigation fees on behalf of the special districts in accordance with County Code Chapter 13. In 2017, the County Code was amended to incorporate the Mitigation Fee Act (MFA) to ensure compliance, avoid duplication, and limit the liability of the County when collecting the fees on behalf of the special districts.

The California Mitigation Fee Act (MFA), Government Code 66000, allows fees to be collected by a local agency to pay for public facilities and services needed for new development. In El Dorado County, the mitigation fees are collected at the time when the building permit is issued, and are generally listed as a Traffic Impact Mitigation (TIM), special district, fire district, public safety facilities (sheriff substation), or ecological preserve fees.

Mitigation fees must be deposited in a separate capital facility account for each facility and may only be expended for the purposes for which they were collected. The Act requires that County/Special Districts account for every fee collected and that an annual report be presented to the governing board showing revenues and expenditures of each fee account. In addition to the annual report, a nexus report of all unexpended fees is to be generated every five years with findings that

- 1) Identify the purpose to which the fee is to be expended,
- 2) Explain unexpended monies and justify the purpose for having a balance in the account,
- 3) Identify the sources and funding for any as-yet uncompleted improvements, and
- 4) Designate the approximate date the agency expects the funding for uncompleted improvements will be needed.

If the local agency fails to make the findings or properly account fees, the Act provides that the agency shall refund the monies to the property owners of record.

Interviews and Policies

The Grand Jury interviewed County staff responsible for the fees including staff at the County Auditor, Planning and Building Department, and Chief Administrative Office. TIM fees have been managed via the Capital Improvement Program (CIP). The County's administration of Special District Fees was not effectively administered during previous years.

Mitigation fees are calculated and collected by the Planning and Building Department then administered and distributed by the Auditor and Chief Administrative Officer.

TIM Fees are based on funding needed for transportation projects that will accommodate growth. Transportation projects are identified from the County's General Plan and proposed developments. Once identified, the projects are included in the Capital Improvement Program (CIP) with estimated time frames for completion. The CIP is a 20-year plan periodically updated with new major projects. TIM fees, in combination with other revenue sources, fund these transportation projects. The County has adopted a TIM Fee Administrative Manual containing policies that govern the use of and reporting of the TIM Fees. Community Development Services, including the Planning and Building Department, administers and manages the CIP and are responsible for submitting updates for approval by the Board of Supervisors (BOS).

In addition to TIM Fees, the County collects other mitigation fees on behalf of special districts. In 1995, the County passed Ordinance 4404 authorizing the County to adopt and collect mitigation fees on behalf of community services districts, as permitted by the MFA. Special district fees, unlike Countywide TIM fees, are specific to particular service districts. These fees fund new or expanded fire protection facilities or equipment and new or expanded park and recreational improvements within those districts.

Current special districts are:

- Georgetown Divide Recreation District
- El Dorado Hills Community Services District
- El Dorado Hills County Water/Fire District
- Cameron Park Community Service District (Fire, Parks & Recreation)
- Rescue Fire Protection District
- Pioneer Fire Protection District
- Mosquito Fire Protection District
- Lake Valley Fire Protection District
- Georgetown Fire Protection District
- Garden Valley Fire Protection District
- El Dorado County Fire Protection District
- Diamond Springs/ El Dorado Fire Protection District

The special districts listed above determine their capital improvement needs and must comply with the reporting requirements of the Mitigation Fee Act. However, these districts typically do not have the expertise or staff to generate those reports. The County assists special district compliance on a voluntary basis and provides the facility fee accounts. Witnesses acknowledged that personnel and administrative changes over the years contributed to inconsistent County assistance with reporting requirements.

In March 2013, the County Auditor advised the Board of Supervisors (BOS), the then Chief Administrative Officer (CAO) and County Counsel, that the County was not, and has not been, in compliance with the MFA regarding special districts. Specifically, the special districts failed to submit the required five-year nexus studies and findings to the County demonstrating the need and expenditures of mitigation fees. This same admonition was repeated for several years. The failure to submit five-year nexus reports was the basis of the Austin lawsuit.

The County recently assigned staff to oversee Special District Mitigation Fee compliance. However, there are no formal County procedures or policies giving guidance for the administration and management of Special District Fees.

MFA reporting requirements have not been strictly adhered to by the County and Special Districts. There must be an annual report accounting for all MFA fees and five-year findings. Both reports are to be presented to and approved by the BOS as having complied with the MFA.

Court Case #PC-20150633, Austin Vs County of El Dorado

The Grand Jury reviewed this petition which seeks to compel the County to refund all unexpended mitigation fees, as required by the Act, because the required five-year studies were not submitted. Hearings on the petition are ongoing and there has not been a final determination in the case at the time of this report.

The California Fourth Appellate District court recently ordered the City of San Clemente to refund impact fees to current owners of affected properties that had been assessed a "Beach Parking Impact Fee" to defray the cost of new beach parking. The City collected almost ten million dollars, yet less than \$350,000 was spent to purchase property without constructing parking facilities. The court found that the City's five-year report failed to make specific findings required by the MFA and ordered the City to refund approximately \$10.5 million.

The El Dorado County Austin case is based on the same concept.

FINDINGS

- F1. The Chief Administrative Office (CAO) has designated staff with responsibility for assisting special district compliance with the MFA.
- F2. There are no County internal policies and procedures governing the County's assistance in the administration of special district mitigation fees.
- F3. All County mitigation fees accounting is up to date and in full compliance with the MFA.

RECOMMENDATION

- R1. The County should formalize policies and procedures with regard to the County's role in assisting special districts to comply with the Mitigation Fee Act.

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- **Response to all findings and recommendations from the El Dorado County Board of Supervisors.**

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

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Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

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Honorable Suzanne N. Kingsbury
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California Penal Code Section 933

933.

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(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

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EL DORADO COUNTY 2017-2018 GRAND JURY

EL DORADO COUNTY JAILS INSPECTIONS

Case 17-03 • June 30, 2018

SUMMARY

The 2017-2018 Grand Jury conducted its annual inspection of El Dorado County jails in both South Lake Tahoe and Placerville in November 2017.

The tours were conducted by correctional staff who explained the overall operation of the jails during a comprehensive viewing and inspection of numerous areas of the facilities including: Receiving, Release, Sally Ports, Booking, Culinary, Visiting and Recreational areas, as well as Inmate Housing Units and Staff Control Booths. Correctional Staff reviewed documents with jury members covering the classification of inmates in the jail, receiving, booking and release.

Jurors were troubled by the purportedly high rate of inmate attempted suicides shown in a 2011-2017 report. In addition, the general maintenance condition of both jails did not meet expectations.

Vocational training programs are nearly nonexistent and there are no life skills training programs to help inmates re-enter society upon release. Exercise and recreation activity space was limited to 10 inmates at a time. We observed a high degree of inmate inactivity in the housing units.

The Grand Jury commends the staff and administrators in both jails for up-to-date computer database systems that track and provide statistics on each inmate during their confinement.

BACKGROUND

California Penal Code Section 919 subsection (b) requires the Grand Jury to annually inspect all County jail facilities. Sections 925 and 925(a) authorize the Grand Jury to investigate county and city jails and other detention facilities. Although a report is optional, the Grand Jury felt a report was necessary based on observations and documentation gathered during the inspections. The Grand Jury has combined both jails in this comprehensive report.

METHODOLOGY

- The Grand Jury reviewed the Board of State and Community Corrections (BSCC) Jails Inspection Handbook.
- The Grand Jury utilized the *Inspection Handbook for Grand Jurors and Detention Facility Inspection Form* for both County jails provided by the California Board of State and Community Corrections (BSCC).
- Grand Jury members toured both jail facilities interviewing staff and inmates.
- The Grand Jury reviewed the statistical accountings of the Inmate Classification System, the Disciplinary System, Special Needs Inmates, Civil Detainees, Special Management Inmates, Health Screening, and Attempted Suicides/Suicides.
- The Grand Jury reviewed the 2017 *Jail Needs Assessment for the El Dorado County Jails*, prepared for both jails by Vanir Consulting, a well-known correctional consultant.
- Grand Jury members conducted exit interviews with correctional staff about the Vanir Report statistics related to attempted and actual suicides.

DISCUSSION

The Placerville Jail is a 303-bed facility constructed in 1988. Within the jail are single occupancy cells, double occupancy cells and dormitory housing units. The South Lake Tahoe Jail is a 158-bed facility initially built in 1973 with an addition in 1992. It too has single and double occupancy cells and dormitory housing. Both facilities house male and female inmates. The number of inmates fluctuates daily.

There are four classifications for housing both male and female inmates: *General Population, Protective Housing, Maximum Security and Administrative Segregation*. Inmates identified as *Gang Members* may require special housing.

Inmates are carefully screened on arrival and classified to determine how and where each inmate should be housed. High risk inmates are identified based on their potential for violence, need for heightened security during pretrial, escape history, gang affiliation and mental health status. High risk inmates are often placed in Administrative Segregation, Protective Custody or a Medical Unit. A registered nurse and a licensed vocational nurse staff the medical unit. Both jails contract with California Forensic Medical Group (CFMG) for mental health issues on an on-call basis, with an option to video conference with mental health professionals.

AB109, enacted in 2011, requires the transfer of some prisoners from State facilities to county jails to reduce overpopulation. Inmates from State prisons are often more knowledgeable than first time inmates, understanding the prison system and ways it can be manipulated. Not all jail staff had been trained to handle these individuals, including gang members. In addition, some of the transferred state prisoners were in the Mental Health Services Delivery System (MHSDS) while in prison. County jails are not equipped to deal with inmates needing on-going mental care. Transferred State prisoners can pose a threat to the security and safety of both jail staff and other inmates.

Vocational Training Programs – Life Skills Programs – Educational Programs

The only vocational program in both jails is the certified culinary program. The South Lake Tahoe Jail Culinary Program has received numerous awards, winning recognition for service to the jail and the community. These culinary programs help inmates become employable upon release. Inmates must complete a food safety certification program and obtain a medical clearance before acceptance into the Culinary Program. Currently, only male inmates work in the Culinary Program while female inmates are limited to laundry services. Jail policy does not allow male and female inmates to commingle.

In the past, the El Dorado County Office of Education and the El Dorado Adult School had provided Adult Basic Education, English as a Second Language (ESL) and General Education Diploma (GED) programs at both jails. Currently, only the GED program is available. It was apparent during our tour of both jails that the educational GED/High School Diploma Program, restarted in 2017, has little inmate participation.

In addition, certain inmates must complete courses such as Anger Management, Narcotics Anonymous and Alcoholics Anonymous as part of mandated court sentencing.

There are currently no life skills training programs in either jail. Life skills training on topics such as filling out a job application, interviewing for jobs, budgeting and using public transportation could provide inmates with skills to more easily succeed in society after release. Life skills could be taught by vetted volunteer instructors from the community.

There are no programs for higher education. The county recently approved use of tablet computers on which on-line courses, books and recreational content can be accessed for self-paced study.

Lack of staff supervision and security concerns limits opportunities for work programs in the community that could keep inmates occupied and could benefit the community.

Receiving and Release

While inspecting the Receiving and Release area at the Placerville Jail, Jurors noticed that the full-body metal detector was not in use. Correctional staff uses hand-held wand metal detectors to search incoming inmates. The more sophisticated and costly full-body detector would be more effective and provide a greater level of safety for the staff and inmates.

Interviews with Inmates

Jurors met with an ethnically diverse group of male and female inmates at both jails. A common subject was the culinary programs. Inmates thought the food was extremely good, although several complained that starchy food was served too often.

Inmates considered the correctional staff professional in their interactions. Inmates overwhelmingly criticized the lack of viable vocational and job skills programs. Female inmates felt that they should be allowed to work in the Culinary Program.

Jail Maintenance

Grand Jury members noted the poor maintenance of ceiling tiles, which were sagging, stained and in need of replacement at both jails. There was graffiti on the walls of the Placerville jail housing units and visiting alcoves, showing possible street gang affiliation. Graffiti often denotes gang territorial sections within the jail. The wall paint throughout both jails was chipped.

The South Lake Tahoe jail could have been cleaner, and the sally ports in both jails were used for storage, causing potential safety hazards.

Suicides and Attempted Suicides

The South Lake Tahoe jail had only one actual suicide between 2011 and 2017. There were two suicides at the Placerville jail in that time, one in 2015 and one in 2016.

The number of attempted suicides during the same period is more difficult to determine. Accurate record keeping is important, so that corrective actions can be taken when problems are identified. The El Dorado County Sheriff's Office contracted with Vanir, Inc. & Criminal Justice Research Foundation of Sacramento, California to prepare a Jail Needs Assessment, for both the Placerville and South Lake Tahoe jails.

Page 95 of the Vanir report showed 2014 suicide attempts as an alarming fivefold increase from 4 attempts in 2011 and 2013. It reports 4 attempts in 2011, none in 2012, four in 2013 and 21 in 2014. The report did not cover 2015 or 2016. It is impossible to determine if the 2014 increase represents a trend or is just an aberration.

Attempted suicide numbers supplied by the County compared with Vanir are shown below. The County was unable to explain the numbers provided by Vanir. Requests to Vanir for an explanation received no response.

<u>Year</u>	<u>Vanir</u>	<u>Jails</u>
2011	4	9
2012	0	8
2013	4	12
2014	21	10
2015	NR	9
2016	NR	7

Comparison of the attempted suicide numbers between the Vanir report and the County are irreconcilable. The year 2014 is possibly overinflated in the Vanir report, and does not reflect statistics reported by the County. Follow-up interviews with correctional staff showed that lack of training in the interpretation of what constitutes an attempted suicide and a deficiency in the software used to document attempted suicides was a possible reason for the variance.

FINDINGS

- F1. Stained ceiling tiles were observed in both County Jails.
- F2. Graffiti and chipped paint was observed on interior County Jail walls, in visiting booths and other surfaces.
- F3. The full body metal detector in Placerville Receiving and Release was not working.
- F4. The culinary program is the only vocational program available in either jail.
- F5. Female inmates cannot participate in the culinary programs at both jails.
- F6. The Vanir Report has inconsistent numbers for attempted suicides in both jails from 2011 to 2016. They are inaccurate and do not correlate with County numbers.
- F7. Assembly Bill AB 109 has created a hardship to County Jails.

RECOMMENDATIONS

- R1. Stained ceiling tiles should be replaced immediately after leak repairs are accomplished.
- R2. Graffiti removal and repainting of chipped paint should occur on a continuous basis.
- R3. In the Placerville Jail Receiving and Release, the full body scanner should be operational and used during inmate intake.
- R4. The jails should institute life skills and vocational programs.
- R5. The culinary program should allow both male and female inmates to participate.
- R6. Jail staff should be trained to better classify and document attempted suicide for more accurate record keeping.

REQUEST FOR RESPONSES

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and names those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Responses are requested in accordance with California Penal Code §933 and §933.05.

Responses to all findings and recommendations are requested from the El Dorado County Sheriff.

The written response of each named respondent will be reprinted in a publication to the citizens of El Dorado County. Each must include the name of the Grand Jury report along with the name and official title of the respondent.

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to review the Penal Code sections and carefully read the pertinent provisions included below before preparing your official response. Each respondent must use the formats below for each separate finding and recommendation identified above.

Please pay attention to required explanations and time frames. Incomplete or inadequate responses are likely to prompt further investigative inquiries by the grand jury and/or the court.

Response to Findings

Finding F# *[Retype the text of the finding as written in the Grand Jury report, # is the finding number in the report.]*

Response: *[Review California Penal Code section 933.05 (a) (1) and (2). Respondents must specify one of three options – a) Respondent agrees with finding, b) Respondent disagrees wholly with finding or c) Respondent disagrees partially with finding. If respondent uses option b or c then the response shall specify the portion of the finding that is disputed and shall include an explanation.]*

IMPORTANT NOTE ABOUT GRAND JURY FINDINGS

Grand Jury Findings are derived from testimony and evidence. All testimony and evidence given to the Grand Jury is confidential by law, and it is the Grand Jury's responsibility to maintain it. California Penal Code §929 provides "... the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released." Further, 86 Ops. Cal. Atty. Gen. 101 (2003) prohibits grand jury witnesses from disclosing anything learned during their appearance including testimony given. This is to ensure the anonymity of witnesses and to encourage open and honest testimony.

Response to Recommendations

Response R# *[Retype the text of the recommendation as written in the Grand Jury report, # is the recommendation number in the report.]*

Response: *[Review California Penal Code section 933.05 (b) (1) - (4). Respondents must specify one of four options – a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, or c) recommendation requires further analysis or study noting a timeframe not to exceed six months from date Grand Jury Report was issued or d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation.]*

Response Times

The California Penal Code 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 grand jury report is a violation of California Penal Code Section 933.05 and is subject to further action that may include further investigation on the subject matter of the report by the grand jury.

Where to Respond

All responses must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

Response via Email to courtadmin@eldoradocourt.org is preferred.

The Court requests that you respond electronically with a Word or PDF document file to facilitate economical and timely distribution.

California Penal Code Section 933

933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

California Penal Code Section 933.05

933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) 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.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or 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 decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) 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.

(e) 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.

(f) 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 2017-2018

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