



**EL DORADO COUNTY GRAND JURY
2013-14**

MIDTERM REPORT

March 2014



EL DORADO COUNTY GRAND JURY 2013-14 Midterm Reports

Mission Statement

The Grand Jury acts as the citizen oversight for the government of El Dorado County

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GRAND JURY
El Dorado County

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

March 21, 2014

To: The citizens of El Dorado County

Re: 2013-14 Interim midyear report

This midterm report is being published midyear because this year's Grand Jury finished a number of investigations resulting both from citizen inquiries and Grand Jury required inspections. The jury felt that since it had completed its investigation of some of the citizen inquiries that seemed to elicit more immediate interest, we should publish those before the final report in June.

Although the jury is working on a number of other investigations, it is likely those reports will be published with our final report in June. This midterm report will also be included in the final report..

The jury would like to recognize and thank all of the entities within the county including the various county officers, directors and staff for their help and cooperation in completing this midterm report.

Respectfully,

Neil P. Cunningham
Foreperson, 2013-14
El Dorado County Grand Jury



GRAND JURY
El Dorado County

P.O. Box 472
Placerville, California 95667
(530) 621-7477 Fax: (530) 295-0763
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Notice to Respondents

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. You are advised to carefully read the pertinent provisions below and prepare your official response accordingly. Please pay particular 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

The responding person or entity shall indicate one of the following:

The respondent agrees with the finding.

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 therefore.

RESPONSE TO RECOMMENDATIONS

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. It is the expectation of the grand jury that the timeframe be specific and reasonable.
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 therefore.

RESPONSES

There are two different response times set forth in the Penal Code essentially depending upon whether the respondent is elected or not elected.

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. The response must be addressed to the Presiding Judge of the El Dorado County Superior Court as indicated in the Response Section of each report.

Elective Officers or Agency Head:

All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public. Responses must be sent to the Presiding Judge of the El Dorado County Superior Court, as specified in the Response Section of each report, with a copy to the El Dorado County Board of Supervisors.

FAILURE TO RESPOND

Failure to respond as required to a grand jury report is in violation of California Penal Code Section 933.05 and is subject to further action. Such action is likely to include further investigation on the subject matter of the report by the grand jury.

The current Presiding Judge of the El Dorado County Superior Court:

Presiding Judge
Honorable Suzanne N. Kingsbury
Department 3
1354 Johnson Blvd, Suite 2
South Lake Tahoe CA 96150

The Presiding Judge of the El Dorado County Superior Court additionally requests that your responses be sent in an original "word" file, or "PDF" file to facilitate the economical and timely distribution of such responses. Please e-mail to the Grand jury at: scadmin@eldoradocourt.org.

Thank you.

EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-01

WHERE IS THE IOWA HILL MONEY FROM SMUD?

Reason for the Report:

Many residents in the Camino area of El Dorado County have complained that their area did not receive the monetary proceeds it deserved under the 2005 El Dorado County-Sacramento Municipal Utility District (SMUD) Cooperation Agreement concerning the building of the Iowa Hill Development by SMUD.

Background:

Since 1957, SMUD has operated a series of electricity-producing dams and reservoirs within El Dorado County. These facilities must be licensed by the Federal Energy Regulatory Commission (FERC). In 2004, SMUD applied to re-license its facilities, as well as propose a new project, the Iowa Hill Pumped Water Storage Facility, that would be located in the Camino area.

The Iowa Hill Facility would pump water from the SMUD-operated Slab Creek Reservoir to the top of Iowa Hill, located 1800 feet above the reservoir, store the water for brief periods of time then release the water through pipes back down to Slab Creek Reservoir to produce electricity.

SMUD sought to have El Dorado County's approval for both the re-licensing of its current facilities and the Iowa Hill Project by paying certain sums of money on an installment basis to the County.

2013-2014 Grand Jury Actions:

- The 61-page agreement and its exhibits between SMUD and the County were reviewed and pertinent provisions of the agreement were analyzed.
- County records were reviewed.
- Members of the past and present County Board of Supervisors were interviewed.
- An evaluation was made as to how monies in the agreement were to be distributed.

Grand Jury Findings:

1. The agreement was entered into as a supplement to earlier agreements between SMUD and the County in 1957 and 1961 regarding the use and operation of the Upper American River Project (UARP) for electric power and water.
2. In 2005 SMUD had to be re-licensed by the Federal Energy Regulation Commission (FERC) to continue operating in the UARP. Under the agreement, SMUD obtained assurances that the County and certain water agencies and districts within the County would not object to the re-licensing. SMUD would continue to plan the building of the Iowa Hill Pumped Storage project.
3. The County was, and is, to receive from SMUD certain different amounts of money pursuant to the agreement. The monies agreed to are as follows:
 - a) \$2,600,000 payable in two installments; the second installment to be paid not later than August 1, 2012 (already paid)
 - b) \$590,000 per year after issuance of the new license (already paid).
 - c) \$250,000 upon SMUD issuing a "Notice of Intention to Proceed" with the Iowa Hill project.
 - d) \$50,000 per year after the issuance of the "Notice to Proceed."
 - e) An amount not to exceed \$2,000,000 for socioeconomic impacts of the building of the Iowa Hill project; such money not to be paid prior to construction.
4. The County has received payments under items 3a and 3b above, but as SMUD has not issued a Notice of Intention to Proceed with the Iowa Hill Development, no funds have been paid under items 3c, 3d, and 3e.
5. The agreement describes, relative to items 3 and 4 above, to whom and on what such monies should be spent. Section 4.4 of the contract addresses those issues with the following language: "SMUD's payment as described in Section 4.3 are to be utilized by the County in order to minimize, avoid, or mitigate socioeconomic impacts attributable to the construction of the Iowa Hill Development within those areas of the County affected by such construction. The determination of which specific uses of payments by SMUD under Article IV and consistent with the limitations of the Section are to be made by the County in its sole discretion."

Grand Jury Evaluation of Findings:

Because the monies under items 3c and 3d have not yet been paid, but presumably will be paid, the Grand Jury believes it is important to render its opinion as to the meaning of the quoted contract language above to help avoid confusion after the project has been constructed and the socioeconomic impact monies are to be distributed.

The Grand Jury understands that all sentences within a contract have meaning and importance. This leads to the conclusion that the agreement does not simply call for the County to spend this money in any way it sees fit as some have suggested. This sole discretion language is clearly tempered by the sentence indicating that the money is to recompense for socioeconomic impacts within the affected area. Iowa Hill is within the Camino/Apple Hill area of El Dorado County.

The Grand Jury understands that no funds have been paid relative to item 3e above, and no funds will be paid until after completion of construction and assessment of socio economic impact pursuant to Exhibit I of the agreement. At that time an amount up to \$2,000,000 will be paid by SMUD to the County for the socioeconomic impacts of the construction of the Iowa Hill project.

Grand Jury Recommendations:

Residents of the Camino area should be notified by the Board of Supervisors of these findings. The County should also notify these residents when SMUD issues a Notice of Intent to Proceed with the Iowa Hill Development and continue to advise these residents of the County's receipt of funds under the contract. The County should take steps to ensure that residents have the opportunity to be advised of and participate in decisions about how funds received under this contract are to be spent.

Responses:

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

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

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

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and

timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: scadmin@eldoradocourt.org

Thank you.

Attachments:

Appendix A: El Dorado County Board of Supervisors Spreadsheet for Money Received from SMUD

Appendix B: El Dorado-SMUD Cooperation Agreement

EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-02

EL DORADO COUNTY JAILS INSPECTIONS

Reason for the Report

Each year, the grand jury is mandated by California Penal Code §919(b) to “inquire into the conditions and management of the public prisons within the county.”

Background

The South Lake Tahoe and Placerville jails are relatively older facilities, and house county inmates, as well as other inmates that have come to our two jails as a result of the California State Public Safety Act / Assembly Bill 109 (AB 109) authorized in April, 2011.

The original South Lake Tahoe jail was built in 1973 and Placerville jail in 1988. While the original jail was constructed in 1973, the majority of the facility currently in use is an addition which was erected during approximately the same time frame as the Placerville Jail.

2013-2014 Grand Jury Actions

This grand jury conducted on-site inspections of the South Lake Tahoe Jail September 23, 2013, and the Placerville Jail on October 21, 2013. At the time of our visits, the jails were at approximately ¾ capacity; South Lake Tahoe at 114 inmates with a capacity of 158, and Placerville housing 243 inmates with a capacity of 311. We interviewed staff regarding the condition and management of the facilities.

Grand Jury Findings

1. Staff at both jails identified several negative impacts to inmate populations due to California AB 109.
2. In spite of their ages, both facilities appeared to be clean and well maintained.
3. Both jails appeared to be well managed and staff morale seemed to be good.

4. Staff indicated that maintaining adequate female staff has been a problem at both jails, but recent aggressive recruitment efforts have been effective in alleviating that problem.
5. Staff reported that turnover has been a problem at the South Lake Tahoe Jail and to a lesser degree in Placerville.
6. Staff commented that inmates with mental health issues, as well as older and homeless inmates, are an ongoing problem. One staff comment was that jails have become a repository for people with mental health issues.
7. Several inmate programs are offered, including substance abuse, life skills, culinary arts (to include state culinary certification), GED education, and religious services.
8. Medical services are out-sourced to the California Forensic Medical Group.
9. 15% of meals are special diets (religious, diabetic, vegetarian, etc.).
10. Staff at the Placerville facility reported that an additional room where attorneys can meet confidentially with clients is needed because of the lengthy time attorneys must wait to use current rooms. It was noted that the pass-through slot in the existing attorney rooms were quite small (only 4 or 5 pages at a time), and often adds much time to a visit as the transfer of paper back and forth does not easily accommodate typical paperwork.

Grand Jury Evaluation of Findings

As noted in Finding #1, the implementation of AB 109 has created several negative impacts to inmate populations at both of our jails. Since these problems are serious, and affect other county departments including Probation and Sheriff, they will be specifically addressed in a separate grand jury report to be released later this year focusing on how AB 109 has affected our county.

Based on our inspections of both facilities, we commend the El Dorado County Sheriff's Office under the command of Cpt. Peshon for hiring very competent leaders and staff. Our two County Jails are well maintained and operated.

Grand Jury Recommendations

1. Because of their ages, both Placerville and South Lake Tahoe jails should be evaluated for replacement and/or refurbishment.
2. Reasons for staff turnover at both facilities should be evaluated, and consideration given to adjacent region's salary ranges as well as other retention tools.
3. An advisory team including the Sheriff's Office, county mental health professionals, and other incarceration experts should be formed to make recommendations to improve the care, treatment and housing of mentally ill inmates.
4. Search for a better process for attorney/client paperwork transfer (perhaps in a manner similar to regular mail) to alleviate the attorney wait times. This may eliminate the need for an additional attorney room.

Responses

This Report has been addressed to the El Dorado County Sheriff for review and response, and provided to the El Dorado County Board of Supervisors.

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

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EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-03

EL DORADO COUNTY JUVENILE DETENTION FACILITIES INSPECTIONS

Reason for the Report

Each year, the grand jury is mandated by California Penal Code §919(b) to “inquire into the conditions and management of the public prisons within the county.”

Background

Both South Lake Tahoe and Placerville have Juvenile Detention Centers. They are managed by the El Dorado County Probation Department. The South Lake Tahoe facility is relatively new (2005), while the Placerville facility was built in 1971. Both facilities can accommodate approximately 40 wards, and at the time of our inspection were at about 50% capacity. The average age of the wards is 13 years.

2013-2014 Grand Jury Actions

This grand jury conducted on-site inspections of the South Lake Tahoe Juvenile Detention Center on September 23, 2013, and the Placerville facility on October 21, 2013. We interviewed both staff and wards regarding the condition and management of the facilities.

Grand Jury Findings

1. Both facilities appeared to be well maintained.
2. Both facilities appeared to be well managed.
3. The kitchen areas were sanitary, and the menus indicate a variety of well-balanced meals.
4. We observed an abundance of programs for the wards, including substance abuse, life skills, work skills, aggression replacement training, goal setting, and a couple of girls-only programs.

5. We were told that the local community is involved in providing bible study and church services. The Juvenile Services Council conducts various activities and parties monthly, especially during holidays.
6. Both facilities operate a school program with one principal who oversees Placerville and South Lake Tahoe teachers on staff. The curriculum is tied in to public schools, but specific needs of each ward are incorporated into the study plan. School is in session every day for *all* wards even if incarcerated for only one day.
7. Maintaining adequate female staff had been a problem, primarily at the South Lake Tahoe facility. Recent aggressive recruitment efforts have been effective in mitigating that problem.
8. In the Placerville facility, the south exercise area is not used due to drainage problems. There are cracks in the asphalt, the surface is uneven, and it is not covered. This causes the usable north area to be over-crowded.
9. The Placerville facility does not have a “sally port” (separate entrance for new wards). The public front door of the building is the only accommodation for all entrants. This lack of a separate entrance for new wards creates potential confidentiality and safety concerns.

Grand Jury Evaluation of Findings

We were impressed with the school principal and program manager. We commend the El Dorado County Probation Department for its wide array of schooling and behavior programs for the wards. We liked their stated goal for the kids: “Don’t Come Back”!

Grand Jury Recommendations:

1. Because of its age, the Placerville facility should be evaluated for replacement or extensive refurbishment.
2. The surface of the south exercise area at the Placerville facility should be repaired and an overhead cover installed.
3. A “sally port” (separate entrance for new wards) should be added to the Placerville facility.

Responses:

This Report has been addressed to the El Dorado County Sheriff for review and response, and provided to the El Dorado County Board of Supervisors.

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

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EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-04

GROWLERSBURG CONSERVATION CAMP INSPECTION

Reason for the Report

Each year, the grand jury is mandated by California Penal Code §919(b) to “inquire into the conditions and management of the public prisons within the county.”

Background

Growlersburg Conservation Camp (Growlersburg) was built in 1967. Originally built as an 80-bed camp, it has increased to accommodate 132 inmates. The primary mission of Growlersburg is fighting fires throughout California. They also perform some local brush clearing. It is operated and managed by two entities: California Department of Corrections and Rehabilitation (CDCR) and California Department of Forestry and Fire Protection (Cal Fire). Growlersburg is one of 44 Conservation Camps in California. The staff of 34 consists of 10 correctional officers, 14 Cal Fire staff and 10 CDCR staff. Inmates assigned to Growlersburg have a very low risk level classification; no fences or guard towers surround the facility. Growlersburg provides training in firefighting, emergency response, and other disciplines.

2013-2014 Grand Jury Actions

This year’s jury inspected the site on September 30, 2013 and discussed operations with the personnel on duty at that time.

Grand Jury Findings

1. The CDCR staff and Cal Fire staff at Growlersburg appear to interact well with each other and do a good job managing Growlersburg Conservation Camp.
2. Although built in 1967, this facility has been well maintained.
3. The jury members observed good morale at Growlersburg Fire Camp based on positive comments from several inmates.
4. This facility is reasonably self-sufficient. The inmates manage kitchen and laundry services, as well as most repair and maintenance issues. This facility has an on-site

garden, which produces over 3,000 pounds of produce each year for camp consumption.

5. We were served the same food as the inmates, and found it quite satisfactory.
6. This facility prepares inmates for life after incarceration. This includes teaching skills in carpentry, mechanics, lumber milling and firefighting.
7. Recreational time is supported by the above mentioned wood working and mechanics shops, an arts and craft area, library, and physical fitness area.
8. Growlersburg operates an 18-wheeler “mobile kitchen” for use at fire sites. It is capable of providing up to 5,000 meals per day.
9. The facility has a family-friendly area for inmates’ families to visit during times when inmates are not out on fire suppression activities.

Grand Jury Evaluation of Findings

Given the many inmate programs and opportunities and the good morale at Growlersburg, we consider this facility deserving of a commendation for excellent management.

Grand Jury Recommendations

1. At some point in time, in spite of the excellent maintenance, this facility will need to be replaced with modern buildings.
2. Additional physical fitness equipment is needed. Citizen donations are allowed and encouraged.
3. This facility needs a new “cryovac” (food sealing) machine to better service their off-site firefighting food provision role.

Responses

This Report has been provided to Cal Fire, and CDCR, as well as the El Dorado County Board of Supervisors.

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

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

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EL DORADO COUNTY GRAND JURY, 2013-2014

REPORT NUMBER 13/14-05

IS THE PONDEROSA HIGH SCHOOL FOOTBALL FIELD DANGEROUS?

Reason for the Report

A citizen complaint was received regarding dangerous depressions on the surface of the Ponderosa High School football field's 4-year-old artificial turf.

Background

In 2008, the voters of the El Dorado Union High School District (EDUHSD) approved Measure Q which would provide \$66.3 million in general obligation school bonds to renovate and modernize educational facilities in the district. The EDUHSD consists of nine schools, which include four comprehensive high schools (El Dorado, Oak Ridge, Ponderosa, and Union Mine), three continuation schools, one charter school and one community day school. All Measure Q funds were to be spent exclusively on school improvements – not on administrator or teacher salaries. The EDUHSD Board of Trustees created a Citizens' Oversight Committee (COC) to inform the public concerning the expenditure of bond revenues. The COC actively reviews and reports on the proper expenditure of taxpayers' money for school construction.

2013-2014 Grand Jury Actions

1. The Grand Jury inspected the football fields at El Dorado, Oak Ridge, Ponderosa, and Union Mine high schools.
2. The Grand Jury interviewed relevant staff at three high schools, relevant EDUHSD staff and a member of the EDUHSD Board of Trustees.
3. The Grand Jury met with representatives of Roebbelen, the general contractor involved in the installation of the artificial turf at Ponderosa's football field.
4. The Grand Jury interviewed FieldTurf, the contractor that installed the artificial turf.
5. The Grand Jury reviewed documents chronicling the events and communications regarding a drain trench remediation effort at Ponderosa during the installation of the football field's artificial turf.
6. The Grand Jury inspected the construction plans for Ponderosa's football field.
7. The Grand Jury reviewed the EDUHSD Consolidated Expenditure Reports and the COC's

annual reports for Measure Q.

Grand Jury Findings

1. The cost of replacing the track and football fields with synthetic all-weather materials at El Dorado, Oak Ridge, Ponderosa, and Union Mine high schools was \$10,018,000.
2. At Ponderosa high school, the Grand Jury observed two rows of depressions on the football field's surface running the length of the field. These depressions are located near the middle of the field and parallel to the hash marks.
3. The other football field installed by the same contractor, Roebbelen Construction, was within specified limits.
4. Roebbelen representatives stated that the standard variance for artificial turf installation is 1/4" to level. Measurements were taken of the football field's depressions and it was found that the west hash mark depression has a variance up to 7/8". The east hash mark depression is slightly less, but still outside of the 1/4" variance in many places.
5. The Superintendent stated the new field is better than the old grass field and that it would cost too much to fix the depressions. In a follow-up email, the Superintendent wrote that Ponderosa's football field is inspected each year by the artificial turf's company representatives, FieldTurf Company. The FieldTurf Company is aware of the depressions and has indicated that the depressions have not affected the field's warranty.
6. A member of the EDUHSD Board stated that the Board was advised of these depressions only after the initiation of this Grand Jury investigation. However, the Grand Jury learned that the district was notified three years ago about the field's depressions during the installation of artificial turf at Ponderosa's football field. At that time mitigation efforts were undertaken to address depressions that developed in the field's drainage trenches. The mitigation work that was done was to remove the existing crushed rock to a depth of 6" from all drainage trenches and replace it with larger 3/4" crushed angular rock. The construction plans for Ponderosa's football field showed that the drainage trenches are 24" in depth.
7. Ponderosa High School staff indicated that students have tripped while using the field during school hours.

Grand Jury Evaluation of Findings

Measure Q bond monies totaling \$10,018,000 were spent for the replacement of the track and football fields at the EDUHSD four high schools. Unfortunately, the depressions in the surface of the Ponderosa football field are a constant reminder to the taxpayers that they are paying for a potentially dangerous football field and nothing has been done to make it right.

The Grand Jury is concerned about the field's condition, as it presents a significant safety and

liability issue to the school district and its taxpayers. As time passes, the depth of these depressions in the football field may increase and create an even larger safety and liability issue.

Grand Jury Recommendations

1. The Grand Jury recommends the EDUHS District arrange a meeting within sixty (60) days from the publication of this report. Representatives from all involved parties are to work out a remediation action plan to fix the field depressions.

This meeting should include at least the following parties:

Roebbelen Construction, Project General Contractor

Beales & Alliance, Project Architects

Joe Vicini, Inc, Project Grading Contractor

FieldTurf Company, Turf Installation Contractor

Representatives from Ponderosa High School, and EDUHSD

2. The Grand Jury expects that within 60 days of the meeting the EDUHSD will report back to the Grand Jury with a plan including accountable parties, deadline dates and status update.
3. The Grand Jury recommends that the cost of this repair work not be paid with Measure Q monies, nor borne by the EDUHSD and its taxpayers.
4. The Grand Jury recommends that EDUHSD adopt a policy to ensure that completed capital projects are reviewed for proper standards and contract compliance.

Responses:

This Report has been provided to the El Dorado Union High School District Board for their review and response.

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

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

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

scadmin@eldoradocourt.org

Thank you.

Attachments:

Attachment 1 – El Dorado Union High School District 6/30/2013 Consolidated Expenditure Report

EL DORADO COUNTY GRAND JURY 2013-2014

REPORT NUMBER 13/14-06

Board of Supervisors Permit Fee Waivers and Refunds

Reason For Report

The Grand Jury became aware of the Board of Supervisor's practice of waiving some permit fees that are otherwise required by the Board's own policies and ordinances. Those same fees are paid by other payers in similar circumstances.

Background

Board of Supervisors Resolution Number 180-2007, dated 7/10/2007, establishes a building fee schedule that provides specific fees. It gives the Director of Development Services the ability to authorize the refund of any fee erroneously paid or when no permit work is performed.

Board of Supervisors Policy Number B-2, Fee Waiving, revised 2/7/1989, amends policies and procedures regarding consideration of requests for waiver of County fees, permit charges and other administrative costs. It authorizes the Chief Administrative Officer (CAO) to waive permit fees if the CAO makes one of six specific findings.

Board of Supervisors Resolution Number 45-2008, dated 2/12/2008, declares property owners affected by the Angora fire eligible for Permit Fee Waivers.

Article XVI, section 6 of the California Constitution prohibits a gift of public money to an individual without public purpose.

Methodology

The Grand Jury interviewed members of the Board of Supervisors and county staff.

The Grand Jury reviewed:

- Board of Supervisors Resolution Number 180-2007.
- Board of Supervisors Policy Number B-2.
- Resolution Number 45-2008.
- A Board of Supervisors meeting agenda Item 11-1161 in which the Board approved the refund of grading permit and asbestos dust mitigation fees.

- A Board of Supervisors Board meeting agenda Item 12-1103 in which the Board approved the waiver of any and all permit fees for needed improvements to wheelchair and handicap access to a home.
- A List of Building Permits with Waived Fees for Years 2009 through October 3, 2013 provided by the County's IT department.
- Article XVI, section 6 of the California Constitution.

Discussion

A list of permit fee waivers for the five year period 2009 through October 3, 2013 was reviewed. Almost all were waived by the County Administrative Officer pursuant to the specific provisions of El Dorado County Fee Waiving Policy B-2 with three exceptions.

1. A waived fee for Permit Number 203375 grading and asbestos dust mitigation.
2. A waived fee for Permit Number 209320 for construction of a wheelchair access ramp following the catastrophic injury suffered by the home owner's teenage son.
3. Fees for homes damaged or destroyed in the Angora fire of 2007.

The waivers appear to have been granted without an attempt to identify and reimburse permit fees paid by other owners for grading permits, homes remodeled to accommodate the needs of a family member incapacitated by a catastrophic injury or properties destroyed by a fire other than the 2007 Angora fire. Similarly situated property owners were not treated in a commensurate manner.

The Board of Supervisors reimbursed permit fees in each of these situations without stating the public purpose that made it appropriate to do so.

Article XVI, section 6 of the California Constitution prohibits any "gift" of public money to an individual. Expenditures of public funds must have a public purpose. (75 Ops.Cal.Atty.Gen. 20) However, under the public purpose doctrine, public funds may be expended only if a direct and substantial public purpose is served by the expenditure, and private individuals are benefitted only as an incident to the promotion of the public purpose. (California Housing Finance Authority v. Elliott (1976) 17 Cal.3d 575, 583.)

Findings

1. Permit fees were required and paid for a Grading Permit and asbestos mitigation. The Board authorized reimbursement of the already paid fees. They were subsequently reimbursed.
2. Permit fees were required for a wheel chair ramp to be added to a home after the owner's teenage son was critically injured. The Board authorized waiver of these fees.

3. The Board has approved waiver of permit fees for owners of property burned in the Angora fire of 2007. Neither Resolution No. 180-2007 nor Policy B-2 nor any other policy authorized refund of these fees. No public purpose was stated for the refund of these fees
4. The Grand Jury found no evidence that the Board sought out or provided relief to others in similar circumstances for grading of property, property lost in fire or the remodeling of a home made necessary by a family member's critical injury.
5. The Grand Jury finds that reimbursement of these fees was a gift of public funds in violation of Article XVI of the California Constitution.

Recommendation

1. The Grand Jury recommends that the Board of Supervisors no longer waive or reimburse permit fees unless they are specifically allowed by a Board Policy, California Constitution or State statute. Waving fees in an ad hoc manner gives the impression of collusion and favoritism.

Responses

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

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

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

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

scadmin@eldoradocourt.org

Thank you.

Attachments

[El Dorado County Board of Supervisors Resolution No. 180-2007](#)

[El Dorado County Board of Supervisors Policy B-2](#)

[El Dorado County Board of Supervisors Resolution No. 45-2008](#)

[El Dorado County Board of Supervisors Agenda Item 11-1161](#)

[El Dorado County Board of Supervisors Agenda Item 12-1103](#)