



# El Dorado County Board of Supervisors

## Initial Draft Response

### 2013 – 2014 Grand Jury Final Report

# EL DORADO COUNTY GRAND JURY 2013-2014

## PLACERVILLE OUT-PATIENT MENTAL HEALTH FACILITY

Case Number GJ-13-07

### Reason for Report

There have been many news stories and much media attention over the past expressing concern regarding the lack of treatment and housing for mentally ill people in the United States. Members of the El Dorado Grand Jury wanted to identify the types of programs and facilities available in this county for individuals manifesting signs of mental illness.

### Background

Grand Jury members visited the El Dorado County Out-Patient Mental Health Facility on November 11, 2013. This facility handles both juvenile and adult clients, and provides counseling services, as well as medication.

This facility is newly leased (October, 2013) space for the county. It is located at 768 Pleasant Valley Road in Diamond Springs. The prior facility was located at 670 Placerville Drive in Placerville. A review of relevant financial material regarding the new and old leases indicates that the county will save approximately \$682,000 over the 10 year term of this new lease. At the time of our visit, the county mental health group had been in this new facility just 2 weeks. We interviewed two staff members who were on site at the time of our visit. We were escorted throughout the entire building to inspect the new facility, and discussed the space as well as the various programs available for clients. There are 48 people on staff.

### Findings

1. Having just been refurbished, the building is in excellent condition, although its unusual architectural design does not facilitate easy accessibility throughout the structure.

**Response:** The respondent disagrees partially with this finding. While the building does not provide internal access between the first and second floor, the accessibility is appropriate for the needs of the Mental Health Division, while also ensuring the appropriate separation between clients served in different programs (i.e. adults and children).

2. A new well-equipped community activity center has been established for adult clients.

**Response:** The respondent agrees with this finding.

3. There is a confidentiality issue in that some of the areas where service providers and patients discuss issues and treatment are not sufficiently soundproofed.

**Response:** The respondent disagrees partially with this finding. Sound masking equipment was installed prior to the Mental Health Division occupying the building. However, upon occupying the building Mental Health Division staff expressed concern the sound masking equipment was not sufficient. Subsequently, a second phase of sound masking equipment and improved insulation between offices was completed in March 2014 which addressed the deficiencies.

4. There is no interior access between floors one and two. Programs for adults are on the lower floor, and parents and children are seen on the upper floor. However, staff has to go outdoors to access one floor to the other; walking across the parking lot or using the uncovered exterior stairway.

**Response:** The respondent agrees with this finding that there is no interior access between floors one and two. However, it should be noted that design of this building not only meets the needs of the Mental Health Division, but is advantageous as it prevents the comingling of adult and minor clients in common reception areas or other parts of the building.

5. Since there are separate entrances for both the adult programs on the lower floor, and the juvenile programs on the second floor, the facility has been certified as ADA (Americans with Disabilities Act) compliant.

**Response:** The respondent agrees with this finding.

6. The parking capacity at the facility (which was not adequate at the time of our visit) has now been increased to fit the building's use needs.

**Response:** The respondent agrees with this finding.

7. Outdoor direction signs at the facility are nonexistent

**Response:** The respondent disagrees partially with the finding. HHSA installed directional signage on the side of the building near the main entrance in the upper portion of the building, as well as a sign with directional information installed on a pole in the parking lot at the lower section of the building. However, HHSA agrees the signage needs to be improved.

## **Recommendations**

1. Soundproof the areas in the building where service providers interact with clients.

**Response:** This recommendation has been implemented. As part of the project plan extensive sound masking equipment was installed in the building prior to occupancy by the Mental Health Division. However, upon occupying the building Mental Health Division staff expressed concern the sound masking equipment was not sufficient. Subsequently, a second phase of sound masking equipment and improved insulation between offices was completed in March 2014 which addressed the deficiencies. As a result, no further action is necessary at this time.

2. Install outdoor direction signs so clients can easily determine where to park and access the proper segment of the building.

**Response:** This recommendation has been partially implemented. HHSA installed directional signage on the side of building near the main entrance in the upper portion of the building, as well as a sign with directional information installed on a pole in the parking lot at the lower section of the building. All signage was installed no later than May 1, 2014. However, HHSA agrees additional signage should be installed and plans to have this recommendation fully implemented by December 1, 2014.

3. Cover the exterior stairway to ameliorate safety concerns in inclement weather.

**Response:** The recommendation will not be implemented because it is not warranted and is not reasonable.

Like all exterior areas including the parking lot, parking lot stairs, and the public street and bus stop, the exterior stairs are exposed to inclement weather conditions. It is unreasonable to cover the stairs when the same concerns exist with all exterior areas of the property which cannot be covered or otherwise protected to ameliorate safety concerns. In addition, the landlord has recently installed a permanent shade structure that covers the exterior stairs. Although not designed for weather, it will partially address the Grand Jury's concerns.

4. After this department has been in this new space for six months, investigate the need and feasibility of creating an interior stairway/elevator for interior access between floors one and two.

**Response:** The recommendation has been implemented. At the time of this response, the Mental Health Division has been in this building for approximately eight months. Based on the programmatic requirements of the Mental Health Division, the access and design of the building meets the needs of the Mental Health Division. The lack of internal access from the first to second floor serves

as an appropriate segregation of clients by preventing the comingling of adult and minor patients in common reception areas or other parts of the building. Therefore, no further action is necessary at this time.

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# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **PLACERVILLE PSYCHIATRIC UNIT HEALTH FACILITY**

Case Number GJ-13-08

### **Reason for the Report**

There have been frequent news stories during the past several years that have caused concern regarding the lack of treatment and housing for mentally ill people in the United States. Members of this Grand Jury wanted to identify the types of programs and facilities available in this county for individuals manifesting signs of mental illness.

### **Background**

Grand Jury members visited the Placerville Psychiatric Unit Health Facility (PUHF) on November 4, 2013. This is an in-patient facility. The facility is funded (50/50) from state and federal subsidies, but operated by the county. The building was constructed in 1949 as a county hospital. In spite of the fact that it is now 64 years old the building seems to be in reasonably good shape. All areas have recently been painted. New, more functional furniture, including beds, have been installed. The heating and air-conditioning system is old but appeared to be adequate at the time of our visit.

The bed capacity is 16 patients; 12 were in residence at the time of our visit. Patients are referred to the facility by the county sheriff's department or Marshall Hospital and evaluated by the facility's crisis team. PUHF is considered an acute, short term facility. A majority of patients (approximately 75%) are affected by substance abuse and almost 50% are considered homeless. Patients spend an average of 10-13 days at the facility before being discharged. At the time of discharge patients are referred to the Placerville out-patient facility, or if deemed necessary, to involuntary residential facilities. Otherwise, they are returned to health facilities in their original counties of residence.

The Medical Director is a full-time psychiatrist who sees patients every week in individual sessions that last up to 30 minutes. Staff includes a program director, program coordinator, 8 full-time and 3 part-time nurses, 2 therapy clinicians, a cook assisted by nine para-professional mental health assistants who work on a rotating part-time basis, and 2 office administrators. Twenty-four hour staff coverage is needed.

Programs include group therapy, creative arts, coping skills, Alcoholics Anonymous and Narcotics Anonymous.

### **Findings**

1. The facility appears to be well managed. The engaging program manager is well informed regarding all aspects of this facility.

**Response:** No response is permitted since all personnel statements, both positive and negative, are confidential.

2. Per staff comments, nurse and especially psychiatrist retention has been a problem due to compensation differentials across the region.

**Response:** The respondent agrees with this finding.

3. An additional psychiatrist has recently been added for a full day on Fridays, as well as another doctor 2-4 hours during the week.

**Response:** The respondent agrees with the finding.

4. When patients are released from PHF, there is a shortage of transitional housing destinations.

**Response:** The respondent agrees with this finding.

### **Recommendations**

1. The recently increased physician time with patients should be maintained.

**Response:** The recommendation has been implemented. HHSA has taken measures to secure additional psychiatrist hours by working with County Human Resources to increase Psychiatrist compensation, as well as increased outreach to Psychiatrist candidates through contract services as well as additional recruitment efforts which include outreaching to medical schools and professional publications. However, there is a shortage of psychiatry services throughout the state resulting in ongoing staffing challenges that will need to be addressed on an ongoing basis.

2. Investigate staff turnover rates; review adjacent area compensation levels and other retention tools as needed.

**Response:** This recommendation has been partially implemented. HHSA implemented a process where all employees are asked to complete an exit questionnaire when they separate from County service. All exit questionnaires are reviewed to identify the reason for the separation and areas where the Agency can improve. In regards to compensation levels, County Human Resources stated they will be undertaking a comprehensive classification and compensation study which will address classification and compensation in equities for all County classifications. It is anticipated this study will begin in FY 2014-15.

3. County Health and Human Services should focus on providing local placement, in the form of board and care residences, for patients in need of further supervision after being discharged from PHF.

**Response:** This recommendation has been partially implemented. The need for board and care residences and other types of transitional living facilities are a priority and is included in HHSA's strategic plan. HHSA recently contracted with Summitview to provide a six bed Adult Residential Facility. This facility/program is currently in development and we anticipate will be accepting clients at the end of the calendar year.

In addition, in June 2014 HHSA received Board approval of a template lease that will allow HHSA to contract directly with landlords to secure transitional housing where HHSA mental health clients can reside during their treatment and recovery.

That being said, the lack of transitional housing and treatment facilities in El Dorado County continues to be a challenge, and work to improve these services is ongoing.



# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **PAST ANIMAL CONTROL FACILITY MISTAKES HAVE PROMPTED A BETTER REAL ESTATE ACQUISITION AND LEASING PROCESS FOR EL DORADO COUNTY**

Case Number GJ-13-09

### **Reason for Report**

A citizen complaint of alleged county fiscal negligence as well as ongoing media attention prompted the El Dorado County Grand Jury to investigate and assess the status of the county's animal control shelter facility. The investigation led the Grand Jury to review the current county real estate acquisition and leasing process.

### **Summary**

The 2006 animal control site purchase and development plan decisions resulted in wasted public funds. New focus and procedures initiated by the Chief Administrative Officer (CAO) have the potential for more professionally qualified individuals and a more responsive facilities function in the county. The new animal control facility is an example of the effectiveness of those new procedures in that it will open this fall on-time and on-budget and at a reasonable cost to tax-payers.

### **Actions**

- ✓ Documents reviewed:
  - Purchase contract County/Shinn Ranch dated May 9, 2006
  - Purchase contract for current project dated December 12, 2012
  - County Facilities Division planning grids, and lease schedules.
  - County Procedures
  - County BOS Records
- ✓ The complainant and associated witnesses were interviewed.
- ✓ Current and former employees of Department of Transportation, Facilities Division, Procurements and Contracts Division, Chief Administrative Office (CAO) and Surveyor's Department were interviewed.
- ✓ The new animal control site and building were inspected.

- ✓ The Grand Jury made inquiries as to the practices in other California counties regarding leases and acquisitions.

### **Background – Animal Control Facility**

In 2006 the county purchased land in the community of El Dorado, referred to as the Shinn Ranch, with the intent of building a new animal control facility. The county had been informed that it would need to move their existing animal control shelter from its Cold Springs Road location near the water treatment plant because that plant needed to be expanded. It was estimated at that time that a new animal control shelter facility built on the Shinn Ranch property would incur a total project cost of \$5,481,000 dollars and take 2 years to complete.

In order to handle animal control needs until the new shelter was completed the county signed a lease in December of 2007 to temporarily operate animal control at 511 Placerville Drive and 415 Placerville Drive at a leased space cost of approximately \$103,903 dollars per year (\$84,000 dollars for the shelter space, plus \$19,903 dollars for the administration space). There were other ancillary costs including operating inefficiencies due to the shelter and administration being in different locations and from the necessity to house large animals off-site. The county animal control operation is still in those spaces nearly seven years later.

In January of 2012 the revised cost estimate for the Shinn Ranch property project increased to \$11,900,000 dollars, over \$6,000,000 dollars *more* than the original estimate. The Grand Jury identified a number of components causing this huge increase in project cost:

- The Shinn Ranch property and building plan specifics were selected by the BOS *despite* staff recommendations of other less costly yet suitable options.
- The Shinn property had some major use restriction problems: a stream bed running through the property and oak trees that could not be removed greatly reduced the usable space for build-out and use of the 10 acre property.
- The property required costly road and utility access.
- The onset of the recession affected the financial dynamics between building new versus buying property with existing building(s).
- There were concerns at that time that county staff did not have adequate project management capabilities.

The county has long since acknowledged that the Shinn Ranch project was rife with problems. At the April 17, 2012 Board of Supervisors (BOS) meeting the CAO opened the proposed new animal control shelter site agenda topic with “a ‘mea culpa’ that she described

as a 'well-deserved F' for our performance on the animal control shelter and the many times we've stumbled over the past seven years". The Grand Jury notes that these problems occurred under a prior BOS and CAO. At the April 17, 2012, meeting the BOS voted to eliminate the Shinn Ranch as an option for the county animal control facility and pursue other suitable sites. The county still owns the Shinn Ranch property with a potential contractual obligation for road and utility improvements.

The county began a new site search following that April 17, 2012 Board action and ultimately purchased a 4.6 acre site with an existing on-site 22,000 sq. ft. building in Diamond Springs.

The county now anticipates a September 2014 opening of the new animal control facility with a total project cost that is estimated to be \$5,700,000 dollars; only 4% above the original cost estimate of 2006.

### **Background – County Real Estate Leasing and Acquisition Process**

The everyday business of El Dorado County happens between the shores of South Lake Tahoe and the rolling hills of El Dorado Hills. Within those county lines lie 740,000 square feet of county owned facilities with an estimated replacement value of a quarter of a billion dollars and 130,000 square feet of leased facilities represented in 25 separate leases at an annual cost of just under \$1,900,000 dollars (attachment A).

In an effort to improve the focus on county facilities the facilities function was moved from a small component in the Department of Transportation to a division under the CAO in late 2011.

The CAO created a cross-functional advisory team in the first quarter of 2012 to help guide *strategy, direction and priorities* in the facilities division. This diverse team, referred to as the Facilities Investment Team, includes two County Supervisors, the CAO, the Assistant CAO, the County Surveyor, the County Assessor, the County Recorder-Clerk, the Chief Budget Officer, the County Sheriff and the Facilities Division Manager. Its mission statement is "*The management and safeguarding of the significant investments in our county facilities, parks and trails. Anticipating the needs of the county in order to provide for uninterrupted services to members of our community. Providing services to departments and visitors that assist with their efficient operations and providing a positive and welcoming environment.*" The role of this team continues to evolve and its members may change over time at the discretion of the CAO.

1. The Facilities Division has created a draft of new procedures (attachment B). The two key changes to past practices are: the inclusion of all appropriate county functions in the purchase or leasing decision making process, and

2. The option to selectively use outside real estate professionals in the research and negotiation process of leases or purchases.

The process of selecting the new Diamond Springs animal shelter site included input and sign-off from all affected departments: Health & Human Services, County Counsel, Procurement and Contracts as well as the BOS. The county used an experienced professional real estate broker with an abundance of resources and market data that added value to the process by providing appropriate site options, assistance in vetting those options and support in negotiating the purchase contract.

The use of an outside real estate broker has met with some negative public comment. The Grand Jury reviewed the most current 2 years of lease and purchase projects. Of those 27 projects, four have utilized the services of a real estate broker. One individual has been used for all four projects. The total value of those four projects was \$8,599,458 dollars; the total net brokerage paid was \$235,020 dollars. As is typical in commercial real estate, these payments were paid by the seller or landlord. These payments represented a commission rate of 2.73% (attachment C).

The Facilities Division and the Facilities Investment Team has brought focus and professionalism to the county's acquisition, leasing and maintenance process. Some recent examples are as follows:

- A new animal shelter on schedule and on budget at \$5,700,000 dollars
- Renegotiated older leases at a savings to the county of over \$5,000,000 dollars spread over 3 to 10 years
- Better utilization of county owned buildings allowing departments to be moved from leased space to county owned space at a savings to the county of \$131,000 dollars annually.
- Performed a complete asset condition audit and provided a prioritized deferred maintenance plan.

### **Findings**

1. Between Environmental Impact Reports, Architectural Studies and the extended leasing of the temporary facilities in Placerville, the Shinn Ranch site decision cost the county hundreds of thousands of dollars which cannot be recovered.

**Response:** The respondent agrees with the finding.

2. The County has taken steps towards an improved leasing and acquisition process by involving qualified professionals and clear written procedures.

**Response:** The respondent agrees with the finding.

3. The Grand Jury concurs with the creation of the Facilities Investment Team as an advisory body for the facilities function.

**Response:** The respondent agrees with the finding.

### **Recommendations**

1. The Grand Jury recommends the Facilities Investment Team concept be kept active, but reviewed by the CAO on a regular basis for its effectiveness.

**Response:** The recommendation has been implemented. The CAO will continue to work to keep the Facility Investment Team active in helping to guide strategy, direction and priorities in the Facility Division. Their findings and recommendations will be brought back to the Board of Supervisors when there are significant transactions or the need for policy decisions.

2. Although we found no evidence of improprieties, the same individual was used in each of the four projects where a real estate broker was utilized. We recommend that the CAO and Facilities Investment Team review the procedures and criteria for contracting with a real estate broker and *propose an appropriate policy*. This recommendation should ensure that the selection and decision process is competitive and transparent.

**Response:** The recommendation will not be implemented because it is not warranted. For non-public works projects or services for which there are no conflicting state or federal requirements, contracting out is mainly governed by California Government Code, the El Dorado County Charter, and County Ordinance Code and Policies. Government Code authorizes counties that employ purchasing agents to contract for services without soliciting bids. The County Charter requires that certain findings be made prior to contracting out.

There is no requirement for a competitive bid process for consulting services under California Government Code or under County ordinance and policy; however, when deemed appropriate the County may opt to solicit proposals for such services. The process for soliciting proposals for services is in Board of Supervisors Policy C-17.

3. The Grand Jury recommends the draft regarding Facilities Division Procedures be formalized by the CAO and then presented to the BOS for adoption.

**Response:** The recommendation has not been implemented as this has been a department policy. The Department will be happy to bring the policy to the Board of Supervisors for adoption during the course of this fiscal year.

4. This Grand Jury recommends that the 2014-2015 Grand Jury review and follow up on the response to recommendations 2 and 3.

**No response required**

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# EL DORADO COUNTY GRAND JURY 2013-2014

## ALLEGATION OF CONFLICT OF INTEREST IN FACILITIES DEPARTMENT UNFOUNDED

Case Number GJ-13-10

### Reason for Report

The Grand Jury received an allegation that Chuck Harrell, an employee in the Facilities Department, was involved in the making of a contract between the County and a heating and air conditioning firm in which he has a financial interest in violation of California Government Code § 1090. That statute prohibits public officers or employees from having any financial interest in any contract made by them or in their official capacity.

### Background

The Facilities Department is responsible for heating and air conditioning contracts for the County. One of the firms that has previously provided heating and air conditioning services under these contracts is Comfort King of Placerville.

Chuck Harrell is employed as the Buildings and Grounds Superintendent within the Facilities Department. Mr. Harrell has worked for the Facilities Department since before 2010.

### Actions

- The Grand Jury interviewed County personnel assigned to Facilities Department about heating and air conditioning contracts and reviewed summaries of the contracts made.
- The Grand Jury interviewed persons who have ownership positions at Comfort King.
- The Grand Jury reviewed the applicable contracting, purchasing, and procurement policies of the County and the Facilities Department as well as the applicable state law, Government Code §1090.

### Findings

1. The Grand Jury finds that, since his employment with the Facilities Department, Chuck Harrell has not participated in heating and air conditioning contracts and has been specifically excluded from that process. Further, the Facilities Department has not entered into a contract with Comfort King since Mr. Harrell has been employed there. Comfort King has not and has vowed not to bid on any contracts with the County as long as Mr. Harrell is both an employee of the County and an officer of that company.

**Response:** The respondent agrees with the finding.

2. None of the allegations within the reason for this report were proven to the Grand Jury.

**Response:** The respondent agrees with the finding.

3. Mr. Harrell does keep his contracting license with Comfort King and is listed as an officer of that Company, although he has not done any work for the company. Because of these facts, the Grand Jury understands that there can be the appearance of impropriety.

**Response:** The respondent agrees with the finding.

### **Recommendations**

1. The Grand Jury Recommends that the Facilities Department enter into an agreement with Comfort King that they not bid or procure any contract with the county while Mr. Harrell is an employee of the county and has any association with the company. The agreement should be done in writing and filed with the County.

**Response:** The recommendation has not yet been implemented, but will implement during the course of this fiscal year, an agreement between the County and Comfort King. The agreement will preclude the bidding or procurement of any contract with a County department where Chuck Harrell has a conflicting interest.



# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **GOLDEN CENTER PLAZA APPROVED IN VIOLATION OF LEGAL REQUIREMENTS**

Case Number GJ-13-11

### **Reason for Report**

The Grand Jury received a complaint from a purchaser of property in the Golden Center Plaza on Missouri Flat Road who complained that he was unable to keep tenants. He lost the property through foreclosure because the El Dorado County Planning Department and Planning Commission failed to review the project plans as required by the County's ordinance and accepted standards.

The Grand Jury found that the Golden Center Plaza was approved in violation of legal requirements.

### **Background**

The complainant observed the shopping center being built in 2006 and purchased a portion of the property in 2006/07 with the expectation that proper design review had been followed by the Planning Department and Planning Commission. Only after he had acquired the property did he realize that there were no on-site loading zones and a shortage of parking stalls with inadequate distribution of those stalls based upon the uses and locations of the stores in the center.

To rectify the absence of on-site loading space, the complainant applied for permission to create a loading zone on the public right of way. Upon the intervention of (now) former Board of Supervisors member Jack Sweeney, permission was granted.

The complainant painted the curbs at the location approved for the loading zone and posted a loading zone sign on the public street adjacent to the shopping center.

### **Actions**

The Grand Jury interviewed the complainant and County staff.

The Grand Jury reviewed:

- Planning Department files.
- Staff Report-Parcel Map/Planned Development PD03-006/P03-0013 Golden Center Plaza

- Planning Commission Minutes of May 12, 2005
- Board of Supervisor Resolution 236- 2007 (September 25, 2007)
- Parking Restriction Survey Golden Center Drive (No. 1471) (August 15, 2007)
- Board of Supervisor Resolution 236- 2007 (September 25, 2007)
- County Zoning Ordinance
- Planning Services Discretionary Review Process

The Grand Jury visited the site at various times.

### **Discussion**

El Dorado County adopted a Zoning Ordinance, Title 17, El Dorado County Code, hereinafter “the Zoning Ordinance”. Section 17.12.010 requires

“All departments, officials and public employees of the county which are vested with the duty or authority to issue permits or licenses **shall** conform to the provisions of this article and all other zoning laws and ordinances ...” (emphasis added)

### ***Required staff review***

Section 17.04.010 of the Zoning Ordinance provides

The planning division staff shall review the proposed plan(s) and make appropriate comments and suggested changes in the plan and shall forward the plan with the staff report to the planning commission for their consideration.

Planning staff told the Grand Jury that the ordinance means projects evolve once they are submitted to the County for approval. Staff review the site plans submitted by developers, suggest changes and plans are commonly modified to ensure compliance with County zoning ordinances and accepted standards. Changes are likely to be made to the buildings, encroachments, parking, landscape design and various other components of the project. After the projects have been adopted, minor changes to the development plan may be approved by the Planning Department. Major changes must be approved by the Planning Commission.

In the case of Golden Center Plaza, the Planning Department files indicate only one change was made to the developer-submitted site plan. That change was a revision of the McDonald's building footprint for which there was no explanation.

Proper review of the plan by planning staff including an internal operations analysis may have alleviated deficiencies in the plan that have since adversely affected the success of the shopping center. However, no such analysis appears to have been performed. The site plan of the project was essentially approved exactly as submitted by the developer.

### ***Requirements for Off Street Parking and Loading***

Chapter 17.18 of the Zoning Ordinance imposes requirements for the provision of off street parking and loading. Section 17.18.010 states that the purpose of these standards is ...to promote the health, safety, and welfare by reducing street congestion, traffic hazards, and to provide safe and convenient access to businesses, public services and places of public assembly, and to ensure compatibility with surrounding land uses.

Specific requirements delineate the number and kinds of parking spaces that must be provided. Recreational vehicle parking is required for restaurant uses and loading spaces are required for commercial uses. In addition, when a combination of uses is developed on a single site, parking shall be provided based on each of the various uses proposed. Golden Center was approved without provision for either a loading zone or recreational vehicle parking.

There are provisions in the ordinance for exceptions to the parking requirements for a shopping center... However, those provisions include safeguards to ensure the intent of the Zoning Ordinance is met. Each project must be evaluated on a case-by-case basis, notifications must be made to adjacent property owners and findings made to ensure the exception is consistent with the General Plan, Zoning, and Improvement Standards. There was no indication that the failure to follow the requirements of the Zoning Ordinance was made pursuant to an authorized exception.

### ***Project Approval***

The original planner assigned to the project left County employment during the processing of the project. A Principal Planner completed the review, signed off on the project, and submitted the project to the Planning Commission without review by the Planning Director.

Golden Center Plaza was approved by the Board of Supervisors on June 7, 2005. The staff report submitted in support of the project indicated that parking for the site was based on a total square footage of proposed development (38,339 square feet) and a parking ratio for neighborhood shopping centers (one on-site parking space per 200 square feet of floor area).

The staff report stated the project required 192 on-site parking spaces. Neither the requirement for loading spaces nor for recreational vehicle parking spaces was addressed.

### ***Project As Built***

The project parking approval was initially based on requirements for a general neighborhood shopping center of one on-site parking space per 200 square foot area; yielding 192 required spaces. There are only 188 spaces on site.

As permits for tenant improvements and certificates of occupancy are issued, adequacy of parking must be continually re-evaluated based on parking requirements for each specific use to ensure adequate parking for the project as a whole. Upon completion of tenant improvements and issuance of certificates of occupancy for Golden Center Plaza, a County planner evaluated parking requirements and determined there was a significant shortfall in spaces. Despite a Development Services Memorandum dated December 12, 2006, no County action was taken.

A parking analysis reflecting the final build out of the project was **not** completed.

No provision was ever made for recreational vehicle parking.

The only loading zone ever provided was that which the complainant sought to have created on the public roadway.

Members of the Grand Jury visited the shopping center at various times of the day and week and observed

- Semi-trailer trucks parked in traffic lanes within the shopping center impeding traffic, obstructing parking spaces and preventing cars from entering and leaving those spaces.
- The loading zone on the public roadway has not been used as a loading zone; instead it largely sits empty and is occasionally used by cars for parking.

These observations suggest that vehicular and pedestrian safety is compromised. These deficiencies may have been corrected had a timely internal operations analysis been performed.

### **Findings**

1. Both the Planning Department and Commission failed to properly review the Golden Center Golden Center Plaza design based on County Zoning Ordinances and accepted standards.
  - a) The shopping center has significantly fewer parking spaces provided than are required by the Zoning Ordinance.
  - b) There is no loading zone on site as required by Zoning Code 17.18.080.
  - c) There are no recreational vehicle spaces as required by Zoning Code 17.18.060
  - d) No internal operations analysis was performed resulting in a highly congested shopping center which does not function well for pedestrians, vehicular traffic or tenants.

**Response:** The respondent disagrees with the finding. The minutes from the May 12, 2005 Planning Commission clearly state that parking was reviewed, including the fact that there was reciprocal parking agreement in place with adjoining properties to alleviate any concerns of inadequate parking. Condition 6 of the permit (PD03-0006) required a minimum of 191 parking stalls, 30 percent which could be compact size stalls, and a minimum of 5 ADA stalls. The Parking Ordinance for Neighborhood shopping centers requires 1 parking space per 200 square feet of gross floor area and does not require recreational vehicle spaces. Parking for shopping centers is not additive to other sections of the Parking Ordinance that identifies specific uses and standards. It is a separate and distinct parking standard designed for multi-building and multi-tenant facilities that are called “shopping centers.” The parking for the site was not calculated on an individual use basis, as the Grand Jury may have interpreted. For example, the Parking Ordinance states that a Restaurant is required to provide 1 space per 3 fixed seats plus 3 spaces per drive-up window and one recreational vehicle space per 10 spaces. Similarly, Office space requires 1 space per 250 square feet and a Barber or Beauty Shops: 2 spaces per chair or station; etc. The Neighborhood Shopping standard of 1 space per 200 gross square feet supersedes those other standards and serves as the comprehensive standard for all the business uses in the shopping center. Therefore, the recreational vehicle space required normally for fast food restaurants is not applicable within a shopping center.

Loading zones are often omitted for shopping centers where there is a mix of small shops and tenants where there is no logical location for a single or central loading zone. It would be illogical to require a large loading zone for each and every building. For these types of shopping centers and their types of businesses, typical deliveries are by smaller vehicles and trucks and occur during off-peak hours. Therefore, areas specifically designated as loading zones are often omitted from these types of shopping centers as allowed by Section 17.18.040.D (Increases and Decreases in Requirements) and Section 17.18.080.D (Modification of Loading Zone Requirements) of the County Code.

There is no requirement in the Zoning Ordinances for an “internal operations analysis.” The project had two public hearings, May 12, 2005 with the Planning Commission and June 7, 2005 with the Board of Supervisors. Both made findings of consistency with the County Zoning Ordinance after reviewing the staff report, site plan, and receiving public comments. The County has authority under section 17.18.040.D and 17.18.080.D to adjust the requirements in the Parking Ordinance. There is no violation of the Zoning Ordinance.

2. The lack of professional review by the Planning Department and Planning Commission along with failure to require proper parking, loading zones and recreational vehicle parking resulted in material benefits to the developer in terms of increased building coverage.

**Response:** The respondent disagrees with the finding. See response to finding number 1.

3. The action of (now) former Board of Supervisors member Jack Sweeney, interceding with the Director of Transportation to have a loading zone approved on Golden Center Drive, a public right of way, for the benefit of a private development, was inappropriate.

**Response:** The respondent disagrees with the finding. See response to finding number 1.

4. When deficiencies in the project became apparent no action was taken to require the developer to fix the deficiencies and bring the project into compliance with mandatory legal requirements.

**Response:** The respondent disagrees with the finding. See response to finding number 1.

### **Recommendations**

1. The Planning Department and Planning Commission need to reevaluate Golden Center Plaza parking as built based upon County ordinances and standards and report to the Planning Commission and Board of Supervisors detailing any shortfall of parking based on County requirements.

**Response:** The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

2. If it is found by Planning Department and Planning Commission that any shortage of parking exists of any type at Golden Center Plaza, the Director of Development

Services should notify the developer of the violation and require the developer to correct such zoning violations through site modifications to parking or other mitigation.

**Response:** The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

3. If the developer fails to correct the violation, the Director of Community Development or District Attorney should proceed with actions defined under Paragraph 17.12.030 Penalty of Violation of the Zoning Ordinance.

**Response:** The recommendation will not be implemented because it is not warranted since there is no violation of the zoning ordinance.

4. The Department of Transportation should not allow private citizens to perform painting of public curbs and erection of signage in a public right of way

**Response:** The recommendation will not be implemented because it is not warranted. The Transportation Division has authority in Section 10.12 (Parking) to designate loading zones and Section 12.08 (Encroachments) to authorize signage and parking restrictions.

5. The Planning Services Discretionary Review Process should be modified to include review of projects by the Department Director as well as the Principal Planner.

**Response:** The recommendation has been implemented. All discretionary applications are reviewed by a Principal Planner and the Development Services Division Director since October 2008.

# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **LAKE VALLEY FIRE PROTECTION DISTRICT RADIO EQUIPMENT PURCHASES**

Case Number GJ-13-12

### **Reason for Report**

The Grand Jury received a complaint alleging that the Chief of the Lake Valley Fire Protection District sold the District radios and related equipment in violation of California Government Code § 1090. The Grand Jury found that purchases made were not in violation of that statute and payment should be made.

### **Background**

The Lake Valley Fire Protection District is in Meyers, California. Gareth Harris was first employed by the District in 2005 when he was hired as Fire Marshal and Battalion Chief. He was promoted to Chief of the District on June 18, 2011.

Harris has experience in the radio business long predating his working for the District. He owned Tamalpais Emergency Services in Marin County, a retail store selling radio equipment. One of the services offered was outfitting mobile emergency command vehicles with communications equipment. Harris became a dealer for Kenwood Communications. Kenwood requires its dealers to have specific training and only allows its equipment to be sold by authorized dealers who can also service that equipment. Harris closed his retail store in 2002, but continued to operate the business from his home. When he was hired by Lake Valley Fire Protection District he transferred his Kenwood license to his home in South Lake Tahoe.

When Harris was first employed by Lake Valley, the District had significant communications problems. Radio repeaters were not located properly and officers responding to an incident in the field could not communicate with dispatch. In addition, a change in FCC rules required the District to replace its broad band equipment with narrow band radios by 2013.

Harris began selling Kenwood radios and related equipment to the District beginning in 2008 after being asked to submit a bid by former District Fire Chief Jeff Michael.

California Government Code § 1090 prohibits public officers or employees from having any financial interest in any contract made by them or in their official capacity. Harris reported that he was unaware of this statute prior to this issue being raised by the El Dorado County (EDC)



Auditor Controller. Several witnesses reported that Chief Michael said he had checked with the District's attorney about selling to the District.

Harris originally sold radio equipment to the District at 5% over cost. The additional 5% covered his hard costs incurred in configuring, programming and setting up the radios. He did not charge the District for the time he spent configuring, programming and setting up each radio. In his capacity as Fire Marshall and Battalion Chief, Harris had no official responsibilities in the procurement of goods or services for the District.

After Harris became Chief of the District in June 2011, he no longer charged the District 5% over cost but charged exactly what he paid Kenwood and sales tax to the State Board of Equalization.

Harris told the Grand Jury he acted out of concern for the District's budget as it was required to spend significant amounts of money to improve its communications capabilities and meet new FCC requirements.

Harris is proud of the work he did to upgrade communications capabilities for the Lake Valley Fire Protection District and bring it into compliance with FCC requirements. His enthusiasm for this work was apparent to the Grand Jury. He showed the Grand Jury pictures of the equipment he installed and the work of the installation. It required many hours of Harris' uncompensated time. Installing a repeater on Angel's Roost alone consumed approximately 40 hours of Harris' time.

The Chairman of the District Board told the Grand Jury that the Chief had saved the District thousands of dollars. Harris testified that a retailer would have charged 2-3 times the equipment cost for the same work.

Records supplied to the Grand Jury reveal that from August 2008 through July 2009 Harris, doing business as Tamalpais Emergency Services, submitted four invoices and was paid \$7,357.42 by Lake Valley Fire Protection District. From July 2011 through September 2012, while Harris was Lake Valley Protection Fire District Chief, he submitted six invoices and was paid \$6,647.09. These were all approved by the members of Lake Valley Fire Protection District's governing board and paid by the El Dorado County Auditor Controller.

In 2013, the Lake Valley Fire Protection District submitted an additional invoice in the amount of \$6,784.18 for payment. However, on March 20, 2013 the EDC Auditor Controller, Joe Harn, notified the District that he would not pay this invoice because it appeared payment would be in violation of Government Code § 1090. Harn told the District that he would consult with County Counsel and invited them to submit any additional information to County Counsel.

The District's board took no additional action to secure payment of the bill. The radio equipment remains installed and operating. Harris has never been reimbursed for the amounts he paid Kenwood and the Board of Equalization for this equipment. He has ceased supplying radio equipment to the District.

Harris' interest in Tamalpais Emergency Services was reported on his Statement of Economic Interest, Form 700.

### **Actions**

The Grand Jury interviewed the complainant, Chief Harris, the Chairman of the Board of the Lake Valley Fire District, District employees and EDC Auditor Controller, Joe Harn.

The Grand Jury reviewed documents:

- Invoices from Kenwood Communications to Tamalpais Emergency Services and from Tamalpais Emergency Services to Lake Valley Fire District
- Letter dated March 20, 2013, from Joe Harn, Auditor-Controller, to Lake Valley Fire District
- Government Code § 1090.

### **Findings**

1. Gareth Harris, doing business as Tamalpais Emergency Services, provided radios and radio equipment to the Lake Valley Fire Protection District while serving first as Fire Marshall and Battalion Chief and later as Chief of the District.
2. While serving as Fire Marshall and Battalion Chief, Harris charged the District 5% over the amounts he paid Kenwood for equipment. Although he certainly had out of pocket costs, the Grand Jury had insufficient information to determine those costs.
3. While serving as Chief, Harris made no profit from the District but charged exactly the sum he paid to Kenwood Communications and to the Board of Equalization. He received no compensation from the District or Kenwood for these sales.
4. Procuring equipment through Harris and Tamalpais Emergency Services saved Lake Valley Fire District substantial amounts of money. Without Harris' assistance in these procurements the District would have faced significant financial hardship in its efforts to comply with FCC requirements to upgrade its equipment. Public safety may well have been jeopardized.

5. While serving as Fire Marshall and Battalion Chief, Harris had no role in making procurement decisions for the District.
6. The only financial interest Harris may have had in sales to the District after he became Chief were those that might accrue in the future from his continued relationship with Kenwood. These are both speculative and de minimis.
7. Gareth Harris, acting as Tamalpais Emergency Services, did not violate Government Code § 1090 when he sold radios and equipment to the District.

### **Recommendations**

1. The Lake Valley Fire Protection District should resubmit its request that a check be issued to Tamalpais Emergency Services in the amount of \$6,784.18.
2. The Auditor-Controller for El Dorado County should issue the check as requested.

# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **SHERIFF'S VEHICLE ABATEMENT PROGRAM IS NECESSARY, BUT NEEDS NEW RULES**

Case Number GJ-13-13

### **Reason for Report**

The Grand Jury investigated the Vehicle Abatement Program because of allegations that the Sheriff's office conspired to take specific vehicles for reasons of profit and personal collection. The Vehicle Abatement Officer may have used the Vehicle Abatement Procedures to obtain vehicles for friends or clients. The Grand Jury found that allegation to be unsubstantiated.

However, during the investigation, the Grand Jury found concerns regarding implementation of the program. Those concerns are addressed in this report.

### **BACKGROUND**

El Dorado County has administered a Vehicle Abatement Program through the Sheriff's Department for approximately 15 years. It is authorized by California Vehicle Code §§ 22660-22717, and El Dorado County Ordinance Code, Chapter 10.16, Abandoned Vehicles. It is implemented by El Dorado County Sheriff's Office Vehicle Abatement Program Standard Operating Procedures (SOP).

In adopting the Vehicle Abatement Program the Board of Supervisors found that the accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property not including highways is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. (§ 10.16.010)

The Board then continued

Therefore the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof on private or public property...is declared to constitute a public nuisance which may be abated...

The procedure for abating a nuisance under the Vehicle Abatement Program is briefly summarized as:

1. Identification of a vehicle as a public nuisance. A vehicle may be identified as a public nuisance because it is wrecked, dismantled, inoperative or abandoned on public or private property. Identification may result either from a complaint received from the public or from an officer's observation. Both the Vehicle Code and the County Ordinance authorize the Officer to enter onto private property to examine the vehicle. The Officer is permitted, but not required, to obtain a search warrant.
2. Notice to the last registered owner of the vehicle and the owner of the property on which the vehicle is found. The notice shall be sent 10 days prior to any action to remove the vehicle, shall be sent by registered or certified mail and shall notify the owners of their hearing rights.
3. If no hearing is requested or the hearing officer rules against the owner of the vehicle or property, the vehicle is removed, title is transferred, and administrative costs assessed against the owner.
4. The California Department of Motor Vehicles is notified by the Sheriff's Office of the vehicle's non-operation.

The same Sheriff's Department Vehicle Abatement Officer has been the primary administrator and enforcement officer for ten years.

County ordinance § 10.16.050 provides that the amount to be assessed as administrative hearing costs shall be the amount established in Title 9 of the Ordinance Code or by action of the Board of Supervisors. The cost of removal shall be established by resolution of the Board of Supervisors. Instead, the Sheriff's Office has determined that the costs of the hearing shall be \$100.

During two years ending June 30, 2013, 580 vehicles were given notice as public nuisances. Of these, 529 vehicles were disposed of under the Vehicle Abatement Program.

### **Actions**

- The Grand Jury interviewed the Sheriff personnel assigned to the Vehicle Abatement Program and reviewed statistics prepared by the Sheriff about the program.
- The Grand Jury reviewed several warrants used by the Vehicle Abatement Officer to enter private property to serve notice or remove vehicles. Sheriff personnel told the Grand Jury that warrants are rarely used. The Grand Jury noted there was little or no showing of probable cause within the officer's affidavit, and each document was vague in the description of the property to be searched and a description of the extent of that search.

- The Grand Jury interviewed 3 citizens who had vehicles towed under this program between 2005 and 2011.
- The Grand Jury reviewed the applicable California state Vehicle Code sections, El Dorado County ordinance chapters, and legal documents.

## **Findings**

The Grand Jury supports the declared purpose of the Vehicle Abatement Program and finds:

1. None of the allegations identified in the initial reason for this report were proven to the Grand Jury.
2. Most of the vehicles given notice as public nuisances are voluntarily removed by the property and/or vehicle owners.
3. Although search warrants are not often used by the Vehicle Abatement Officer, the warrants issued were deficient in many ways. There was little or no showing of probable cause within the officer's affidavit, and each document was vague in the all-important description of the property to be searched and the extent of that search.
4. Law enforcement and county personnel often came on private property without either a warrant or the consent of the owner to view, give notice or supervise towing of the vehicles.
5. Property owners felt law enforcement and county personnel treated them unfairly by giving notice that their vehicles were public nuisances.
6. Those individuals who did not voluntarily take care of their vehicles by moving or removing them generally did not request a hearing within the 10 day time period allowed and no hearing was held.
7. Ten days to request a hearing is insufficient in a rural county where many people receive their mail at a Post Office Box.
8. The \$100 hearing fee charged by the Sheriff's Office is not authorized by law and may be so large as to inhibit the property owner's ability or desire to request a hearing.

9. Having one individual act as the Vehicle Abatement Officer for ten years has contributed to suspicions surrounding the program. Changing Vehicle Abatement personnel more frequently would improve warrant preparation and relations with property owners.

### **Recommendations**

We recommend the Sheriff:

1. Discontinue the \$100 fee charged to vehicle and/or property owners who wish to have a public hearing to contest the nuisance finding.
2. Change El Dorado County Sheriff (SOP) procedures to comply with Title 10.16.040 A, where "...regularly salaried full-time employees of the county sheriff's office..." have the ability to administer and enforce the program.

***The Grand Jury acknowledges that during discussion of the concerns arising from this investigation, the Sheriff immediately agreed to make the changes recommended in numbers 1 and 2 above.***

3. Assure warrants for the Vehicle Abatement program are raised to the standard of search warrants generally employed by law enforcement.

We recommend the Board of Supervisors:

4. Amend ordinance 10.16.070 pertaining to Vehicle Abatement to provide increased time for the property owner to request a hearing by allowing 20, not 10, days from the time of actually mailing a notice.
5. The Sheriff is the moving party of the action to take the vehicle. The ordinance should mandate that the hearing officer be independent from the Sheriff's Department so that the hearing will be seen as a fair proceeding.

# EL DORADO COUNTY GRAND JURY 2013-2014

## SOUTH LAKE TAHOE PROBATION OFFICE

Case Number GJ-13-14

### Summary

The Grand Jury undertook an investigation into the work environment at the South Lake Tahoe Probation Department Office after local newspaper coverage indicated there was employee harassment and a pending civil lawsuit.

### Background

The Probation Department enforces court orders for persons convicted of crimes and persons released with pending criminal charges. Additionally, The Probation Department may attempt to rehabilitate probationers.

Most El Dorado County departments have offices on the west slope and in South Lake Tahoe (SLT). It is a recognized necessity; the two areas are separated by approximately 80 highway miles over a high mountain pass. The South Lake Tahoe Probation Department office is one of those departments. It's headquarters are in Shingle Springs on the west slope.

### Actions

Sixteen current and former Probation personnel were interviewed about the South Lake Tahoe work place environment.

### Discussion

The employees interviewed are intelligent, well spoken, and dedicated. They have college degrees and many years of probation experience. Yet, most described the work place environment as **toxic**. Supervisors and managers micromanage employees; fostering and allowing a *clique* system that identifies employees as either favored, or *shunned*, by management.

Many complained that those perceived in the non-favored *clique* are overly scrutinized and disciplined for minor administrative issues including requiring written explanations for approved sick days, incorrect punctuation in reports, work files with paperwork not in chronological order, who was (or was not) copied on internal emails or proper use of radios in County vehicles. Employees are unfairly disciplined and made to feel badly about their performance. Some observed that unqualified and favored employees were promoted instead of those qualified but disfavored. Both past and present officers reported they are subject to



undue criticism, discipline and relegation to the disfavored *clique* because they choose to ensure compliance with court orders by visiting with probationers in the field. Management prefers they remain in the office without doing field visits. In many instances officers do not talk to other officers. Officers and other employees rarely talk with supervisors.

The cumulative result, described by employees and some managers, is poor morale in and dysfunction of the SLT Probation office as a whole, detracting from their overall mission to enforce court orders. Written bail reviews are often poor quality and there are failures to detect many parole violations.

The Grand Jury found several factors that highlight and perhaps exacerbate the poor workplace environment. All employees are required to read County discrimination, harassment and retaliation policies when hired, however, there is no additional more formal training. There are 11 managers and supervisors overseeing 33 workers; a ratio of one supervisor/manager for three workers. There is a perceived lack of management from headquarters in Shingle Springs, due to both physical separation and lack of interest in the SLT office.

El Dorado County hired a new Chief Probation Officer on December 2, 2013. A week after beginning his duties, the Grand Jury disclosed its findings about the working environment in the South Lake Tahoe office to him. Four months later the new Chief reported back that he had not found the toxic work environment and had made no substantive change to personnel or policies.

The Grand Jury then re-interviewed SLT personnel who reported that, in fact, the same toxic environment continues. However, they believe the new Chief to be well motivated and are hopeful he will institute changes to improve the working environment.

## **Findings**

1. The *cliques* that currently exist exacerbate an already toxic environment.

**Response:** The respondent disagrees wholly with this finding. The "Discussion" section of the Grand Jury report indicated that some staff who are in a non-favored "clique" are overly scrutinized (presumably by supervisors and managers) and cited, without detail, the types of scrutiny received. All of the examples cited involved activity that would generally be considered reasonable supervision of staff.

2. Unfair discipline, undeserved job promotions, making employees feel badly about their performance, harsh criticism and relegation to a *shunned* status is construed as bullying and harassment. It should not exist for many reasons, both legal and moral.

**Response:** The respondent disagrees wholly with this finding. The Grand Jury cites staff claims that, due to low morale, there is impact to the mission of the department in the enforcement of court orders and the quality of written work to the court. In discussing this perception with the Court in South Lake Tahoe, it appears the opposite is true in that the Court believes that the general quality of written work coming from the Probation Department is high and effective. According to partner agencies in law enforcement the supervision work of the department is also of high quality.

The Grand Jury cited several beliefs as to why the cultural environment in the South Lake Tahoe office suffers. Specifically, the Grand Jury identified insufficient training in the areas of harassment, discrimination and retaliation for managers and supervisors. In fact, supervisors receive annual training, including various leadership and professional development courses that include discussions in each of those topics. Supervisors in the South Lake Tahoe field office have completed a combined total of over 650 hours of professional development training.

3. It seems incomprehensible that working from the office is preferred to working in the field.

**Response:** The respondent disagrees wholly with this finding. Only one specific criticism was levelled at the department's policy, in that it was alleged that deputies are encouraged to stay at their desks rather than conduct "field" work to supervise cases. In fact, the opposite is true. The department insists that deputies conduct field work in order to adequately supervise cases. Instances where individual deputies are asked to remain in the office may generally be attributed to training issues related to officer safety. In that case, officers receive training to improve their field safety skills until they are better prepared to conduct field operations.

4. The supervisor/manager to worker ratio appears out of balance.

**Response:** The respondent disagrees wholly with this finding. The Grand Jury indicated there are eleven managers and supervisors overseeing thirty-three line workers (roughly a 3:1 ratio and, presumably including the Juvenile Treatment Center). The structure of the South Lake Tahoe Field Office includes one office manager, two supervisors for twelve deputies and one clerical supervisor for two clerical staff. In the South Lake Tahoe Juvenile Treatment Center (JTC) there is one on site manager and four supervisors, each one responsible for five staff, who cover the facility twenty-four hours per day, 365 days per year. The management and supervision structure of both the field

office and JTC are according to best practices in the Probation industry and, in the case of the JTC, state regulations.

5. The Grand Jury is hopeful that the new Chief will come to understand the dysfunction in the South Lake Tahoe office and will institute changes that result in positive results.

**Response:** The respondent agrees with this finding. With the introduction of a new administration, the Probation Department has conducted, through a third party, a department wide cultural assessment. The findings of the assessment, combined with focus group discussions, will result in a cultural improvement plan for the entire department. The focus of the plan will largely be in the areas of communication and in the promotion of the professional values of the staff and administration. The Chief Probation Officer has met with the entirety of the SLT office and discussed ways to overcome past challenges and introduce new business practices to improve the professional environment for all staff.

### **Recommendations**

1. Eliminating the *cliques* should be an absolute priority.

**Response:** This recommendation will not be implemented because it is not warranted. The department is aware of the perception of some staff and works to rectify that perception through transparent interactions to the greatest extent permitted, but the workers are all under reasonable supervision of staff.

2. Communication should be encouraged and open without recrimination, so that all employees feel vested in the entire workings of the office and department.

**Response:** This recommendation has been implemented. The respondent agrees with the Grand Jury that “communication should be encouraged and open without recrimination(.)” To that end the administration has created pathways for staff to openly communicate concerns and ideas with each other, their supervisors and all management. This ongoing effort will serve to keep up, down and lateral communications flowing in perpetuity and ensure it is the environmental norm.

3. The existing dysfunction does not exist by happenstance. The skills of all current supervisors and managers should be intensively reviewed.

**Response:** This recommendation has been implemented. There are already actions being taken to ensure supervisors and managers have the correct skills. The Grand Jury cited several beliefs as to why the cultural environment in the South Lake Tahoe office suffers. Specifically, the Grand Jury identified

insufficient training in the areas of harassment, discrimination and retaliation for managers and supervisors. In fact, supervisors receive annual training, including various leadership and professional development courses that include discussions in each of those topics. Supervisors in the South Lake Tahoe field office have completed a combined total of over 650 hours of professional development training.

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# EL DORADO COUNTY GRAND JURY 2013-2014

## GRADING OF BOULDER BUMP ROAD

Case Number GJ-13/14-15

### Reason for Report

An agent representing a group of homeowners repaired a road easement on another land owner's property. The group of homeowners traversed the road to access their respective properties. Grading to repair the road began without an El Dorado County Grading Permit. The easement property owner complained to the County Department of Transportation and a stop work order was issued. The homeowners' agent applied for and obtained an improperly issued grading permit. Work resumed and a final inspection was eventually done.

The easement land owner complained the road was improperly repaired, widened, his private property was damaged, Maidu Indian protected lands damaged, his privately owned road materials were used without permission or compensation and improper materials were used during the repair that were not certified to be asbestos content compliant.

### Background

The homeowner's group agent hired a grading contractor to conduct repairs, replace existing culverts and install new culverts. The contractor started grading without a permit. The County Department of Transportation issued a stop work order after the easement property owner complained. The homeowner's group agent then secured a permit from the County Development Services Department for grading and culverts. The grading and culvert work resumed.

After the grading permit was issued the County Air Quality Management District contacted the agent informing him that an approved Asbestos Dust Mitigation Plan was also needed. The plan was submitted and approved.

The County Development Services Department performed only rough grading, erosion control and final inspections. There was no inspection of culverts. The County Air Quality Management District did not perform any inspections telling the Grand Jury that it was not necessary after Development Services had signed off their final inspection.

The newly graded roadway washed out onto Salmon Falls Road, a County road, sometime after grading was complete. The complainant reported that it was cleaned up by the County Department of Transportation (DOT) and provided photographic evidence of DOT maintenance vehicles at the site of the washout.

## **Actions**

- The complainant was interviewed.
- Representatives of the County Building Department, Department of Transportation and Air Quality Management District were interviewed.
- Files from Development Services and Air Quality Management relating to the property, permitting and inspection of the grading work were reviewed.
- The County FINAL Revised Grading Design Manual, 2-5-07, Adopted by the Board of Supervisors on 3-13-07 (Resolution #047-2007) was reviewed.
- The County FINAL Revised Grading Ordinance, 2-5-07 (Ordinance #4716) Revised 8-10-10 (Ordinance #4949) was reviewed.
- Board of Supervisors Resolution 048-2007, Implementation of the County Grading, Erosion and Sediment Control Ordinance, dated 2/27/2007, was reviewed.

## **Discussion**

Board of Supervisor's Resolution 048-2007 designates administrative authority for implementation of the County Grading, Erosion and Sediment Control Ordinance (Chapter 15.14 of the County Code) among the Departments of Transportation, Agriculture and Development Services. The Development Services Department has administrative authority over and responsibility for rural access roads under the General Grading provision; Boulder Bump Road was determined to be a rural access road.

The Development Services permit application and documents for this project were requested by and supplied to the Grand Jury by the County Building Department. They are severely lacking information and plans necessary to 1) properly issue the grading permit as defined in the County FINAL Revised Grading Design Manual, 2-5-07, Section D, and 2) subsequently inspect that the work comported with the plans and county regulations. There was no parcel map, no site plan showing the easement, drainage or location of new and replaced culverts. There was no grading cross section. There was no evidence that the easement did indeed exist, no evidence of a road maintenance agreement among the users of the easement and no evidence that the permit applicant was legally entitled to perform the proposed work.

The approved Asbestos Mitigation Plan and documents requested by and supplied to the Grand Jury by the County Air Quality Management District appear complete. They include a County Surveyor's section map showing the existing road (Boulder Bump) and a topographic

site plan showing the easement/roadway, drainage, new culvert locations, culvert replacements and a typical road section that denotes “match existing roadway width.”

The grading permit was issued to the homeowner’s agent for the parcel he owned. The work was done on the easement property; **a different parcel**. Testimony from Building Department personnel stated that a permit issued to one parcel cannot be used to perform work on another parcel. The approved Asbestos Mitigation Plan was also submitted by and approved to the agent of the homeowner’s group but using the easement parcel number where the work was actually done.

It appears that the County Development Services Department was completely unaware of the Air Quality Management Asbestos Mitigation Plan. Both departments enter their data into the County Land Management Information System (LMIS) and both have access to data entered by the other. It also appears that Air Quality was automatically notified of the new Development Services permit, while Development Services was not automatically notified of the Air Quality Plan.

The County DOT was unable to confirm that they cleaned up a washout on Salmon Falls Road saying that they did not keep records or logs of those operations.

## **Findings**

1. Non-paved private roads are notoriously deficient in meeting any standard. Situations like described here are opportunities to bring them to present day standards through a permitting process that embraces those standards.

**Response:** Respondent disagrees with finding. “Non-paved private roads” by definition do not meet any County road standards. The County does not have the authority to require private roads to be improved to County standards. Roads are typically improved as required through the subdivision process authorized by the State Subdivision Map Act, County Ordinance Title 16, and the County Subdivision Design Improvement Standards Manual. In this particular situation, the parcels are 40 acres and larger and were not required to improve road at the time of the parcel creation. Title 16 Section 16.44.120.E states that creation of 40 acre parcels are not required to improve roads to County standards. The parcels along Boulder Bump Road are 40 acre parcels.

2. The lack of information and plans by both the permit applicant and the Planning department make it impossible to validate the complainant’s claim. However, the Grand Jury does find that the Planning and Building Departments were deficient in their analysis of the scope of work for the project, acquisition and inspection of documents germane to the permit and subsequent inspections.

**Response:** Respondent disagrees with finding. A grading permit (203375) was issued after most construction had occurred and an inspector had visited the construction site in response to a citizen complaint. Plans were reviewed and meetings held between the applicant and County staff to address permit requirements. The grading plans were prepared and stamped by a registered professional civil engineer and approved by the County's civil engineer. The County engineer required hydrology calculations for sizing the culverts. A Senior Planner familiar with the property because of the processing of a tentative parcel map in 2007 also approved the permit, specifically reviewing potential impacts to Native American resources and determined the grading would not impact those resources. There was no lack of analysis for this permit.

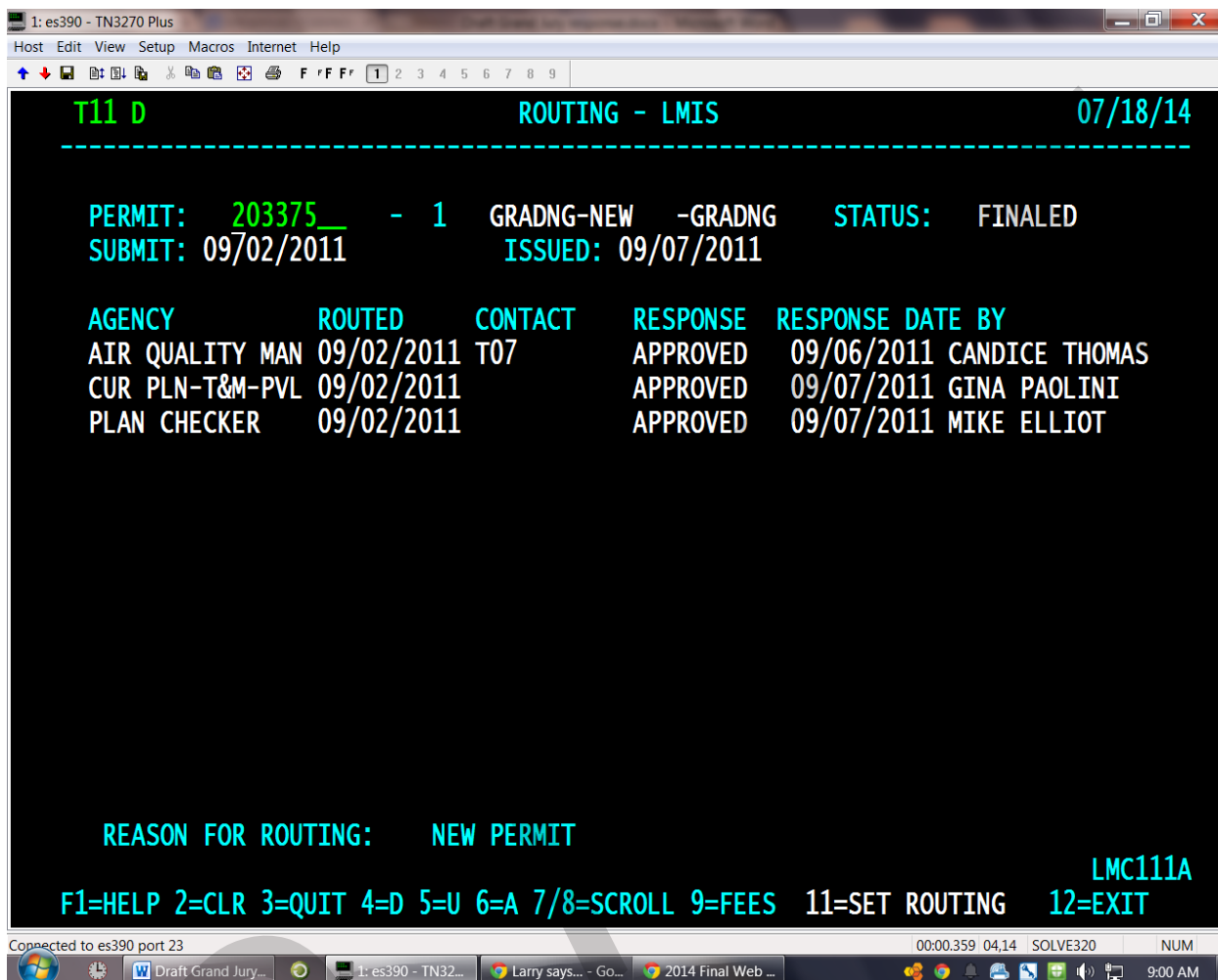
3. There was no evidence that the Development Services Department verified the existence of the easement and the permit applicant's legal right to grade it at all, in any manner. Coupled with the improper parcel numbers referenced above the permit should not have been issued.

**Response:** Respondent disagrees with the finding. The County does use all available documents to verify accuracy of grading plans, including Records of Survey, Parcel Maps, and recorded Deeds. The County issues permits based on consideration of that information and the information provided on the grading plans prepared by a registered professional civil engineer. Property owner disputes regarding the validity, use, or location of easements is a civil matter.

4. The permit was for roadway repairs and culvert installation, yet there was no inspection of culverts, but merely an inspection of rough grading, erosion control and a final inspection. Further, the Grand Jury finds that Development Services did not properly administer the County Grading, Erosion and Sediment Control Ordinance, and should have neither issued the permit nor inspected the work.

**Response:** Respondent disagrees with finding. Development Services received an application and collected fees on September 2, 2011, reviewed the application and plans (including culverts), and issued the permit on September 7, 2011, including the Air Quality Management District. (Below is a screen shot of the approvals from AQMD, Planning, and Building staff:)





Inspections occurred on September 9, 2011 and October 11 2011. Permit was finalized on October 11, 2011. Final inspection included review of all improvements shown on the plans, including road improvements, two culverts, and erosion control measures

5. The El Dorado County Grading, Erosion, and Sediment Control Ordinance is Chapter 15.14 of the County Code. It is the law of El Dorado County. Public officials failed to follow the provisions of the Grading Ordinance; they failed to follow the law.

**Response:** Respondent disagrees with the finding. Grading permit 203375 was applied for, reviewed, approved, inspected, and finalized as noted in the County files. The finding does not specify what portion of the law was not followed.

6. There was insufficient communication and interaction between the Development Services and Air Quality Management departments.

**Response:** Respondent disagrees with the finding. Grading permit 203375 was applied for, reviewed, approved, inspected and finalized. This included AQMD review on September 6, 2011, one day before the grading permit was issued and four days

after the permit was submitted. In fact, the permit was submitted on Friday September 2. September 3 and 4 were weekend days and September 5 was a holiday. The permit was effectively processed in three working days with AQMD responding within two working days.

7. DOT was unable to recover the cost of cleaning up the washout. It did not have any record that it was actually done.

**Response:** Respondent agrees with the finding.

8. All County permit fees were later refunded by the Board of Supervisors agenda item 11-161 without explanation.

**Response:** Respondent agrees with the finding.

9. The El Dorado County Grading Ordinance may put undue burden on simple maintenance on rural roads when strict adherence to the Ordinance is practiced.

**Response:** Respondent disagrees in part with this finding. The Grading Ordinance allows maintenance of roads without a permit. Section 15.14.140.J of the Grading Ordinance exempts from the Grading Permit process: "Maintenance of existing firebreaks and roads to keep the firebreak or road substantially in its original condition." A permit was required in the Boulder Bump Road area because the building inspector visited the site determined that the road was being improved and not simply being maintained "substantially in its original condition." In addition, two culverts were being added to the road, which is not exempt from the Grading Ordinance.

## **Recommendations**

1. The Grand Jury recommends that the administrative authority over the issuance of grading permits in Resolution 048-2007 be revised. The investigation of this complaint indicates that Development Services was not capable of properly administering the Grading, Erosion and Sediment Ordinance in this case. The Administration of the Grading Ordinance defined by Resolution 048-2007 should be revised to transfer administration under the headings Encroachments and General Grading from Development Services to the Department of Transportation. The Administration defined in heading Residential Grading should remain with Development Services.

**Response:** The recommendation will not be implemented because it is not warranted. It may be considered in the future when the County reviews updates and amendments to Title 15, including the Grading Ordinance in FY14/15. Note that the Department of Transportation and Development Services Department have both been

absorbed into the Community Development Agency. Coordination of Grading Ordinance permitting and review now occurs within a single organization.

2. The Planning and Building Departments should exercise increased due diligence in the processing of permit applications, analysis of the project and acquisition and inspection of documents.

**Response:** The recommendation will be implemented.

3. The LMIS system should be improved to provide automatic notifications of one department's activity that affect another department's actions.

**Response:** The recommendation will not be implemented because it is not warranted. The Grand Jury investigation report did not identify that the grading permit was issued appropriately, in three working days, based on three approvals on the T11 screen in LMIS: AQMD, Planning, and Building. The AQMD approval on T11 indicates that the permit may be issued by Development Services.

4. The County Grading Policy should be evaluated and possibly changed to provide a well-defined, yet less onerous and more permissive permitting process for simple maintenance of rural roads.

**Response:** The recommendation will not be implemented because it is not warranted. The Grand Jury findings do not support changing the Grading Ordinance to be "less onerous and more permissive permitting process for simple maintenance of rural roads" because the Grading Ordinance already exempts maintenance of roads (Section 15.14.140.J.)

# **EL DORADO COUNTY GRAND JURY 2013-2014**

## **TOXIC POLLUTION SPREAD BY ILLEGAL GRADING ON DIAMOND DORADO**

Case Number GJ-13-16

### **Reason for Report**

A citizen complained that El Dorado County was ignoring continuing pollution into Webber Creek from the former Diamond Lime Plant site.

### **Summary**

Two adjacent Assessor's parcels in Diamond Springs are located within the former Diamond Lime Plant site. They are also next to the present day Material Recovery Facility (MRF) on Throwita Way. The physical manifestations of the lime plant are long gone. However, the last vestige of the Diamond Lime Plant may be the lime waste that today continues to contaminate the property, surrounding area and adjacent waterways.

The property is currently under investigation by the California Department of Fish and Wildlife (CDFW), formerly the Department of Fish and Game, and the California Regional Water Quality Control Board. CDFW issued a citation with pending fines amounting to almost \$100,000 and was cooperating with the El Dorado County District Attorney who has since dismissed the underlying misdemeanor criminal case.

The owner has improperly and illegally graded the property without an El Dorado County grading permit in spite of a stop work order issued by the County Department of Transportation. In addition the grading was not done according to a conditionally approved grading and lime mitigation plan prepared by professional Engineers at the request of the owner.

The property is a portion of the proposed right of way for the County's Diamond Dorado Parkway. That part of the property has been offered to the County without charge for that purpose. The property is the entire site of the proposed Diamond Retail Center that will be adjacent to and front on the Parkway.

### **Background**

The Diamond Lime Plant was a lime production plant with lime kilns and sludge settling ponds that began operation prior to 1935 and continued until at least 1977. It processed lime from a quarry 6 miles away that was transported to the processing plant on an overhead cable transport system. The lime was processed in kilns then shipped out on the railway that ran alongside the site.

Citizens using the El Dorado Trail, a bike/pedestrian path on the former railroad right-of-way at the North perimeter of the property, reported white milky water and dead mammals in two tributaries of Webber Creek to the CDFW. CDFW documented lime discharge from the property on March 17, 2011. Testing showed alkalinity up to pH 12, equivalent to ammonia or oven cleaner, on the property. A CDFW violation case was filed with the County District Attorney.

The proposed Diamond Dorado Parkway and commensurate utilities will traverse the northern property and the proposed adjacent Diamond Dorado Retail Center will partially occupy the remainder. DRAFT 5

### **Methodology**

- A representative of the California Regional Water Quality Control Board was interviewed.
- A representative of the County Department of Transportation was interviewed.
- Representatives of the El Dorado County District Attorney's office were interviewed.
- The *BRADLEY ROAD PROPERTY LIME KILN WASTE MITIGATION PLAN REPORT for APNs 051-25-51-100 And 051-250-54-100 Bradley Road And Throwita Way, Diamond Springs, El Dorado County, California* Prepared by Holdrege & Kull, Consulting Engineers – Geologists, dated June 4, 2012 was reviewed.
- The *Diamond Dorado Retail Center Project Final Environmental Impact Report* (State Clearinghouse No. 2008012004) was reviewed.
- The *Diamond Springs Parkway Project Final Environmental Impact Report* (State Clearinghouse No. 2007122033) was reviewed.

### **Discussion**

The California Department of Fish and Wildlife (CDFW) recommended that the property be stabilized and a corrective action plan developed. Two corrective action plans submitted by the property owner to CDFW were determined to be incomplete, inadequate or insufficient.

A third plan, also submitted by the property owner, the *BRADLEY ROAD PROPERTY LIME KILN WASTE MITIGATION PLAN REPORT for APNs 051-250-51-100 And 051-250-54-100 Bradley Road And Throwita Way, Diamond Springs, El Dorado County, California* (Waste Mitigation Plan) prepared by Civil Engineer Don Olsen of Holdrege and Kull, was submitted to

CDFW. Its corrective action plan for the lime waste pollution to state waters, including a grading plan, was conditionally approved.

The Grand Jury learned that the Holdrege and Kull grading plan was also submitted to the El Dorado County Department of Transportation (DOT). It was not reviewed by DOT personnel because a plan review fee was never paid by the applicant and a grading permit was never issued. When grading commenced without a permit, DOT issued a stop work order. Despite the stop work order, grading continued.

The Grand Jury learned that when a stop work order is not complied with and/or improper or illegal grading activity continues after a stop work order, there are escalating actions that can be taken to gain compliance. Legal enforcement remedies can be criminal action by the County District Attorney and civil action by the County Counsel. Another possibility is delineated in the County Grading, Erosion, And Sediment Control Ordinance Article IV. Enforcement Section 15.14.410 Corrective work. It allows that "... *the Director may order County workers or contractors to immediately enter private property to abate hazards to public health and safety ...*". The Section also allows direct cost recovery including "... *a lien on the property.*" However, the Grand Jury could not identify any instance where the provision of Section 15.14.410 had been invoked! ***Instead, the County took no action and let the improper and illegal grading continue.***

When grading approached completion, a CDFW inspection of the site revealed several unauthorized activities and CDFW violations including a required El Dorado County Grading Permit was not obtained. DRAFT 5

Subsequently, CDFW issued a citation and referred it to the El Dorado County District Attorney. The District Attorney initially pursued prosecution of the CDFW violation but eventually dismissed the underlying misdemeanor criminal case after the Grand Jury inquired about the status of the case.

Examination of the property afterward revealed that the grading did not approach the provisions of the Holdrege and Kull grading plan. Cut-off walls were not installed. The property was graded and filled in places with between 7 and 15 feet of contaminated material spread from other parts of the property. It essentially dug up contaminated soil and used it to cover up the worst lime waste deposits without proper remediation or possible mediation.

The grading raised the grade of the property creating a *dam* effect that completely obstructed the previous drainage pattern from the MRF. A substantial storm water drainage system was installed by MRF on a County easement between the MRF and the graded property to alleviate the problem. The storm water system was installed with a County Permit. Ironically, the need for it was caused by grading ***without a permit despite a stop work order!***

The owners initiated a project to construct the Diamond Dorado Retail Center on the property. The retail center would front on the proposed County Diamond Dorado Parkway that would partly occupy part of the property. The owners took steps to give part of their property to the County at no cost for the Parkway.

### **Findings**

1. The unpermitted grading spread toxic limestone waste over the site causing dangerously high levels of pH in surrounding tributaries.

**Response:** The respondent agrees with the finding.

2. Toxic limestone waste continues to flow into adjacent waterways. Nobody is doing anything to stop it. Not the owner, not the County and not the State.

**Response:** The respondent disagrees partially with this finding since making this determination is outside the Transportation Division's jurisdiction. The Division has issued a Stop Work Notice which is in effect until such time as the property owner obtains a grading permit and completes the approved work.

3. The property along with several adjacent parcels have become the site of two important County projects: Diamond Dorado Parkway and Diamond Dorado Retail Center.

**Response:** The respondent partially agrees with the finding. The Diamond Springs Parkway is a County project; the Diamond Dorado Retail Center is a private project.

4. El Dorado County has executed and recorded two CONSENT TO MAKING OF IRREVOCABLE OFFER OF DEDICATION, where it appears the owners have offered part of the property to the County without charge for rights-of-way for a portion of the Parkway. The offer can be accepted by the County until 5/25/2025.

**Response:** The respondent agrees with the finding.

5. The County did not enforce the Grading Ordinance, Title 15.14 of the County Code. It is the law. The law was not enforced.

**Response:** The respondent disagrees wholly with the finding. The Transportation Division followed the actions prescribed in the Grading Ordinance and forwarded the complaint to the appropriate agency for follow up and enforcement.

6. It would be completely irresponsible of the County to allow the Diamond Dorado Parkway project to proceed without ensuring that all environmental issues and mitigations have been resolved.

**Response:** The respondent agrees with the finding

7. Section 15.14.410 of the Grading Ordinance is an extremely valuable tool to enforce proper grading of property. It should be used.

**Response:** The respondent agrees with the finding

8. It is somewhat disquieting that enforcement compliance can be predicated by payment of fines and fees by the offending party, particularly when environmental concerns are paramount.

**Response:** The respondent agrees with the finding

## **Recommendations**

1. The Grand Jury recommends that El Dorado County immediately review whether spending public monies for the planning, engineering or improvements for Diamond Dorado Projects is wise given environmental concerns.

**Response:** The recommendation will not be implemented because it is not warranted. The County is spending “public monies” to construct the Diamond Springs Parkway which has benefits for a wide range of County residents. The Diamond Dorado commercial project is being proposed by private developers. The County prepared an Environmental Impact Report (EIR) for the Diamond Springs Parkway Project (Project), which was adopted by the Board of Supervisors in 2011. The EIR is a comprehensive document that identifies and evaluates potentially significant adverse environmental effects of the Project, as well as mitigation measures that would serve to avoid or reduce these impacts to a less-than-significant level. Through this process, pursuant to the California Environmental Quality Act (CEQA), the County determined that the Project would result in a less-than-significant environmental impact by implementing a Mitigation Monitoring and Reporting Plan.

2. The County should engage an environmental consultant to measure the impacts of existing grading upon dispersal of limestone waste in consideration of up to date reports and water samples from State agencies including the Regional Water Quality Control Board and the Department of Fish and Game.

**Response:** Recommendation has not yet been implemented but will be in the future. The County prepared an Environmental Site Assessment (ESA) for the Project, which



evaluated the project area for potential or known hazardous materials, hazardous waste, and contamination. Preparation of the ESA included a records search, field visits, and historical research on past land uses within the Project area in order to identify potential sources of contamination. The ESA identified recognized environmental conditions at 2 parcels within the Project area, and also recommended that the County provide on-site monitoring during construction of the parcels within the former lime plant site for the presence of hazardous material releases or contamination. The County will also conduct soil testing at the 2 parcels with recognized environmental conditions in order to determine the extent of contamination and create a work plan outlining the appropriate course of action in constructing the Project improvements.

3. The County should ensure that all environmental issues and mitigations have been resolved before continuing with the development of the Diamond Dorado Parkway and the Diamond Dorado Retail Center.

**Response:** Recommendation has been implemented. It is the responsibility of the County as the Project lead, to ensure that all measures included in the Mitigation Monitoring and Reporting Plan are implemented and addressed in order to satisfy CEQA requirements for construction of the Project. Environmental remediation activities and required mitigation pursuant to CEQA compliance for the Diamond Dorado Retail Center (DDRC) are the responsibility of the developer and not the County, as the DDRC is a proposed development that is separate from the Project and funded with private dollars.

4. Property owners adjacent to the Project or in the vicinity of the Diamond Lime Plane should be advised of the existing contaminations.

**Response:** Recommendation will not be implemented Adoption of the EIR for the Project involved public outreach wherein all property owners in the Project area, as well as the general public via press releases, were notified of the document and provided the opportunity to review and submit comments.

5. Planning Services and DOT should explore using County Grading, Erosion, and Sediment Control Ordinance Section 15.14.410 to achieve prudent results.

**Response:** Recommendation has been implemented The Community Development Agency will continue to monitor each inquiry for a permit to determine if it is prudent to issue a permit and/or if remedial action is warranted.

6. The County should enforce the provisions of the Grading, Erosion, and Sediment Control Ordinance, Chapter 15.14 of the County Code.

**Response:** Recommendation has been implemented. The Community Development Agency enforces the Grading, Erosion, and Sediment Control Ordinance to fullest extent possible within the language and limitations contained in the Ordinance and with the resources available to staff.

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# EL DORADO COUNTY GRAND JURY 2013-2014

## COUNTY ACTIONS CREATE FLOODING, COUNTY NO HELP WITH REPAIR

Case Number GJ-13-17

### Reason for Report

Two property owners adjacent to the Granada Heights subdivision in Cameron Park complained that each time there is substantial rain, their properties are heavily flooded and eroded. They assert the flooding is a result of: (1) installation of an apparent *speed bump* by the Granada Heights Homeowners Association (HOA) which actually diverts storm water runoff to a drainage swale that was not originally designed to handle it; and (2) enlargement of a side yard and alteration of the same drainage swale by a property owner uphill of the complainants that was approved by the HOA and the County. The alteration changed the swale, a rock lined ditch, into a concrete sidewalk that greatly reduced the storm water capacity while increasing its velocity.

### Summary

The investigation revealed many incidents that ultimately contributed to the complaint. The complainants had every expectation that the County would assist in solving the significant drainage problems the County created when failing to thoroughly review either the original drainage design for Granada Heights or its alteration by the HOA and a property owner. To the complainants' surprise, and significant cost, the County denied any responsibility for the problem, putting the burden of correcting it on the property owners, despite the County's failure to correctly administer the County Code.

In reality, the County failed to protect neighboring property owners from the increased storm water flows by allowing them to happen and continued to deny relief assistance of any kind due to their flawed record keeping.

### Background

*1990*

The revised Granada Heights subdivision was approved by the County.

*July 2002*

The HOA installed what appears to be a *speed bump* that acts as a diverter, redirecting storm water onto Granada Court and to a rock lined drainage easement not designed to handle the additional flow and then to a complainants' property.

*March 2004*

El Dorado County Department of Transportation (DOT) Maintenance Division cleared a culvert on Granada Court after a complaint of flooding, demonstrating that DOT accepted maintenance responsibility for that street.

*June 2005*

The Granada Heights HOA approved a property owner's plan to enlarge his side yard adjacent to a rock lined primary drainage swale. He extended his side yard into the drainage swale by constructing a retaining wall reducing the drainage swale to a 3 ft. concrete sidewalk with a 6" curb. This both reduced the drainage capacity and increased the velocity of flowing water.

*November 2005*

The property owner submitted and the County approved a plot plan for the retaining wall although it did not address drainage. The County review of the plan did not address drainage either.

*December 2005*

The complainants' properties were flooded and the newly installed retaining wall, with an incomplete curb, was undermined.

*January 2006*

A complainant notified DOT Maintenance of flooding and silt/erosion on their property. DOT maintenance reported that eroded silt and rocks from the incomplete concrete curb had clogged a storm pipe at the rear of the complainants' properties causing flooding.

*July 2006*

The County decided that the drainage problems were a civil matter that should be resolved between the property owners.

*December 2006*

DOT incorrectly determined that an unrelated property owner was responsible for the obstruction and demanded that the drainage ditch improperly installed on that property be reinstalled. This parcel owner hired an attorney and the County dropped its demand when it was determined that the drainage ditch never existed on this property.

*March 2007*

Subsequently, DOT demanded that the property owner who did alter the drainage ditch properly size a pipe he illegally placed on a neighbor's property. The Assessor's Parcel Number referred to in the DOT letter could not be found to exist.

*February 2008*

The complainants estimated the costs for repairs to and mitigation of the drainage problem at more than \$25,000.

*August 2008*

The County informed the complainant they could not find a drainage plan for Granada Heights.

*2009*

The complainants sued the HOA. The property owner and management company subsequently settled.

*December 13, 2013*

The County Community Development Agency, Transportation Division, stated in a letter to the complainant that “they (the property owner that enlarged his front yard and altered the drainage swale) may have miscalculated the actual velocity of the runoff in the concrete swale and the infrastructure necessary to safely move the run off through the property”, and that “additional calculations and modifications to the concrete swale” might be necessary to return the flow to pre-concrete velocity.

The County also suggested an existing pipe system in an El Dorado Irrigation District easement at complainants’ rear yards may also be inadequate. The letter goes on to say that it is the complainants’ responsibility to discuss the need for any change with neighbors.

### **Actions**

- The complainants were interviewed.
- Representatives of the County Building Department, Department of Transportation and Air Quality Management District were interviewed.
- County records were reviewed.
- The County FINAL Revised Grading Ordinance, 2-5-07 (Ordinance #4716) Revised 8-10-10 (Ordinance #4949) was reviewed.

### **Discussion**

Although there were neighborhood and civil engineering concerns about the drainage of the revised subdivision of Granada Heights, the County approved the project in 1990. The County's analysis of internal and external drainage was flawed; flooding of the subdivision and adjacent properties has since occurred resulting in damages to the complainants.

From 2004 to 2013, the County has been aware of, has been in communication with, and acted upon complaints from numerous parties regarding the flooding of these properties.

The HOA of Granada Heights subdivision installed a *speed bump* to divert water from their development to a drainage swale. The County subsequently made matters worse by rubber stamping a private property owner's desire to make his yard bigger and not analyzing the impacts of alterations to the drainage. Investigations by the County indicate that a critical drainage ditch that could have alleviated run off to a nearby creek ***did not, in fact, actually exist.***

The mantra the Grand Jury has heard repeatedly from County officials that it is the *will* of the County Board of Supervisors (BOS) to be customer friendly. Unfortunately, in this case, their customer friendly attitude coupled with lack of proper plan checking and application of county ordinances, caused collateral damage.

The complainants had every right to believe and expect that the County would assist in solving the significant drainage problems created when the County failed to thoroughly review either the original drainage design for Granada Heights or its alteration by the HOA and a property owner. To their surprise, and significant cost, the County denied any responsibility for the problem, putting the burden of correcting it on the property owners, despite the County's failure to do its duty and administer the County Code causing their damage originally.

### **Findings**

1. The complainants' properties are flooded from runoff when there is substantial rain; causing erosion on their properties.

**Response:** Respondent cannot agree or disagree with the finding. There is no evidence the flooding issues have not been rectified. The Grand Jury report states that there was a civil settlement agreement between the "property owner and management company."

2. The internal and external drainage analysis of the Granada Heights revised subdivision was flawed. The County should not have approved this revised subdivision.

**Response:** Respondent disagrees with the finding. The flooding issue is described by the complainants as a result of either a speed bump in the road and/or enlargement of a side yard. By this context, the subdivision as approved and built in 1990 was not flawed, but according to complainants improvements added later created a problem in 2005.

3. Deficiencies in County record keeping prevented County staff from locating the drainage plan for Granada Heights. Staff relied on an *as built* subdivision plan showing

a drainage swale that, in fact, did not exist, leading to a claim against the wrong property owner. That property owner was forced to hire an attorney to defend against the mistaken claim.

**Response:** Respondent disagrees with the finding. The County relies on the subdivision as built plans as the only true evidence of the subdivision original construction.

4. The County illegally permitted the installation of a retaining wall and alteration of a drainage swale without requiring the analysis and plans required by its own regulations.

**Response:** Respondent disagrees with the finding. The installation of a retaining wall was completed under proper building permit (168046) including supporting documentation from registered professional engineer Ronald S. Illium, AEI Engineering, Foslom, consistent with the Building Code and Grading Ordinance.

5. The County has admitted that the velocity of the water in the altered drainage swale and improper sizing of a pipe in an EID easement have contributed to the drainage, flooding, and erosion problems.

**Response:** Respondent disagrees with the finding. The finding is not supported by any documentation in the Grand Jury report or in the County files.

6. The County has the authority to remediate the harm done to the complainants and others similarly affected. The El Dorado County FINAL Revised Grading Ordinance, 2-5-07, Section 15.14.410, Corrective work, subsection A., **Abatement of unlawfully created conditions** allows the director to

...order County workers or contractors to immediately enter private property to conduct work necessary to abate hazards to public health and safety such as: a. The alteration of drainage patterns that has caused, or has the potential to cause, flooding of or siltation upon any downstream property...

It further states

**2. Cost recovery:** Whenever the County expends any funds or takes any action, the County shall bill the landowner, lessee or licensee for the costs indicated herein. Pursuant to the requirements of Government Code Section 54988, the costs shall become a lien on the property, or shall be recoverable from the property owner by other legal means.

**Response:** The respondent disagrees in part with the finding. The County has authority to protect the public health and safety but has prosecutorial discretion when

implementing code enforcement actions. In the matter of the flooding, it was determined to be primarily a civil matter.

## **Recommendations**

1. The County should analyze, or cause to have analyzed, the existing drainage of Granada Court, Granada Heights and surrounding properties and any drainage methods and devices within public right-of-way and private and public easements to determine their adequacy to properly convey storm runoff sufficiently to avert flooding and erosion of private property. Upon completion of such analysis, the county should install corrective measures in the public right of way and private and public easements to correct any deficiencies.

**Response:** The recommendation will not be implemented because it is not warranted.

2. The Director of Development Services should require County employees to apply the requirements of the Grading Ordinance.

**Response:** The recommendation has been implemented.

3. Prior to issuance of any permit, the County should thoroughly analyze the impacts on drainage by requiring the applicant to adhere to the specific requirements of the Grading Ordinance.

**Response:** The recommendation has been implemented.

4. If it is determined that application of the Grading Ordinance in some cases is particularly onerous to some property owners, the Director of Development Services should study such cases and, with input from stakeholders, recommend appropriate exemptions.

**Response:** The recommendation has been implemented.

5. The County should more aggressively implement the provisions of the Grading Ordinance cited above to restore properties to the condition existing before illegal grading and construction occurred and bill the landowner, lessee or licensee for costs.

**Response:** The recommendation will not be implemented because it is not warranted.



# EL DORADO COUNTY GRAND JURY, 2013-2014

## EL DORADO COUNTY FAILS TO ENFORCE ITS GRADING, EROSION AND SEDIMENT CONTROL ORDINANCE

Case Number GJ-13/14-18

### Reason for Report

The Grand Jury received a number of complaints involving improper grading of private property. Three specific complaints were investigated and addressed in three separate reports. One involves grading of a rural property, another involves grading of a suburban property and the third is grading by a commercial property owner. In each instance, persons other than the property owner suffered damage as a result of the county's failure to ensure compliance with its Grading Ordinance. The investigations of those cases caused the Grand Jury to question if there was a pattern and practice of failing to comply with the County Grading Ordinance.

The Grand Jury found that it did.

### Background

#### ***The Ordinance***

The El Dorado County Grading, Erosion, and Sediment Control Ordinance (hereinafter "the Ordinance")

...for the purpose of regulating grading within the unincorporated area of El Dorado County to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses; and to ensure that the intended use of a graded site is consistent with the El Dorado County General Plan, any Specific Plans adopted thereto, the adopted Storm Water Management Plan, California Fire Safe Standards and applicable El Dorado County ordinances including the Zoning Ordinance and the California Building Code. (Section 15.14.110)

"This ordinance *shall* be implemented and enforced *by the County...*" (emphasis added)

A grading permit is required for all grading activities in the unincorporated area of El Dorado County unless a specific exemption applies. (Sections 15.14.130 and 15.14.140). An exemption did not apply to any of the specific instances investigated by the Grand Jury.

The Ordinance requires permit applications to include specific informational items. (Section 15.14.200)

Fees collected when a permit is issued are used to fund enforcement of the Ordinance. Violation fees of twice the regular permit fees are required whenever grading is done in

violation of the Ordinance or without an approved permit. The language of the Ordinance is **not** discretionary; It **mandates** that this violation fee be charged. (Section 15.14.230 E)  
It prohibits grading activities that cause or have the potential to result in itemized hazards including a threat to neighboring property or degradation of water quality. (Section 15.14.290)  
The county is authorized to enter private property and conduct work necessary to abate and repair hazards from unlawfully created conditions. The County may conduct such work either using its own employees or through a licensed contractor. The County is required to bill the property owner for costs incurred and is authorized to recover those costs through a lien on the property and other legal means. (Section 15.14.410)

### ***Enforcement of the Ordinance***

Review of the permit application and subsequent inspection of the grading site only happens after permit fees are paid. Otherwise, no action is taken. When work is initiated without a valid permit a stop work order may be issued. If work is completed prior to issuance of a stop work order or if work continues without a valid permit, there is no inspection of the work done. Thus, someone who wants to perform work not authorized by county ordinances could well decide to not seek a permit in order to get away with that unauthorized work.

County employees interviewed were aware of the legal authority to charge violation fees but not that those fees were mandatory rather than discretionary. Further, violation fees were rarely charged and suggested that it would discourage the public from seeking a permit and encourage performing work without proper permits.

County employees were unaware of the County's authority to conduct necessary remedial work at the property owner's expense and knew of no instance when this action was taken.

### ***Why is the Grading Ordinance Not Enforced?***

Grading in violation of the Grading Ordinance resulted in substantial harm to property owners adjacent to or affected by improper grading in each of the cases investigated by the Grand Jury. The Grading Ordinance gives the Department of Transportation significant authority to correct improper grading. This authority could be a very effective tool for protecting other affected property owners if it were used, but it is not .... Why not?

Both County staff and officials reported that they perceived it to be the *will of the Board of Supervisors* that the Ordinance not be enforced. They stated that El Dorado is a *property rights county*; the will of the Board of Supervisors is that property owners not be burdened by strict compliance with requirements perceived to be onerous for some property owners. Several witnesses reported they believed the Ordinance imposed excessive burdens on property owners maintaining rural access roads

The public appears to understand that the Ordinance is not enforced. Neither of the contractors who performed illegal grading in Report No. 13-15 or 13-16 felt required to obtain a permit for the grading they performed. In Report No. 13-16 the Contractor appears to have understood that if he failed to pay the fee for a grading permit no action would be taken to enforce the terms of the permit.

The Ordinance is quite specific "...to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses..." The Grading Ordinance of the County of El Dorado is Chapter 15.14 of the County Code; it is the law of El Dorado County. Failure to enforce the Ordinance is failure to enforce the law; that failure benefits property owners who act unlawfully while denying the law's specific protections to others. It leads to a perception of corruption on the part of County officials and general disrespect for County government.

### **Actions**

- The Grand Jury reviewed the El Dorado County Grading, Erosion and Sediment Control Ordinance.
- The Grand Jury interviewed private parties who complained to having been adversely affected by the County's failure to enforce the Ordinance.
- The Grand Jury interviewed County employees responsible for implementing and enforcing the Ordinance.

### **Findings**

1. When grading work is done in El Dorado County and no permit is obtained and no permit fee paid, and the county is made aware of the work being done before the work is complete, the county will issue a stop work order.

**Response:** The respondent agrees with the finding, except that a stop work order is not always issued. In some cases a letter is issued stating the need for a permit. In other cases the County can issue a citation, send a Notice to Correct, and/or record a Notice of Violation. The County Code Enforcement regulations are contained in Section 9.02 of the County Code.

2. When work improperly continues after issuance of a stop work order or if work is completed before a stop work order is issued, no enforcement action is taken.

**Response:** The respondent disagrees with the finding. Enforcement can be engaged through a range of options other than the stop work order, depending on circumstances, such as public health and safety. Section 9.02.05 of the County Code

allows options for code enforcement: “Nothing in this chapter shall be interpreted to preclude an enforcement authority from informally encouraging citizens to comply with the El Dorado County Code or other applicable laws. Informal oral or written requests to encourage compliance are encouraged, as are attempts to informally negotiate or mediate issues relating to compliance.”

3. Only payment of a permit fee triggers inspection of grading work performed.

**Response:** The respondent disagrees with the finding. Payment of permit fees triggers permit review, issuance, inspection, and finaling. Complaints generated by the public on potential unpermitted grading also can trigger an inspection.

4. Grading work performed where no permit fee is paid is not inspected.

**Response:** The respondent disagrees partially with the finding. Complaints generated by the public will trigger an inspection.

5. El Dorado County does not enforce its Grading, Erosion and Sediment Control Ordinance.

**Response:** The respondent disagrees with the finding because the Grand Jury report findings were based on “three specific complaints” dating from 2011. Development Services issued 45 stand-alone grading permits in 2011, 45 in 2012, 86 in 2013, and 49 in the first six months of 2014. Additional grading reviews and inspections have occurred and are combined with other permits such as a commercial building or single family residence. The Department of Transportation (now the Transportation Division) also issues grading permits. The Grading Ordinance is enforced on every permit applicable.

6. The County’s failure to enforce its Grading, Erosion and Sediment Control Ordinance encourages illegal grading to the detriment of other property owners and residents.

**Response:** The respondent disagrees with the finding because it is not substantiated by the report or findings. There is significant number of grading permits issued by the County every year. There is no evidence the County does not enforce the Grading Ordinance. There is no evidence that there is a causal relationship to unpermitted grading. There is no evidence of detrimental impacts to property owners or residents. The County Code Enforcement procedures (outlined in Section 9.02 of the County Code) include a response to all complaints of unpermitted grading and building activity. Enforcement of identified unpermitted activity is prioritized based on health and safety issues and other considerations. The Department Director has prosecutorial discretion to determine the appropriate response to Ordinance Code violations based on factors

such as fairness, staffing levels, history of violations, public health and safety, and the seriousness of the violation.

## **Recommendations**

1. The Board of Supervisors should review the Grading, Erosion and Sediment Control Ordinance and determine whether the Ordinance imposes overly burdensome requirements for rural access roads.

**Response:** The recommendation will not be implemented because it is not warranted. The Grand Jury findings do not support changing the Grading Ordinance to be “less onerous and more permissive permitting process for simple maintenance of rural roads” because the Grading Ordinance already exempts maintenance (Section 15.14.140.J.)

2. If the Board of Supervisors determines the requirements for grading of rural access roads are overly burdensome, it should amend the Ordinance to define appropriate requirements for the grading of those roads.

**Response:** The recommendation will not be implemented because it is not warranted. The Grand Jury findings do not support changing the Grading Ordinance to be “less onerous and more permissive permitting process for simple maintenance of rural roads” because the Grading Ordinance already exempts maintenance (Section 15.14.140.J.)

3. Whether or not the Ordinance is amended, the Grading, Erosion and Sediment Control Ordinance should be enforced.

**Response:** The recommendation has been implemented. Respondent notes that the Director has prosecutorial discretion to determine the appropriate response to Ordinance Code violations based on factors such as fairness, staffing levels, history of violations, public health and safety, and the seriousness of the violation.

# EL DORADO COUNTY GRAND JURY 2013-2014

## HOW HAS PUBLIC SAFETY REALIGNMENT (AB 109) AFFECTED EL DORADO COUNTY?

Case Number GJ-13-19

### Reason for Report

The California Public Safety Realignment Act (referred to commonly as "AB 109") has had financial and social impact upon El Dorado County and will continue to do so in ways both known and unknown. During the course of the Grand Jury mandatory county jail inspections there were concerns raised which expanded the investigation to look into the function and operation of other county departments that are impacted.

### Discussion

The California Public Safety Realignment Act of 2011 (AB 109) resulted from a Federal Court Order to reduce the State's overcrowded prison system. This legislation intended to reduce the State prison population by moving lower-level offenders to County jails. Counties became financially responsible for incarceration, parole and parole revocation including all ancillary services related to long-term incarceration.

Pertinent issues related to the effects of realignment were discussed with El Dorado County staff at both jails in Placerville and South Lake Tahoe, Probation Department, Placerville Police Department, Sheriff's Department and Health and Human Services Department.

The most immediate issues among the staff was the number of additional inmates needing incarceration, parole and probation in a short period of time and the services attendant to them such as higher case loads and medical care. Additional issues are:

- Inmate length of stay can be dramatically longer; as much as 15 or 20 years, possibly more.
- The average age of the inmate population has increased, impacting acute and long-term medical care needs.
- The *sophistication* (i.e. incarcerated for more violent crimes) of inmates has grown and gang affiliation has increased, both requiring more attention to cell assignment and behavior in the general population.
- Jail staff safety training has not kept pace with the increase in more violent jail populations.

The County has established some promising programs using realignment funds.

- A new Community Corrections Center on Durock Road was recently opened providing a collection of services in one location. The Probation Department has oversight along with the Office of Education and Mental Health. Having just recently opened, there isn't enough information to evaluate its long term effectiveness.
- Several new positions have been established (4 Health Education Coordinators, a Public Health Nurse, 1.5 HS Technicians and 1 Mental Health Tech). Physicians, Mental Health Therapists and Pharmacy Services as contract service providers use the bulk of this funding. In an effort to provide seamless service to those being release from jail, two new positions assess inmate needs while still incarcerated to provide those services upon release.
- The Community Corrections Partnership (CCP) Board which has oversight responsibility continues to develop data for effective allocation and expenditure of realignment funds.
- Although HHS has reliable hard data to justify its funding, both local police departments need better data collection. Only by chance encounter are Police departments able to determine if an individual has been a recipient of AB 109 funds.

All Counties receive funding from the State, including El Dorado. The State Corrections & Rehabilitation website reports interesting information, paraphrased:

*A dedicated and permanent revenue stream has been provided by AB 109. Voter passed Proposition 30 created a constitutional amendment prohibiting the Legislature from reducing or removing realignment funding to the counties. The allocation of initial funding to individual counties is temporary. A one-time allocation for 2011-2012 came at the explicit request of the counties, who wanted to be able to assess whether the initial distribution of funds reflects the number offenders they receive.*

*\$400 million was provided to the counties in 2011-2012, \$850 million in 2012-2013 and more than \$1 billion in 2013-2014. In addition, a series of trailer bills, AB 111, AB 94, AB 118, SB 89 and SB 87, were signed in 2011 to secure sufficient funding for counties. Moreover, a permanent allocation of the ongoing revenues is expected to take place in 2014-2015.*

The dissemination of realignment funding within El Dorado County is managed by the Community Corrections Partnership (CCP) Board comprised of representatives from various departments involved including the Chief Administrative Office (CAO), Sheriff, Police Chiefs, Superior Court, District Attorney, Probation, and Director, Health and Human Services (HHS).

The upcoming 2014-2015 funding for the El Dorado County is \$4,100,000. The budget, by department:

Health & Human Services \$1,307,000 32%  
Probation 1,140,000 28%  
Sheriff 1,138,000 28%  
EDC Office of Education 340,000 8%  
Chief Administrative Office 125,000 3%  
PV & SLT Police Departments 50,000 1%

Until now, the primary issue for El Dorado County has been deciding how to effectively use the funds received from the State. The challenge will be to devise a plan for the future based upon the best perception of future needs, the reality of the past and the uncertainty of future funding. The CCP Board has been working on a 2 year budget projection. Current spending reserves now exist. However, in 3 years some projections show it may need general fund monies.

Despite the State's expectation that a permanent allocation of ongoing revenue for funding will take place for 2014-2015, it is uncertain that it will continue at current levels. Coupled with uncertainties of incarceration costs like medical care, it is extremely important that prudent planning takes place.

The need for Transitional Housing is identified by HHS. More than half of those released from county services have no place to live. **Adequate transitional housing is necessary to decrease recidivism.** It's tougher on rural counties where there are fewer service providers. Transitional Housing is greatly needed in El Dorado County and would be a next logical step in services, now that there is a new Community Corrections Center.

Safety training to provide more effective Staff response to prisoners and paroles of a more violent jail population would be an area needing review and revision.

**NO RESPONSE IS REQUIRED.**