

**AMICUS CURIAE IN SUPPORT OF
RICHARD W. BUCHANAN'S APPEAL TO THE
EL DORADO COUNTY BOARD OF SUPERVISORS
CHALLENGING THE JUNE 21, 2021 DECISION OF THE
COMMITTEE OF FEDERALLY CHARTERED
VETERANS ORGANIZATIONS**

**IN THE MATTER OF THE CONTESTED
EMPLACEMENT OF A BRONZE PLAQUE
BEARING THE NAME OF CAPTAIN PAUL JACOBS
UNITED STATES NAVY (RETIRED) ON THE HONOR WALL
AT THE EL DORADO COUNTY VETERANS MEMORIAL**

SUMMARY

According to the provisions of paragraph four of the "Criteria for Military Honoraria and Civilian Recognition" (herein, "CMHCR"), which is part of El Dorado County Ordinance N^o 4743 (Exhibit 1 at p. 7-9), and in response to Richard W. Buchanan's¹ objection to the emplacement of a bronze plaque bearing the name of CAPT Jacobs on the Wall of Honor of the El Dorado Veterans Monument (Exhibit 2), on June 21, 2021 county Veterans Service Officer (herein, "VSO") Richard Todd convened a committee of federally chartered veterans organizations to rule on Mr. Buchanan's objection. After hearing unsworn testimony and arguments, the committee dismissed Mr. Buchanan's objection. This *amicus curiae* is submitted in support of Mr. Buchanan's appeal to the El Dorado County Board of Supervisors, for the reasons specified herein.

¹ United States Marine Corps veteran, recipient of the Navy Cross.

BACKGROUND

1. Background, County Ordinance No. 4743: On September 11, 2007 the El Dorado County Board of Supervisors adopted Ordinance 4743 which established, in part, the criteria for honoring the military accomplishments of current members of, and veterans of the armed forces of the United States (Exhibit 1). The ordinance includes adoption of the CMHCR (*supra*, at p. 7-9), which was written by Ken Schoniger in collaboration with members of the original Friends of Veterans Monument, and was vetted by county counsel and the county Chief Administrative Officer.² The CMHCR describes three criteria a honoree must meet in order to be eligible for emplacement of a special bronze plaque on the Wall of Honor:³

1. The honoree must be:

- a. The recipient of the Medal of Honor, or,
- b. The recipient of a military cross (Distinguished Service, Navy, or Air Force), or,
- c. "Who, while serving with the military, distinguishes himself in action by extraordinary heroism."

2. The eligible action must take place under one of three circumstances:

- a. While engaged in military operations involving conflict with an opposing foreign force, or,
- b. While serving with friendly foreign forces, or,
- c. While engaged in an armed conflict in which the United States is not a belligerent party.

² Multiple conversations with Mr. Schoniger.

³ The term "Wall of Honor" is not seen in the CMHCR.

3. The act to be commended must have been performed under two circumstances:

- a. In the presence of great danger or at great personal risk, and,
- b. Must be performed in such a manner as to render the individual highly conspicuous among others of equal grade, rate, experience, or position of responsibility.

Mr. Schoniger told me the original monument committee deliberately used wording derived from Department of Defense (herein, "DOD") Manual 1348.33, the "Manual of Military Decorations and Awards." In this DOD manual:

1. The highest award is for "Valorous action", a condition for receiving the Medal of Honor which is the nation's highest military award (DOD Manual 1348.33, Vol VI § 3.1(b), Exhibit 3).

2. The second highest award are military service crosses (Distinguished Service, Army, Navy, or Air Force), for either:

- a. Singular acts of valor, or,
- b. "Extraordinary heroism" (DOD Manual 1348.33, Vol. III § 3.1(c)(2), Exhibit 4).

2. Captain Jacobs' Military Awards. Reportedly the highest military award presented to CAPT Jacobs is the Bronze Star with Combat V. The level of valor reflected by that award is, "The required valor, while of a lesser degree than that required for award of the Silver Star medal, must nevertheless have been performed with marked distinction (DOD Manual 1348.33, Vol. III § 3.6((c)(2), Exhibit 4). There is no evidence CAPT Jacobs was awarded the Medal of Honor or a service cross.

3. Dispute: Captain Jacobs was nominated for a bronze plaque to be placed on the Honor Wall at the El Dorado County Veterans Monument. Richard Buchanan raised an objection on a claim that (A) Although CAPT Jacobs service was honorable, (B) He nevertheless does not meet the qualifications for inclusion on the Honor Wall.

4. Paragraph Four Hearing: Pursuant to the provisions of paragraph four of the CMHCR, on June 21, 2021 VSO Todd convened a committee of representative commanders of federally chartered veterans organizations in order to consider this matter. Salient parts of the meeting include:

- Only one participant described Captain Jacobs in terms of "extraordinary heroism", that being Daniel Del Monte who is the Chief Assistant Director of El Dorado County Health & Human Services. Mr. Del Monte compared CAPT Jacobs to Sully Sullenberger and Oskar Schindler, then described CAPT Jacobs as "an extraordinary hero."
- Gary Campbell (Veterans Alliance) described CAPT Jacobs as "among the county's greatest heroes and [thus] deserving of recognition on the Honor Wall."
- John Poimiroo (Veterans Alliance) stated "The veterans alliance treats the honor wall as reserved for our county's greatest heroes."
- Richard Armitage (former Deputy Secretary of State) said CAPT Jacob's actions "were above and beyond the call of duty."
- Other presenters referred to CAPT Jacobs as a "hero" (Tyler Jacobs, son of CAPT Jacobs; Kenneth Schoniger for Richard Buchanan; Jan Herman, former chief medical historian of the U.S. Navy; Daniel Lucero, USN crew member who served with CAPT Jacobs; James Cahill, Vietnam combat veteran; and Peter Nguyen).
- When a participant argued the importance of following rules and the law, Mr. Poimiroo cut him off, "I've got to protest. This is taking way too long. It's another speech, and it's ridiculous."

The committee dismissed Mr. Buchanan's objection.

5. Publicity & Pain: This dispute has garnered local and national media attention, some of which is unfavorable. It has caused pain for the Jacobs family, and tension within in the veterans community.

ANALYSIS

6. "Extraordinary Heroism": When the meaning or origin of words in legislation or ordinances are uncertain, scholars such as myself research the intention of the people who created them. In this case I researched the intention of the authors of the CMHCR, learning the phrase "extraordinary heroism" is derived from DOD Manual 1348.33. The authors of CMHCR intended for this term to carry the same meaning as it does in the DOD manual; however, they failed to describe this intention or identify that reference in the CMHCR. Nevertheless, the intention of the writers is now known. "Extraordinary heroism" is meant to duplicate the meaning given in DOD Manual 1348.33, and as such to have a fixed meaning. Therefore, "extraordinary heroism" is not subject to interpretation.

7. Categories Of Eligibility: Only two military awards are eligible for honoraria, as described in the CMHCR: (A) The Medal of Honor and (B) Service crosses. The CMHCR confuses eligibility by also describing "Who, while serving with the military, distinguishes himself in action by extraordinary heroism;" however, this wording is seen to duplicate a portion of the eligibility criteria for a service cross and is therefore redundant. It does not create a third category of eligibility, nor an opportunity for interpretation of "extraordinary heroism."

8. Committee Error: The June 21, 2021 committee failed to sufficiently interpret CAPT Jacobs service record according to the terms of honoraria eligibility described in the CMHCR; instead, a variety of interpretations were presented and considered. Only one participant in the June 21 meeting described CAPT Jacobs using the term "extraordinary heroism." All other mention of the heroics of CAPT Jacobs are seen to be expressions of opinion that rely upon a variety of other terms and criteria.

9. Publicity: Untoward national publicity has developed from this matter, and the Jacobs family has been hurt. The manner in which it is resolved will largely determine whether additional negative attention is brought to the county through national news media coverage.

CONCLUSIONS

10. Captain Jacobs Is Not Eligible: Because Captain Jacobs was not awarded a Medal of Honor or the Navy Cross he is not eligible to have a bronze plaque placed on the Wall of Honor.

11. A Fast, "Win-Win-Win" Resolution Is Needed: The county needs to quickly adopt a solution that will satisfy all parties and lay this matter to rest.

RECOMMENDATIONS

12. Find In Favor Of Mr. Buchanan: The law is clear: *Captain Jacobs is not eligible for a bronze plaque on the Wall of Honor.* The Board of Supervisors should rule in favor of Mr. Buchanan. This is not a politically expedient solution; however, it is the legally correct decision to make.

13. Care For The Jacobs Family: Without delay, on its own initiative, and from great appreciation for CAPT Jacobs service, the Board should:

a. Establish a non-recurring "Captain Paul Jacobs" day, meant to bring attention to his combat and humanitarian service.

b. Give a proclamation of appreciation to Jacobs family, with concurrent publication on the county website and in news outlets.

14. Honors For Captain Jacobs: Order that a separate monument to honor CAPT Jacobs' humanitarian work be installed on the grounds of the Veterans Memorial within one year, to be paid for by private donations. In the era of "Go Fund Me" fundraising pages, it is quite possible the necessary amount will be raised in short order. The national news media is going to report on the Board's decision. This is an opportunity to alert the nation that a Go Fund Me page has been set up to raise funds for the Captain Jacobs monument. This may trigger many financial gifts from across the United States.

15. Ordinance No. 4743 Clean Up Language: To prevent future error, the Board of Supervisors should amend County Ordinance N^o. 4743 to strike the phrase "Who, while

serving with the military, distinguishes himself in action by extraordinary heroism" from the Criteria for Military Honoraria and Civilian Recognition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Nelson', is placed on a light gray rectangular background.

Eric L. Nelson, Ph.D.
Placerville, California
phd@fastmail.com

EXHIBIT 01



County of El Dorado

330 Fair Lane, Building A
Placerville, California
530-621-5390
FAX 530-622-3645
www.edcgov.us/bos

MEETING AGENDA

Board of Supervisors

Helen K. Baumann, Chairman, District II
Rusty Dupray, First Vice Chairman, District I
Ron Briggs, Second Vice Chairman, District IV
James R. Sweeney, District III
Norma Santiago, District V

Cindy Keck, Clerk of the Board of Supervisors
Laura S. Gill, Chief Administrative Officer *Louis B. Green,*
County Counsel

Tuesday, September 11, 2007

8:00 AM

Board of Supervisors Meeting Room

Vision Statement

"El Dorado County will remain the leader in supporting our safe, healthy, and vibrant communities, wisely managing our natural resources, and preserving our local heritage."

BOARD MEETING ROOM EQUIPPED WITH AN AUDIO INDUCTION LOOP ASSISTIVE LISTENING SYSTEM.

Public Testimony will be received on each agenda item as it is called. Principal party on each side of an issue (where applicable) is allocated 10 minutes to speak, individual comments are limited to 3 minutes, and individuals speaking for a group are allocated 5 minutes. (Adopted 8/10/93) Matters not on the agenda may be addressed by the general public during the Open Forum. Public comments during Open Forum are limited to three minutes per person. The Board reserves the right to waive said rules by a majority vote.

For Purposes of the Brown Act § 54954.2 (a), the numbered items on this Agenda give a brief description of each item of business to be transacted or discussed. Recommendations of the staff, as shown, do not prevent the Board from taking other action.

The Board of Supervisors meets simultaneously as the Board of Supervisors and the Board of Directors of the Air Quality Management District, In-Home Supportive Services, Public Housing Authority, Redevelopment Agency and other Special Districts.

The Board of Supervisors is concerned that large amounts of written information submitted to the Board the day of the Board meeting may not receive the attention it deserves. To ensure timely delivery, written information from the public must be received by the Board Clerk by Monday prior to the meeting. The Board Clerk cannot guarantee that any FAX or mail received the day of the meeting will be delivered to the Board prior to action on the subject matter.

8:00 A.M. - CALL TO ORDER AND RECESS TO CLOSED SESSIONS

9:00 A.M. - RECONVENE TO OPEN SESSION AND CLOSED SESSION REPORTS

INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

At this time the Board will make any necessary additions, deletions, or corrections to the Agenda; determine matters to be added to or removed from the Consent Calendar; and with one motion adopt the Agenda and approve the Consent Calendar.

OPEN FORUM

CONSENT CALENDAR

- 29. [07-394](#) Adoption of Ordinance **4743** establishing regulations for the use of the Veterans Memorial Monument; and providing amendments to the Criteria for Military Honoraria and Civilian Recognition. (Introduced 8/28/07, Item 37)

Details	
File #:	07394 Version: 7
Type:	Agenda Item
Title:	CAO - Veteran's Memorial Monument
Mover:	Rusty Dupray Secondar: Ron Briggs
Result:	Pass
Agenda note:	
Minutes note:	
Action:	Adopted
Action text:	This matter was added to the Consent Calendar and adopted.
Votes (4:0)	
5 records	Group Export
Person Name	Vote
Rusty Dupray	Yes
Helen Baumann	Yes
James R. Sweeney	Absent
Ron Briggs	Yes
Norma Santiago	Yes



ORDINANCE NO. _____

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9.54 entitled "County Veterans Monument" of Title 9 of the El Dorado County Ordinance Code is hereby added as follows:

9.54.010. Title. This chapter shall be known as the County Veterans Monument Ordinance.

9.54.020. Purpose. The El Dorado County Veterans Monument ("Monument") is intended to honor the veterans of this country and to provide a place for individuals to engage in quiet contemplation, reflection, meditation, and consideration of the veterans and their service. To preserve this purpose, it is intended that the Monument not be utilized for any organized activities other than the commemorative ceremonies to be held on Memorial Day and Veterans Day. The Monument is to be accessible to the public for the stated purposes, but shall be preserved as a non-public forum.

9.54.030. Authorized Events.

A. National Holidays. Two organized events shall be held at the Monument annually, one a commemorative ceremony on Memorial Day and one a commemorative ceremony on Veterans Day. The ceremonies shall be hosted by The Friends Of The Veterans Monument, a California nonprofit mutual benefit corporation, whose specific purpose is to foster cooperation among veterans groups. In hosting said events, The Friends Of The Veterans Monument shall act as the umbrella organization for the duly constituted, chartered veterans organizations in the county. No organized events shall be permitted on any other day, including holidays such as Pearl Harbor Day.

1. Expressive activities, including speeches and presentations, conducted in conjunction with such events shall be conducted in a manner consistent with the purpose of the Monument. To that end, expressions of political or religious speech shall be prohibited.
2. To assure that speeches and presentations do not run afoul of the foregoing prohibitions, all speeches and presentations must be reviewed by the Chief

Administrative Officer or designee prior to the subject event. In reviewing such speeches and presentations, the Chief Administrative Officer or designee shall not discriminate on the basis of the speaker's viewpoint.

B. Funeral Services. No formal ceremonies or services shall be permitted at the Monument. However, while impromptu memorial services or other gatherings may occur, all such services and gatherings must be conducted in a manner consistent with these regulations and the stated purpose of the Monument.

C. Reservations. Except as allowed in Section 9.54.030(A), neither the Monument, nor any part thereof shall be available to be reserved for use by any person, group or entity.

9.54.040. General Use.

A. Definitions.

1. The term "demonstrations" includes demonstrations, rallies, picketing, speechmaking, public oratory, marching, holding vigils or religious services, and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual use of the Monument by the public which does not have an intent or propensity to attract a crowd or onlookers.

2. The term "special events" includes celebrations, historical reenactments, exhibitions, parades, fairs, festivals, and similar events, which are not "demonstrations" under the foregoing paragraph, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual use by the public which does not have an intent or propensity to attract a crowd or onlookers.

3. The term "Veterans Memorial Monument" or "Monument" means the area occupied by the County Veterans Memorial Monument and its associated facilities and pathways, which are bounded by, but do not include, Ray Lawyer Drive and the sidewalks used for general pedestrian circulation within the County Government Center.

B. Demonstrations and Special Events.

1. Except as otherwise provided in Section 9.54.030 above, demonstrations or special events are prohibited at the Monument.

2. Should a group or member of the public seek to hold a demonstration or special event at the Monument, the General Services Director shall propose an alternate site to the applicant, if available for the proposed activity.

C. Soliciting. Soliciting or demanding gifts, money, goods, or services at the Monument is prohibited. In addition, no person shall display or distribute commercial advertising at the Monument.

D. Sales. No sales shall be made and no goods or services shall be exposed for sale at the Monument.

E. Leafletting. The sale or free distribution of any literature, leaflet, pamphlet, flyer, handbill, or other similar printed material at the Monument is prohibited, except that a program may be distributed if approved by the Chief Administrative Officer or designee and such distribution is a part of a special event authorized by these regulations.

F. Displays. The display of any placards, banners, signs, or similar devices at the Monument is prohibited, unless approved by the Chief Administrative Officer or designee and a part of a special event authorized by these regulations.

G. Littering. It shall be unlawful for any person to throw, dump, scatter, discard, place or deposit litter or solid waste in any manner or amount within the Monument's boundaries, except in containers or in areas lawfully provided for or permitted for that use.

H. Sidewalks. Nothing herein shall be deemed to inhibit the public's free use of the streets and sidewalks adjacent to the Monument, including the sidewalks on Fair Lane and Ray Lawyer Drive and the sidewalks used for general pedestrian circulation within the County Government Center.

I. Bicycles and Skateboards. The riding, operation, or use of bicycles, rollerskates, skateboards, in-line skates or other wheeled conveyances is prohibited at the Monument, except for wheeled conveyances used by handicapped persons and child carriages.

J. Destruction or Removal of Property. No person shall willfully destroy, damage, deface, mutilate, remove, or displace any property, including any placards or memorial bricks, at the Monument.

K. Use of Alcohol or Drugs. No person shall be under the influence of alcohol or intoxicating or dangerous drugs in such a condition that the individual is unable to exercise care for their own safety or the safety of others.

L. Audio Devices. No person shall operate any public address system, amplified musical instrument, amplified sound device or other noise-producing device at the Monument, except in connection with a permitted special event.

M. Noise. No person at the Monument shall yell, utter loud and boisterous language, or make or cause to be made any loud and raucous, unnecessary or unusual noise which by its volume causes discomfort or annoyance to any reasonable person of normal sensitivity.

9.54.050. Enforcement. Any person who violates any of these rules and regulations shall, in the discretion of the enforcing authority, be guilty of an infraction or a misdemeanor and, pursuant to Section 1.24.020 of this Code, may be subject to a fine of not more than five hundred dollars (\$500) and/or imprisonment not to exceed six (6) months.

Section 2. This ordinance shall become effective thirty (30) days following adoption hereof.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the ___ day of _____, 2007, by the following vote of said Board:

Ayes:

ATTEST
CINDY KECK
Clerk of the Board of Supervisors

Noes:
Absent:

By _____
Deputy Clerk

Chairman, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____
ATTEST: CINDY KECK, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk

El Dorado County Veterans Monument
Criteria for Military Honoraria and Civilian Recognition
September 11, 2007

The El Dorado County Veterans Monument is intended to honor the in-service accomplishments of veterans and current members of the armed forces of the United States of America. All eligible veterans will be included proportional to their in-service contributions.

There will be two separate areas of recognition:

1. Recognition of veterans through military honoraria to be located in the veterans monument plaza (hereinafter referred as "plaza").
2. Recognition of civilian contributors to the monument to the left and right of the Monument's main (west) entrance adjacent to the parking lot.

As of November 11, 2006, no further integration of veterans honoraria and civilian recognition is permitted in the plaza.

Any issues that arise regarding inclusion, inscription, or location of honoraria in the monument are to be directed to the Veterans Service Officer, who will convene a committee including one representative commander from each of the federally chartered veterans organization in El Dorado County to hear and settle the issue (hereinafter referred as "committee"). The decision rendered by the committee may be appealed to the Board of Supervisors by submitting a request to the Veterans Services Officer, who will place the appeal on the Board's agenda. All decisions regarding inclusion, inscription, or location of honoraria in the monument will be made in a manner consistent with this policy.

Eligibility for Recognition through Military Honoraria

Eligibility for inclusion in the plaza is based upon discharge from active military service under other than dishonorable conditions.

1. Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Merchant Marines or Coast Guard. Men and women veterans with similar service will be entitled to the same category of honoraria.
2. Dishonorable and bad conduct discharges issued by general courts-martial may bar inclusion in or cause removal from the plaza.
3. Veterans in prison and parolees must contact the El Dorado County Veterans Service Officer or Friends of the Veterans Monument to determine eligibility. Acceptance will not be provided to any veteran wanted for an outstanding felony warrant.

Those seeking honoraria in the plaza for the first time must complete and submit an application to the El Dorado County Veterans Services Officer that provides the following information:

1. Documentation that demonstrates service dates and type of discharge a copy of their service discharge form, such as DD-214, DD-215, or for WWII veterans, a WD form; or
2. Full name, military service number, and branch and dates of service.

Application forms are available from the Veterans Service Office, The Friends of the Veterans Monument, Inc. (hereinafter referred as “the Friends”), ~~or~~ the Pool Place on Missouri Flat Road, Placerville, or other such places as may be designated by the Chief Administrative Officer.

Types of Military Honoraria

The following types of military honoraria are available for purchase through The Pool Place at prices in effect at the time of purchase:

Special Bronze Plaques honoring events, units, or heroes. For plaques that honor heroes, the honoree must meet the following conditions:

- Heroes are defined as recipients of the Medals of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross or any person or unit who, while serving with the military, distinguishes himself in action by extraordinary heroism.
- The action must take place under one of three circumstances: while engaged in action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party.
- The act to be commended must have been performed in the presence of great danger or at great personal risk and must be performed in such a manner as to render the individual highly conspicuous among others of equal grade, rate, experience, or position of responsibility.

Benches. Benches are intended to honor any veteran, unit or action. For benches included in the plaza, the inclusion of civilians in the inscriptions is specifically prohibited.

Bricks. Size 4x8 bricks may be purchased to honor any qualified veterans or current member of the armed forces of the United States. Each brick contains up to three lines and a maximum of 14 characters per line.

Modification and Maintenance of the Monument

The County shall be responsible for the maintenance and upkeep of the Monument, including installation of any bricks, plaques and the like that are provided by the Friends.

The County, through the General Services Department, will notify the Friends and the committee in writing of any ~~intended or~~ proposed changes in the design, configuration, or landscaping of the monument. The Friends will have the opportunity to discuss any such changes with representatives of the General Services Department. Private citizens, civic organizations, and military/veterans organizations are encouraged to communicate with the County and the Friends

regarding proposed improvements and additions to the monument that are consistent with this policy.

Any modifications must be consistent with the original purpose of the monument, which is to honor veterans.

The Friends will continue to purchase materials for the monument, such as bricks, tiles, plaques, and benches. The General Services Department is responsible for the installation of the materials within the monument.

EXHIBIT 02

May 12, 2021

Richard W. Todd
Veteran Services Program Manager
El Dorado County Health & Human Services Agency
937 Spring Street
Placerville, CA 95667

Subj: Objection to Captain Paul Jacobs bronze plaque

Dear Mr. Todd:

As the founder of the El Dorado County Veterans Monument I object to the planned installation of a bronze plaque on the monument's "Honor Wall" in recognition of Captain Paul Jacobs, USN (Ret.) and his service aboard the USS Kirk (FF-1087) in the last days of the Vietnam War. While Captain Jacob's actions were commendable they do not fulfill the approved criteria for this recognition as sought by the El Dorado County Veteran's Alliance ("EDCVA").

The Monument is governed by County Ordinance 4743 (Code 1997, § 9.54.010; Ord. No. 4743, 9-11-2007). The Ordinance provides that the monument may not be used "for any organized activities other than the commemorative ceremonies to be held on Memorial Day and Veterans Day." Those ceremonies are to be "hosted by The Friends of the Veterans Monument" ("FOVM"). Otherwise, the ordinance does not authorize the FOVM or any other organization to approve or install memorial plaques, or make any changes to the monument.

The Board of Supervisors adopted ordinance 4743, along with amended criteria for "Military Honoraria and Civilian Recognition," on September 11, 2007. (Enclosures 1-2.) The criteria includes that "any issues that arise regarding inclusion, inscription, or location of honoraria in the monument are to be directed to the Veterans Service Officer," and describes the process of hearing and appealing such issues. Therefore, I am submitting this objection to you as the program manager for the County's Veteran Services office.

Bronze Plaque Criteria:

The EDCVA seeks to install a bronze plaque honoring Captain Jacobs as a "national hero who distinguished himself in action" and that his "deeds fulfill the *intent* of the guidance provided for placement of a bronze plaque." (Enclosure 3.)

The approved criteria do not describe *intent*, but conditions that "the honoree *must* meet." (Enclosure 2, page 2.) With no disrespect to Captain Jacobs or his crew, his actions as part of Operation Frequent Wind in 1975 do not meet these conditions.

First, the criteria defines "heros" as "recipients of the Medals of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross or any person or unit who, while serving with the military,

distinguishes *himself* in action by extraordinary heroism.” The EDCVA’s description omits any mention of those medals being awarded to Captain Jacobs, and only superficially describes “heroic” actions by the USS Kirk, but not by Captain Jacobs personally or extraordinarily.

Second, “The action must take place under one of three circumstances: while engaged in action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party.”

Multiple sources, including interviews with Captain Jacobs, affirm that the USS Kirk engaged in “humanitarian” actions by recovering helicopters evacuating from Saigon on April 29, 1975, but did not engage in combat, and was not subject to enemy actions. On April 30, 1975, the final day of the Vietnam War, the USS Kirk rendezvoused with remnants of the Vietnamese Navy at Con Son Island, approximately 50 miles offshore, and then escorted those vessels and their evacuees without incident to the Philippines. Again, the USS Kirk engaged no enemy and its operations were entirely humanitarian. Apart from those actions, the USS Kirk only departed San Diego for Vietnam in March, 1975 and was not engaged in armed conflict with any enemy force. Captain Jacobs, as the Commanding Officer of the USS Kirk, did not personally engage any enemy of the United States.

Third, “The act to be commended must have been performed in the presence of great danger or at great personal risk and must be performed in such a manner as to render the individual highly conspicuous among others of equal grade, rate, experience, or position of responsibility.”

Operation Frequent Wind took place in the final two days of the Vietnam War. The USS Kirk was one of 25 U.S. Navy vessels comprising Task Force 76, which were situated approximately 17 miles from the Vung Tau peninsula. The USS Kirk was notable for landing 16 helicopters and pushing 15 of them overboard in order to keep its landing deck clear; in all, 250 people were evacuated from those helicopters and then transferred to other vessels.

Captain Jacobs is credited for making a command decision to land helicopters and care for evacuees, but his was not the only U.S. naval vessel to do so. Nor did he do so under “great danger or at great personal risk.” Pictures show him in short pants, without battle gear, amidst his crew on the flight deck as they unloaded evacuees and pushed helicopters overboard. The ship was not under enemy threat, and he performed his duties the same as other units of Task Force 76. On April 30, 1975 and afterwards, Captain Jacobs tended to evacuees and their humanitarian needs as they led a convoy of Vietnamese vessels to the Philippines without the danger of enemy combat.



Commander Paul Jacobs, USS Kirk (3rd from left)

Recommendation:

Captain Jacobs and the crew of the USS Kirk stood out because they were ordered to Con Son Island and led a convoy of evacuees that totaled approximately 30,000 Vietnamese. Those actions are notable and more suitable for recognition on Veterans Day, when the descendents of those Vietnamese refugees could speak to those actions and their subsequent relocation to the United States. The Asian Heritage Society of San Diego did so in 2017 when it “held ceremonies commemorating the largest humanitarian effort in U.S. naval history.” Another appropriate speaker would be from members of the USS Kirk Association. They can be reached at <https://www.kirk1087.org/>, or on Facebook at <https://www.facebook.com/UssKirkAssociation>.

The monument contains other means to recognize Captain Jacob's service, but he does not meet the criteria for the placement of a bronze plaque in a place of reserved honor at the veterans monument. Therefore, I recommend the EDCVA's action to place a plaque honoring Captain Jacobs be immediately denied. The Alliance does not have authority to approve or install a plaque, nor does Captain Jacobs meet the criteria for placement of a bronze plaque honoring him as a hero.

Respectfully,

Richard W. Buchanan, Navy Cross
Past National Commander, Board of Directors, Legion of Valor

Encl: (1) September 11, 2007 Board of Supervisors Agenda
(2) Amended Criteria for Military Honoraria
(3) John Poimiroo email dated May 12, 2021

END CONSENT CALENDAR**NOTICED HEARINGS****DEPARTMENT MATTERS**

29. [07-394](#) Adoption of Ordinance **4743** establishing regulations for the use of the Veterans Memorial Monument; and providing amendments to the Criteria for Military Honoraria and Civilian Recognition. (Introduced 8/28//07, Item 37)

Attachments: [Goldenrod for Veteran's Memorial Monument.pdf](#)
[Ltr rcvd from Sup. Briggs and Ord. 4188.pdf](#)
[Additional information for Veterans Monument.pdf](#)
[070403 Veterans Memorial Monument Management Issues.doc](#)
[070713 Veterans Memorial Monument Update.doc](#)
[Ordinance 4743 8-28-07.pdf](#)
[Board Letter - Veterans Memorial 8-28-07.pdf](#)
[Amended Criteria for Military Honoraria and Civilian Recognition.pdf](#)
[083007 FINAL Veterans Monument Criteria Amendments](#)
[Revised Ordinance 9-4-07](#)
[Phone Message by Jamie Beutler 9-7-07.pdf](#)

This matter was added to the Consent Calendar and adopted.

Yes: 4 - Dupray, Baumann, Briggs and Santiago

Absent: 1 - Sweeney

30. [07-1310](#) Public Health Department recommending Chairman be authorized to sign Amendment I to Agreement 200-S0811 with El Dorado County Regional Prehospital Emergency Services Operations Authority (JPA) to amend Section V, Article XI - Response Time Standards, Letter C. Maximum Response Times, to provide prehospital Advanced Life Support (ALS) services and dispatch services within County Service Area No. 7.

Attachments: [Blue Sheet](#)
[Amendment I](#)
[WS JPA Contract](#)
[Attachment A, Response Time Comparison.pdf](#)

This matter was added to the Consent Calendar and approved.

Yes: 4 - Dupray, Baumann, Briggs and Santiago

Absent: 1 - Sweeney

**El Dorado County Veterans Monument
Criteria for Military Honoraria and Civilian Recognition
September 11, 2007**

The El Dorado County Veterans Monument is intended to honor the in-service accomplishments of veterans and current members of the armed forces of the United States of America. All eligible veterans will be included proportional to their in-service contributions.

There will be two separate areas of recognition:

1. Recognition of veterans through military honoraria to be located in the veterans monument plaza (hereinafter referred as "plaza").
2. Recognition of civilian contributors to the monument to the left and right of the Monument's main (west) entrance adjacent to the parking lot.

As of November 11, 2006, no further integration of veterans honoraria and civilian recognition is permitted in the plaza.

Any issues that arise regarding inclusion, inscription, or location of honoraria in the monument are to be directed to the Veterans Service Officer, who will convene a committee including one representative commander from each of the federally chartered veterans organization in El Dorado County to hear and settle the issue (hereinafter referred as "committee"). The decision rendered by the committee may be appealed to the Board of Supervisors by submitting a request to the Veterans Services Officer, who will place the appeal on the Board's agenda. All decisions regarding inclusion, inscription, or location of honoraria in the monument will be made in a manner consistent with this policy.

Eligibility for Recognition through Military Honoraria

Eligibility for inclusion in the plaza is based upon discharge from active military service under other than dishonorable conditions.

1. Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Merchant Marines or Coast Guard. Men and women veterans with similar service will be entitled to the same category of honoraria.
2. Dishonorable and bad conduct discharges issued by general courts-martial may bar inclusion in or cause removal from the plaza.
3. Veterans in prison and parolees must contact the El Dorado County Veterans Service Officer or Friends of the Veterans Monument to determine eligibility. Acceptance will not be provided to any veteran wanted for an outstanding felony warrant.

Those seeking honoraria in the plaza for the first time must complete and submit an application to the El Dorado County Veterans Services Officer that provides the following information:

1. Documentation that demonstrates service dates and type of discharge a copy of their service discharge form, such as DD-214, DD-215, or for WWII veterans, a WD form; or
2. Full name, military service number, and branch and dates of service.

Application forms are available from the Veterans Service Office, The Friends of the Veterans Monument, Inc. (hereinafter referred as "the Friends") , or the Pool Place on Missouri Flat Road, Placerville, or other such places as may be designated by the Chief Administrative Officer.

Types of Military Honoraria

The following types of military honoraria are available for purchase through The Pool Place at prices in effect at the time of purchase:

Special Bronze Plaques honoring events, units, or heroes. For plaques that honor heroes, the honoree must meet the following conditions:

- Heroes are defined as recipients of the Medals of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross or any person or unit who, while serving with the military, distinguishes himself in action by extraordinary heroism.
- The action must take place under one of three circumstances: while engaged in action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party.
- The act to be commended must have been performed in the presence of great danger or at great personal risk and must be performed in such a manner as to render the individual highly conspicuous among others of equal grade, rate, experience, or position of responsibility.

Benches. Benches are intended to honor any veteran, unit or action. For benches included in the plaza, the inclusion of civilians in the inscriptions is specifically prohibited.

Bricks. Size 4x8 bricks may be purchased to honor any qualified veterans or current member of the armed forces of the United States. Each brick contains up to three lines and a maximum of 14 characters per line.

Modification and Maintenance of the Monument

The County shall be responsible for the maintenance and upkeep of the Monument, including installation of any bricks, plaques and the like that are provided by the Friends.

The County, through the General Services Department, will notify the Friends and the committee in writing of any ~~intended~~ or proposed changes in the design, configuration, or landscaping of the monument. The Friends will have the opportunity to discuss any such changes with representatives of the General Services Department. Private citizens, civic organizations, and military/veterans organizations are encouraged to communicate with the County and the Friends

regarding proposed improvements and additions to the monument that are consistent with this policy.

Any modifications must be consistent with the original purpose of the monument, which is to honor veterans.

The Friends will continue to purchase materials for the monument, such as bricks, tiles, plaques, and benches. The General Services Department is responsible for the installation of the materials within the monument.

----- Original Message -----

From: John Poimiroo <poimiroo@gmail.com>

To: Richard Todd <richard.todd@edcgov.us>

Cc: Gary Campbell <gacambi@pacbell.net>, Jack Babbitt <jackabbitt@msn.com>, Rich Buchanan <rbuchanan2680@comcast.net>, Ranell Brown <ranell.brown@edcgov.us>, Philip Houseworth <phouseworth@gmail.com>

Date: 05/12/2021 9:15 AM

Subject: Re: Voice Message From: 5530

The El Dorado County Veterans Alliance, as the County-assigned overseer of the El Dorado County Veterans Monument determines the deeds of CAPT Jacobs fulfill the intent of the guidance provided for placement of a bronze plaque on the Honor Wall, namely that CAPT Paul Jacobs, USN is a national hero who distinguished himself in action.

As the sole US ship facing the entire North Vietnamese military, the USS Kirk, commanded by CAPT Jacobs performed heroically. There was great risk to the ship, its crew, its wards and to CAPT Jacobs personally, as has been dramatically presented in the historical record, the book *The Lucky Few* and in numerous highly acclaimed documentaries.

At the time, Kirk was serving with friendly foreign forces in an armed conflict. The act was performed in the presence of great danger and was performed in such a manner as to render CAPT Jacobs highly conspicuous among those of equal grade and position of responsibility. These are all conditions to be considered when placing a plaque on the Honor Wall.

There is no question in our mind that the plaque is deserved and honors one of El Dorado County's greatest heroes and that it fulfills the intent of both existing and previous guidance on placement of bronze plaques on the Honor Wall.

John Poimiroo, CAPT, USN-Ret
Secretary-Treasurer
(916) 801-1013 M – (916) 933-3414 O



EXHIBIT 03



DoD MANUAL 1348.33, VOLUME 1

MANUAL OF MILITARY DECORATIONS AND AWARDS: MEDAL OF HONOR

Originating Component:	Office of the Under Secretary of Defense for Personnel and Readiness
Effective:	December 21, 2016
Change 4 Effective:	May 7, 2021
Releasability:	Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD .
Reissues and Cancels:	DoD Manual 1348.33, Volume 1, "Manual of Military Decorations and Awards: General Information, Medal of Honor, and Defense/Joint Decorations and Awards," November 23, 2010, as amended
Approved by:	Todd A. Weiler, Assistant Secretary of Defense for Manpower and Reserve Affairs
Change 4 Approved by:	Lernes J. Hebert, Performing the Duties of the Assistant Secretary of Defense for Manpower and Reserve Affairs

Purpose: This manual is composed of several volumes, each containing its own purpose. In accordance with the authority in DoD Directive 5124.02 and DoD Instruction (DoDI) 1348.33:

- This manual implements policy, assigns responsibilities, and provides procedures for managing the DoD Military Decorations and Awards Program.
- This volume:
 - Provides information regarding the Medal of Honor (MOH) and award criteria.
 - Provides information on courtesies and privileges afforded MOH recipients.
 - Prescribes procedures for preparing and submitting MOH recommendations.
 - Prescribes procedures for requesting replacement and duplicate MOHs.
 - Prescribes procedures for presentation of the MOH flag.

SECTION 3: MOH GENERAL INFORMATION

3.1. AWARD CRITERIA AND ELIGIBILITY REQUIREMENTS.

a. In accordance with Sections 7271, 8291, and 9271 of Title 10, U.S.C., the President may award, and present in the name of Congress, an MOH of appropriate design, with ribbons and appurtenances, to a person who, while a member of the Army, naval service, Air Force, or Space Force distinguished himself or herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty:

(1) While engaged in an action against an enemy of the United States;

(2) While engaged in military operations involving conflict with an opposing foreign force; or

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

b. The MOH recommendation must contain proof beyond a reasonable doubt that the member performed the valorous action which resulted in the MOH recommendation.

c. The valorous action(s) performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his or her comrades and must have involved risk of life.

d. While MOH criteria require the member to risk his or her life, there is **no** requirement for the member to be wounded or killed in order to meet the “risk of life” portion of the MOH award criteria.

e. In accordance with Section 1136 of Title 10, U.S.C., no MOH may be awarded to a person if the service of the person after the act justifying award has not been honorable. Honorable service determinations are made in accordance with DoDI 1348.33.

f. Upgrading a previously approved award to the MOH or reconsideration of an MOH nomination previously reviewed by the Secretary of Defense or the Secretary of a Military Department requires:

(1) Presentation of new, substantive, and relevant material evidence that was not available at the time the original recommendation was considered. The information forming the basis for upgrade must have been previously unknown and not considered by the awarding authority. New information that merely adds details to what was previously provided in the original award recommendation will not meet the “new and relevant” requirement; or

(2) Evidence of material error or impropriety in the processing or adjudication of the original award recommendation. Examples might include loss of accompanying or substantiating documents or witness statements during the original routing of the

EXHIBIT 04



DoD MANUAL 1348.33, VOLUME 3

MANUAL OF MILITARY DECORATIONS AND AWARDS: DoD-WIDE PERSONAL PERFORMANCE AND VALOR DECORATIONS

Originating Component:	Office of the Under Secretary of Defense for Personnel and Readiness
Effective:	December 21, 2016
Change 3 Effective:	May 7, 2021
Releasability:	Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD .
Reissues and Cancels:	DoD Manual 1348.33, Volume 3, "Manual of Military Decorations and Awards: DoD-wide Performance and Valor Awards; Foreign Awards; Military Awards to Foreign Personnel and U.S. Public Health Service Officers; and Miscellaneous Information," November 23, 2010
Approved By:	Todd A. Weiler, Assistant Secretary of Defense for Manpower and Reserve Affairs
Change 3 Approved By:	Lernes J. Hebert, Performing the Duties of the Assistant Secretary of Defense for Manpower and Reserve Affairs

Purpose: This manual is composed of several volumes, each containing its own purpose. In accordance with the authority in DoD Directive 5124.02 and DoD Instruction (DoDI) 1348.33:

- This manual implements policy, assigns responsibilities, and provides procedures for managing the DoD Military Decorations and Awards Program.
- This volume provides detailed information and procedures regarding DoD-wide performance and valor awards (excluding the Medal of Honor and DoD Joint decorations and awards), including:
 - Award criteria for DoD-wide decorations and awards.
 - Eligibility requirements for DoD-wide decorations and awards.
 - Award authority for DoD-wide decorations and awards.
 - Authorized devices and appurtenances for DoD-wide decorations and awards.

SECTION 3: PROCEDURES FOR DOD-WIDE DECORATIONS AND AWARDS

3.1. MILITARY SERVICE CROSSES.

a. Introduction. The Military Service Crosses (Distinguished Service Cross – Army; Navy Cross – Navy and Marine Corps; and Air Force Cross – Air Force) are the second highest military decorations in precedence following the Medal of Honor. The Military Service Crosses are awarded to recognize extraordinary combat heroism not justifying award of the Medal of Honor.

b. Award Category. Personal Valor Decoration.

c. Award Criteria and Eligibility Requirements.

(1) In accordance with E.O. 13830, the Secretary of the Military Department concerned may award the applicable Service Cross, as authorized by Sections 7272, 8292, and 9272 of Title 10, U.S.C., in the name of the President, to any person who, while serving in any capacity with the Army, Navy, Marine Corps, or Air Force, distinguishes himself or herself by extraordinary heroism not justifying the award of the Medal of Honor:

- (a) While engaged in an action against an enemy of the United States;
- (b) While engaged in military operations involving conflict with an opposing foreign force; or
- (c) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(2) The required heroism, while of a lesser degree than that required for award of the Medal of Honor, must nevertheless have been performed with marked distinction. The Service Cross is awarded for singular acts of valor or for extraordinary heroism over a very brief period, such as one or two days of a battle. The Service Cross will not be awarded for an accumulation of lesser acts of heroism over time, none of which by itself would justify this level of decoration. Nor will the Service Cross be awarded in recognition for any period of meritorious service, regardless of the scope or impact of such service.

(3) The heroic actions of each Military Service Cross nominee will be reviewed against Medal of Honor award criteria by the Secretary of the Military Department concerned to ensure the nominee's actions do not justify award of the Medal of Honor.

(4) In accordance with Section 1136 of Title 10, U.S.C., the award is not authorized if the awardee's service after the act justifying award was not honorable. Refer to Section 8 of DoDI 1348.33 for additional guidance.

(1) **Army.** Refer to AR 600-8-22.

(2) **Navy and Marine Corps.** Refer to the SECNAVINST and SECNAVMAN 1650.1 series.

(3) **Air Force.** Refer to AFMAN 36-2806. Pursuant to current statutory and E.O. guidance persons who distinguish themselves while serving in any capacity with the Space Force are not eligible for award the Distinguished Flying Cross. Should applicable guidance be revised to expand eligibility to this class of persons, this issuance will be revised accordingly.

g. Posthumous Award. The DFC may be awarded posthumously. When so awarded, it may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the Military Department concerned.

h. Order of Precedence. The DFC is worn after the LOM and:

(1) **Army.** Before the Soldier's Medal.

(2) **Navy and Marine Corps.** Before the Navy and Marine Corps Medal.

(3) **Air Force and Space Force.** Before the Airman's Medal.

i. Subsequent Awards.

(1) In accordance with E.O. 13830 and Sections 7279, 8295, and 9279 of Title 10, U.S.C., individuals are only presented a DFC upon initial award.

(2) Subsequent awards are denoted by wearing the appropriate device on the suspension and service ribbon of the medal.

j. Authorized Devices. Refer to the applicable Military Department regulation for specific guidance on wear of authorized devices. Authorized devices are:

(1) "V" Device.

(2) "C" Device

(3) Oak-Leaf Cluster (bronze or silver).

(4) 5/16 Inch Star (gold or silver).

k. Illustration and Description. See Appendix 3A.

3.6. BRONZE STAR MEDAL.

a. Introduction. The BSM may be awarded to any person who, while serving in any capacity with the Army, Navy, Marine Corps, or Air Force distinguished themselves by heroic (valorous) or meritorious achievement or service not involving participation in aerial flight.

b. Award Category. PMD.

c. Award Criteria and Eligibility Requirements.

(1) In accordance with E.O. 11046, subject to the provisions of Section 1133 of Title 10, U.S.C., the Secretary of a Military Department may award the BSM to any person who, while serving in any capacity in or with the Army, Navy, Marine Corps, or Air Force of the United States, after December 6, 1941, distinguishes or has distinguished himself or herself by valor, or meritorious achievement or service not involving participation in aerial flight:

- (a) While engaged in an action against an enemy of the United States;
- (b) While engaged in military operations involving conflict with an opposing foreign force; or
- (c) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(2) The required valor, while of a lesser degree than that required for award of the SSM, must nevertheless have been performed with marked distinction. When the BSM is awarded for valor, the “V” device will be authorized.

(3) The BSM may also be awarded for meritorious service under combat conditions that is of a lesser degree than that required for award of the DSSM or LOM. However, for meritorious service that ended on or after January 7, 2016, the BSM may only be awarded if during the period, the awardee was exposed to hostile action, or was at significant risk of exposure to hostile action. Otherwise the appropriate award would be either the Defense Meritorious Service Medal (DMSM) or the MSM.

(4) After October 30, 2000, in accordance with Section 1133 of Title 10, U.S.C., the BSM may only be awarded to a member of a military force who:

(a) At the time of the events for which the decoration is to be awarded, was serving in a geographic area in which hostile fire pay or imminent danger pay was authorized in accordance with Section 310 of Title 37, U.S.C., or hazardous duty pay in accordance with paragraph (1) or (3) of Section 351(a) of Title 37, U.S.C.; or

(b) Receives hostile fire pay or imminent danger pay in accordance with Section 310 of Title 37, U.S.C., or, hazardous duty pay in accordance with Paragraph (1) or (3) of Section 351(a) of Title 37, U.S.C., as a result of the action or events justifying award.

(5) In accordance with Section 1136 of Title 10, U.S.C., the award is not authorized if the awardee’s service after the service or act justifying award was not honorable. Refer to Section 8 of DoDI 1348.33 for additional guidance.

d. Foreign Military Personnel. The BSM may be awarded to members of the armed forces of friendly foreign nations.