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EL DORADO COUNTY GRAND JURY 2009-2010

Mission Statement

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

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**Grand Jury
El Dorado County**

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June, 2010

To: The citizens of El Dorado County

Re: El Dorado County Grand Jury 2009-2010 Report

Dear fellow citizen,

In June of every year the El Dorado County Civil Grand Jury, which consists of 19 citizen volunteers from all backgrounds, puts out a report based on investigations completed during their 12-month term. This year is no different! However, during this Grand Jury session we focused on the economics of county government and the savings which could be achieved. We discovered many areas where cost savings could be realized.

An area of concern as reported in this report is the governmental functions of the City of South Lake Tahoe. This Grand Jury did extensive investigations into the operational functions of that city and found many areas of concern. Many departments need renewed focus, energy and direction. We strongly urge the residents of the Tahoe basin to read the report and become involved in their city government.

Despite the poor economy we are experiencing in El Dorado County, our county government compared to other counties in the state, is doing a remarkable job of conserving funds. The Board of Supervisors, the County Administrative Office and many other departments have made many necessary changes and hard decisions to make El Dorado County economically viable. However, citizen involvement is critical to the success of all governments and El Dorado County is no exception. Become a Grand Jury member and contribute to the success of your county, city and district.

The Grand Jury appreciates the support and guidance from Supervising Judge Steven Bailey, assistance from Judicial Secretary Holly Warren, County Counsel Lou Green and Chief Assistant County Counsel Ed Knapp, Auditor/Controller Joe Ham and his assistant Keely Gonzales and Senior Administrative Assistant Mike Applegarth from the CAO

Respectfully,

A handwritten signature in black ink, appearing to read "Rene (Ray) Van Asten", is written over a faint, larger version of the same signature.

Rene (Ray) Van Asten
Foreman, 2009-2010
El Dorado County Grand Jury



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, California 95667

Fax: (530) 622-5729
(530) 621-6451

June 8, 2010

Dear Grand Jury Members:

As Supervising Judge of the *2009/2010* Grand Jury, and on behalf of the El Dorado County Superior Court, I wish to thank you for your service. You are to be commended for your hard work, dedication, and accomplishments.

Grand Jurors always assume a great deal of responsibility whenever they agree to be a part of a year's panel. They willingly do this as volunteers without any purpose together than to insure that governmental agencies and individuals are properly performing their duties. Your hard work has helped fulfill the Grand Jury's goal of better government for all the citizens of El Dorado County.

Special thanks to Mr. Ray Van Asten, Foreperson of the *2009/2010* Grand Jury. It is due largely to his leadership skills that your work was conducted harmoniously and well.

In closing, I applaud each member of this Grand Jury and congratulate you on your *2009/2010* Grand Jury service.

STEVEN C. BAILEY
Judge of the Superior Court

Very truly yours,



NOTICE TO RESPONDENTS

California Penal Code Section 933.05 mandates specific requirements for responding to grand jury reports. This information is intended to help you in your responses to avoid unnecessary and time consuming repetitive actions. Those responses which do not fully comply with Penal Code requirements, including explanations and time frames where required, will not be accepted and will be returned to respondents for corrections

RESPONSE TO FINDINGS

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

- 1. The respondent agrees with the finding.*
- 2. The respondent disagrees wholly or in part with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reason therefore.*

RESPONSE TO RECOMMENDATIONS

The responding person or entity shall report one of the following actions:

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

* The time frame needs to be specific and reasonable.

** At the conclusion of this analysis, the recommendation must be responded to as required by items 1, 2, or 4.

RESPONSE: TIME, WHERE, AND TO WHOM

The Penal Code identifies two different response times, depending upon the classification of the respondent (see below), and includes where and to whom the response is directed. Day one begins with the date of the report.

1. Public Agency:

The governing body of any public agency (also refers to department) must respond within ninety (90) days. The response must be addressed to the Presiding Judge of the El Dorado County Superior Court.

Examples: Governing body of a public agency, Board of Supervisors, Directors of Districts.

2. Elective Officer or Agency Head:

All elected officers or heads of agencies/departments are required to respond within sixty (60) days to the Presiding Judge of the Superior Court, with a copy provided to the Board of Supervisors.

Examples: Sheriff, Auditor/Controller, Recorder, Surveyor, Tax/Treasurer.

FAILURE TO RESPONSE:

Failure to respond to a grand jury report is in violation of California Penal Code 933.05 and is subject to further action.



EL DORADO COUNTY GRAND JURY 2009-2010

From row left to right: Wendy Hagel, Rita Clayton, Guadalupe Rangel, Donna Bergmeister, Clyde Needham, Jane Newman, Barbara Bailey, Thomas Fleming, Kenneth Harper - Pro Tem, Valerie Stevens, Steve Baker, Edward Bernhoft, Bud Brown, Brian Katz, David Keneller
Back row left to right: Donald Williams, Robert Johnston, Ray Van Asten – Foreman, (not in picture Joseph Salerno)



EL DORADO COUNTY GRAND JURY 2009-2010

ENERGY CONSERVATION AND COST SAVINGS

Case No. GJ 09-003

REASON FOR REPORT

The Grand Jury received a citizen complaint that El Dorado County, California, Board of Supervisors Policy Number A-I8, Energy Conservation Policy, is not being enforced.

BACKGROUND

Board of Supervisors Policy Number A-I8 was adopted on June 5, 2001. Policy A-I8's stated purpose is to identify conservation and cost saving measures related to energy consumption as well as outline procedures in the event of sustained and/or rotating electrical outages. Policy A-I8 sets heating and cooling practice such that all mechanical equipment in County-owned buildings or leased space will be set to provide a maximum of 68 degrees for heating and a minimum of 78 degrees for cooling. Policy A-I8 also provides that temperatures in Juvenile Hall, Mental Health inpatient/outpatient facilities, or other identified facilities may be set at 73 degrees cooling.

BOS Policy A-I8 may be referenced at: www.co.el-dorado.ca.us/BOSPolicies/pdf/A-I8.pdf

METHODOLOGY

The Grand Jury inspected County-owned buildings and County-leased spaces. The Grand Jury interviewed staff members, supervisors, and department heads. The Grand Jury requested and reviewed documents related to this investigation.

The 2009-2010 EI Dorado County Grand Jury has arrived at the following findings:

1. EI Dorado County spends more than \$2 million annually for heating, air-conditioning, and lighting in County-owned and leased buildings.
2. Board of Supervisors (BOS) Policy A-18 does not designate a specific department or official to ensure that the County complies with, nor has the BOS enforced compliance with this Policy.
3. Centralized computer systems permit Department of Transportation (DOT) personnel to set minimum and maximum temperatures at multiple County-owned buildings from a single location. The remaining County-owned buildings, and the County-leased buildings, do not have centralized computer management systems and therefore, temperatures are set on an individual basis.
4. BOS Policy A-18 directs that mechanical equipment in County-owned buildings or leased space will be set to provide a maximum of 68 degrees for heating and a minimum of 78 degrees for cooling.
5. Some County-owned buildings have old and outdated HV AC units and, when combined with changes in inside office configurations, these conditions make it difficult to keep all employees comfortable through the different seasons. Notwithstanding the old and outdated equipment and changed interior configurations, DOT personnel do have the capability to set mechanical equipment in County-owned buildings or leased space to provide a maximum of 68 degrees for heating and a minimum of 78 degrees for cooling.
6. The DOT has not required personnel to comply with BOS Policy A-18. DOT personnel do not maintain equipment in County-owned buildings or leased space in accordance with BOS Policy A-18. This is a deliberate decision motivated by a good-faith desire to keep County employees more comfortable.
7. The County does not have a detailed master plan to identify, replace, and update old and inefficient heating and air-conditioning units. The County has deferred replacement of old and inefficient HV AC units with the result that units break and no replacement parts are available, and/or other units are cannibalized for parts.
8. The County does not have a capital reserve set aside to replace and update old and inefficient HV AC units.
9. The California Energy Commission has estimated that raising the thermostat in the summer from 73 degrees to 78 degrees can save 15 percent in energy costs, and that lowering the thermostat in the winter from 73 degrees to 68 degrees could save 25 percent in energy costs. If it is assumed that 40 percent

Of the County's energy bill is for HV AC, then these two changes could save the County as much as \$160,000 annually.

RECOMMENDATIONS

1. The Board of Supervisors should appropriate funds for a capital improvement account to replace old and inefficient heating and air-conditioning equipment.
2. The Department of Transportation should prepare a detailed plan for replacing old and inefficient heating and air-conditioning equipment.
3. The Board of Supervisors, through the CAO, should direct the Department of Transportation to take all steps necessary to ensure that personnel within his/her Department set mechanical equipment in County-owned buildings or leased space to provide a maximum of 68 degrees for heating and a minimum of 78 degrees for cooling.
4. The Department of Transportation should educate El Dorado County employees about the costs-savings benefits in complying with BOS Policy A-18, and should encourage County Employees to dress appropriately to be comfortable in these temperature ranges.
5. Each County Department should designate a supervisor as the point of contact for employee complaints of uncomfortable temperatures, so that the supervisor can determine whether BOS Policy A-18 is being complied with, and if not, communicate the problem to appropriate maintenance personnel.

RESPONSES

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

ACKNOWLEDGEMENT

The County Department of Transportation should be recognized for applying for the \$812,423 Energy Efficiency and Conservation Block Grant program which is funded through the American Recovery and Reinvestment Act (Federal stimulus dollars).

Facilities Inspected:

- Boiler Room, Building B, El Dorado County Government Center, Placerville, California
- Control Room, Building 3, 2850 Fairlane Court, Placerville, California
- County-leased facility at 3057 Briw Road, Placerville, California
- El Dorado County Library, Placerville, California

Interviews Conducted:

- Building Maintenance personnel
- Building Operations Supervisor
- Capital Group, Executive
- Citizen complainant
- Deputy Director, Facilities Engineering, DOT

Documents Reviewed:

- California Energy Commission letter dated August 3, 2009, to the El Dorado County Supervisors inviting the County to apply for \$812,423 in federal stimulus dollars (American Recovery and Reinvestment Act money)
- Department of Transportation's Response to Grand Jury Inquiry of November 30, 2009, containing:
 - a. Description of all energy audits that have been performed within the past five years;
 - b. Description of all plans for replacing inefficient heating, ventilation, air conditioning (HV AC) and lighting equipment;
 - c. Description of County Master Plan, Capital Improvement Fund, etc.;
 - d. Reports of power consumption by each El Dorado County facility;
 - e. Report of all funds received from the Federal and State Governments for increasing energy efficiencies;
 - f. Report of all plans for spending federal and state monies for increased energy efficiencies;
 - g. Information on the annual expenses for electricity, propane and natural gas for HV AC and lighting for all facilities under the jurisdiction of the County government.
- El Dorado County Board of Supervisors Agenda Item dated August 11, 2009, approving letter for support for the Lake Tahoe Green Energy District.

FINDINGS

In accordance with the California Penal Code §933 and §933.05, each numbered finding and recommendation will be responded to by the governmental entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court.



EL DORADO COUNTY GRAND JURY 2009-2010

VOTE BY MAIL

Case No. GJ 09-004

REASON FOR REPORT

Upon receiving a citizen's inquiry, the Grand Jury initiated an investigation of the El Dorado County's ballot procedure for elections. The Grand Jury was asked whether El Dorado County could save money and improve voter turnout by implementing a Vote by Mail (VBM) program. This report is the result of the Grand Jury's investigation.

BACKGROUND

Currently, El Dorado County permits individual voters to vote by mail in all elections. However, countywide precinct polling sites must still be staffed, equipped and operated for those voters who prefer to vote in person.

The majority of this County's eligible voters currently vote by mail. In the November 2008 general election, 57 percent of the registered voters chose to vote by mail. Of the registered voters who voted by mail, 88 percent returned their ballot. Only 40 percent of those residents who chose to vote at a precinct actually voted. Therefore, polling places were opened countywide to service only 17.2 percent of registered voters.

The State of Oregon adopted a successful VBM program for local elections in 1981, and in 1998 implemented a statewide VBM requirement for all elections. According to Oregon's Secretary of State, in the November 2008 election, 85.64 percent of the eligible voters voted by mail.

The Sacramento County 2008-2009 Grand Jury recommended adoption of the VBM process for their county and projected a savings of \$1 million per election.

METHODOLOGY

Several members of the El Dorado County Grand Jury visited the El Dorado County Elections Office during the November 3, 2009 local election to observe and review County election procedures.

Interviews were conducted with the Registrar of Voters. Substantial data and information was received and reviewed. The Grand Jury also reviewed materials from the State of Oregon and several counties in Washington State, all of which have actually authorized a VBM program. The Sacramento County 2008-2009 Grand Jury Report, which recommended adopting a VBM program, was also reviewed.

FINDINGS

Voter turnout is substantially higher with those who vote by mail when compared to those who vote at a polling place. Additionally, the cost is substantially lower for those voting by mail than when voting in person.

For example, if there had been a VBM program in place in EI Dorado County for the special election held in February 2008, \$96,863 would have been saved. Most of these savings would have been from polling place operations and salary expense reductions.

Some concerns have been voiced regarding a greater likelihood of fraud with a VBM program than with ballots received at the polling places. The EI Dorado County Registrar of Voters has established major fraud prevention procedures, such as:

- Signatures on all mail-in ballots are now verified; first electronically and if uncertainty exists, those signatures are verified by senior staff. If necessary, staff will call the voter in question.
- Mail ballot procedures currently generate a paper trail for ready review should questions need to be resolved.

In accordance with the California Penal Code §933 and §933.05, each numbered finding and recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court.

The 2009-2010 EI Dorado County Grand Jury has arrived at the following findings:

1. A Vote by Mail program will save EI Dorado County significant amounts of budget funds each year.
2. A Vote by Mail program will likely increase the voter turnout in the county.
3. A Vote by Mail program will not increase the likelihood of voter fraud.

RECOMMENDATIONS

1. That the Board of Supervisors adopt a resolution to have all elections in EI Dorado County conducted by mail-in ballots pursuant to California Election Code §§4000-4108.
2. The Board of Supervisors should adopt a resolution to the State of California Legislature to initiate a Vote by Mail process for all special and general elections in the State of California.

RESPONSES

Response(s) to both Findings and Recommendations in this report are required in accordance with California Penal Code §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the EI Dorado County Superior Court, 1354 Johnson Boulevard, South Lake Tahoe, CA 96150.

COMMENDATION

The 2009-2010 EI Dorado County Grand Jury commends the EI Dorado County Registrar of Voters for his plans to save County budget funds and to take action to secure the accuracy of all ballots cast.



EL DORADO COUNTY GRAND JURY 2009-2010

CITY OF SOUTH LAKE TAHOE CITY COUNCIL

Case No. GJ 09-008

REASON FOR REPORT

A Grand Jury investigation originated from a complaint by a local union official that there had been violations of California State law including the Ralph M. Brown Act, and local City and county ordinances. It was alleged that the violations had been committed by a member or members of the City Council of the City of South Lake Tahoe. The complaint related to the release of confidential personnel information. Specifically, during the hiring process for a new City Attorney, local news media outlets reported that two members of the City Attorney's staff had not passed the California State Bar examination. The information was believed to have come from members of the City Council, and possibly from closed sessions of City Council meetings. As the investigation into the violations progressed, the Grand Jury became aware of additional issues. It was stated that breaches of confidentiality affected the conduct and fiduciary functions of the City Council, compromising its ability to govern.

BACKGROUND

The City of South Lake Tahoe is a "general law" City incorporated in 1965. The City Council of five members acts as the legislative body and elects a Mayor each fiscal year from among its members. Council members who are elected by the citizens of the City of South Lake Tahoe serve a term of four years. The members of the City Council, when their four-year term has expired, may run for re-election. There are no term limits for City Council members. The City Clerk and the City Treasurer are the other elected officers. There is no term limit for these positions. The governance of the City is vested in the City Council, a City Manager (who is hired and appointed by the City Council), a City Clerk, a City Treasurer, and such subordinate officers or employees as are provided for by law, and deemed necessary by the City Council for the proper administration of the municipal government.

METHODOLOGY

The Grand Jury interviewed several officials and staff of the City government. Additionally, members of the media were interviewed and comments from the public were collected. The Grand Jury reviewed documents, watched internet videos of the City Council, and attended various Council meetings.

Interviews conducted:

- Elected City officials
- Appointed City staff
- City employees
- Local media personnel
- A trainer of municipal officers and employees

Documentation reviewed:

- Emails (inside City government and outside sources)
- Handwritten notes from City officials
- Hard copies of online media reports
- Hard copies of public responses published online
- Memoranda authored by various City officers and employees
- Paid warrants and the procedures for the issuance of warrants
- Published media reports (newspapers)
- Sections of City policy and procedures manuals

FINDINGS

In accordance with the California Penal Code §933 and §933.05, each numbered finding and recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court.

The El Dorado County Grand Jury arrived at the following findings:

1. The Grand Jury investigation revealed that many factors have contributed to impaired functioning of the City's government at multiple levels.
 - a. Constant hostility and bickering among members of the City Council and their unprofessional conduct has resulted in a consistent 3/2 split vote creating two "camps" of Council members. The voting often appears to be the result of Council members pursuing personal agendas rather than operating in the best interests of the City. The bickering and nitpicking

between Council members during meetings, combined with hostile comments to media outlets and behind the scenes “back biting” has resulted in the failure to address routine and important business entrusted to the Council by the citizens of the City of South Lake Tahoe.

- b. Council members and senior staff are unwilling or afraid to address and deal with the existing hostile work environment. In a matter that involved an inappropriate written poem (involving sexual comments from one Council member to another), the City Manager and the City Council failed to take action until questioned by the Grand Jury.
2. The City Council, when facing controversial issues or after threat of litigation, routinely drops issues, even if addressing the issue would improve the function of government or service to the public.
 - a. When a City Attorney recommended that the City Finance Director be placed under the direct control of the City Council, rather than the City Manager, the Finance Director expressed strong opposition. This action came after the City Attorney had challenged the Finance Director about the propriety and amounts of an expenditure made by the City. This move for the Finance Director to be placed under City Council control was a suggestion that had been made by a City Council member in prior years. The City Manager, fearing loss of supervisory control of the Finance Director, advised the City Council that the Finance Director would probably file an official complaint against the City Attorney and the City charging them with harassment if the move took place. This statement was viewed by some employees as a threat by the City Manager.
 - b. During a contentious June 30, 2009 City Council meeting it was suggested that the City Manager should resign. Testimony received indicated the City Manager later threatened to file a Workers Compensation claim, hire outside counsel, and sue the City.
 - c. The City Manager used intimidation to retain control over parts of government. The City Manager attempted to keep the Finance Director under his direct control. He informed the City Attorney that he could make the Finance Director’s complaints against the City Attorney “go away” if the City Attorney dropped the suggestion to move the Finance Director under direct control of the City Council as an “at will” employee.
 - d. Based on testimony received by the Grand Jury the public impression is that the City of South Lake Tahoe has a “bush league” City Council, which is incapable of maintaining confidences, operates in an atmosphere of intimidation, and is frequently distracted from important City business by personal feuds. The Council operates at an inconsistent and barely functional level.

3. Some City officials engaged in avoidance and obstruction during the Grand Jury investigation. Despite assurances from the City Council that City officers and employees would cooperate with the Grand Jury in its attempts to analyze City government, actions by senior City officials were engineered in an attempt to keep the Grand Jury from getting the information it requested.
 - a. The Grand Jury submitted a written request to the Mayor asking for introduction of an agenda item to have the City Council waive the attorney-client privilege so that the City Attorneys could be free to give complete answers to all inquiries. The Mayor, through the City Attorney, responded by stating that the request had been improperly addressed to the Mayor and not to the City Council. Therefore, it could not be placed on the City Council agenda. This information was subsequently contradicted by the City Manager advising the Grand Jury that the Mayor can place items for City Council discussion on the agenda. According to other testimony, Council members can only place items on the agenda when at least three out of five members agree. According to the City Manager, both he and the City Attorney can place items on the agenda at their discretion.
 - b. Prior to being interviewed by the Grand Jury, some employees were counseled by the City Attorney on how to testify in a manner that was designed to limit the information that the Grand Jury would receive. City employees who had been subpoenaed to testify before the Grand Jury, were instructed by memo that they should not volunteer any information, and they should not attempt to refresh their memories when asked about specific events or topics. The memorandum and the counseling go beyond normal and acceptable witness preparation for testimony in Grand Jury proceedings.
4. The City's government employs a notable number of married couples and family members among its employees, commission members, and elected officials. Some of the related employees are in positions of significant influence. Although the policy relating to nepotism does not seem to have been violated, the existence of these close relationships has resulted in an atmosphere where many employees are afraid to discuss operational problems in the City. They are concerned that their observations might be viewed as criticism of family members. In testimony received, there is "angst" by City employees who believe, that employees who have spoken about problems within City government have ended up on "layoff lists". This fear is so pervasive that some witnesses requested assurance, when they appeared before the Grand Jury, that members of the Grand Jury were not related to officers and employees of the South Lake Tahoe City government before they testified.

5. City Council members and City officials have varying degrees of understanding and openly disagree with the Brown Act. Although bound by the laws of the State of California to obey the same, some violate them on a regular basis. For example:
 - a. More than one Council member or City staff member erroneously has reported Brown Act violations by City officials.
 - b. One Council member has publicly and frequently expressed disdain for the Brown Act and has often been identified as the source of improper disclosures about confidential matters within City government. This Council member also disclosed information which was discussed in closed session by the City Council.
 - c. Closed sessions are reserved for discussions of confidential and sensitive information. Disclosures of information from closed sessions could have detrimental consequences for the City. When information about this disclosure was obtained by the other members of the City Council, they failed to take the appropriate corrective action by censuring or officially reprimanding the offending City Council member.
 - d. The instructor selected by the City of South Lake Tahoe gave ethics training to Council members with only cursory information about the Brown Act, and appeared to have limited knowledge about the Act.
6. A City Council member filed a complaint with the Grand Jury that the City Manager was operating without authority and not doing his job. The Council member also made these remarks in public. The Grand Jury received testimony and found these accusations without merit and misleading. The City Council hires and supervises the City Manager and apparently was unwilling to conduct its own investigation to address these accusations. Instead, the Council attempted to use the Grand Jury as its tool to correct a situation that was completely within their jurisdiction.
7. Testimony supports that City officers and employees at times operate using accepted historical practices that conflict with official written policy. This has resulted in misunderstandings, contentious City Council meetings, and a public impression that the City's government operates outside the law. These misconceptions could expose the City to lawsuits.
 - a. A member of the City Council requested reimbursement for legal fees paid to an outside law firm. The legal advice consisted of a legal opinion and preparation of a letter to the Fair Political Practices Commission. No contract had been signed and the City Council had not approved the expenditure in advance. The City Manager stated

that he gave verbal approval for the expenditure. California State Law clearly states that government contracts for payment may not be backdated. All unusual expenditures should be approved in open session. The City's Purchasing Policy and Procedure Manual calls for the presence of written contracts when professional services are sought, and makes no provision for payment and reimbursement absent the presence of a contract.

RECOMMENDATIONS

The 2009-2010 El Dorado County Grand Jury makes the following recommendations:

1. The City Council should develop a code of conduct, a code of ethics, practice professionalism, and receive training in conflict resolution. Council members should be able to express concerns about City issues without being exposed to ridicule by their fellow Council members.
2. The City Council must be more assertive in dealing with inappropriate conduct by Council members. This should include securing opinions from the City Attorney, the El Dorado County District Attorney, the California League of Cities, or other appropriate agencies.
3. The City Council should review the current practice that requires three Council members agree before they can put items on meeting agendas. The procedure for placing items on the agenda should be adopted as written policy.
4. City Council members, elected City officers, and senior appointed City officers should receive mandatory training, on a regular basis, in the duties and responsibilities of their positions.
5. The City should review its written policies on nepotism and job relationships between family members and domestic partners. The policies should be changed as necessary to assure that these relationships do not interfere with City operations, and promote an atmosphere of cooperation.
6. City employees, starting with City Council members and senior City officials, should receive mandatory training in ethics, sexual harassment, and confidentiality, with emphasis on the Brown Act. The City should consider training from sources other than those used in the past.
7. City officials must find a way to assure that the City adheres to written policies and procedures, and does not allow itself to "cut corners" by using historically accepted practices that violate written policies. Senior City officials and Council members should receive mandatory annual training on

policies and procedures. Enforcing adherence to this might require establishment of an Ombudsman or Inspector General position.

CONCLUSION

The City Council, in its reports, procedures and by evidence received by the Grand Jury, points to a severely handicapped organization that needs major changes. The 2009-2010 Grand Jury has recommended to the County Supervisor for District V, that the City of South Lake Tahoe needs a “Management and Procedural Review” to be conducted by an independent consultant. The consultant should make their report to the District Attorney for possible legal action. This Grand Jury is of the opinion that an accusation for malfeasance or nonfeasance by this City Council may be appropriate after the study is concluded. The Grand Jury only touched the “tip of the iceberg” in its investigation and recommends that the citizens of South Lake Tahoe get involved with their City government. It is up to the citizens to establish the kind of governance they desire, to exercise their democratic right to vote, and get a City government that works for the common good and in an efficient manner for its citizens.

RESPONSES

Responses to both findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.



EL DORADO COUNTY GRAND JURY 2009-2010

EL DORADO COUNTY JUVENILE HALL

Case No. GJ 09-009

REASON FOR REPORT

California Penal Code §919(a) and §919(b) require that grand juries annually inspect any jail, prison, or juvenile detention facility within their respective counties.

BACKGROUND

The El Dorado County Juvenile Hall, Placerville, was built in 1971. Since original construction, the facility has been expanded and now houses a maximum of 40 male and female juveniles. These juveniles become temporary wards of the court pending adjudication. The El Dorado County Probation Department is responsible for the care of the wards as well as the facility and personnel. The El Dorado County Office of Education is responsible for their education. A good relationship between these two departments is necessary for the success of both programs. The wards' health, safety and education are governed by Welfare and Institution Code, California Code of Regulations and Federal and State educational codes.

Programs are in place to educate and support youthful offenders and their families. These programs include counseling, mental health and vocational training. Providing an education to the wards allows them the opportunity to stay abreast of their school work.

METHODOLOGY

The Grand Jury conducted interviews, analyzed documents, and inspected the facility.

Members of this Grand Jury visited the El Dorado County Juvenile Hall, Placerville, on November 11, 2009.

Interviews conducted:

- Superintendent of Juvenile Hall
- Probation Staff and Department of Education Staff
- Juvenile wards

Documents reviewed:

- California Code of Regulations, Title 15, §1029, Policy and Procedures Manual
- California Code of Regulations, Title 15, § 1280, Facility Sanitation, Safety and Maintenance
- California Code of Regulations, Title 17, §§6000-6075
- California Education Code §49068 and §49403
- California Health and Safety Code, §§120325-120380
- California Welfare and Institutions Code, §§850-873
- El Dorado County Health Service Department facility inspection report (2010)
- Title 42 United States Code 5601 §101, Juvenile Justice Delinquency Prevention Act

Web sites reviewed:

- Department of Education www.edc.ca.gov (February 2010)

FINDINGS

The 2009-2010 El Dorado County Grand Jury has arrived at the following findings:

1. The facility has a new digital video security system. Specific time frames can be downloaded if necessary. This is an upgrade that had been recommended by a previous grand jury.
2. Procedures are in place to handle complaints and are posted in common areas. Complaints are resolved in a timely manner.
3. The Department of Education determines the appropriate level of instruction needed for each ward and prepares individual study plans. All educational materials are contemporary and some are tailored to be used in juvenile correctional facilities. Students who successfully complete a high school education program get a full diploma from a high school that cannot be identified as being part of a detention program. Educational staff are appropriately credentialed and accredited for their positions.
4. Medical facilities are efficient and modern.
5. Wards have access to medical professionals at all times.
6. Food is nutritious and prepared on site.

RECOMMENDATIONS

None

RESPONSES

A response to this report is not required.

COMMENDATION

The 2009-2010 Grand Jury commends the El Dorado County Probation Department and the Office of Education for their outstanding advocacy and rehabilitation programs for at-risk youth and for acting on recommended upgrades to the facility in a timely manner.



EL DORADO COUNTY GRAND JURY 2009-2010

PURCHASE OF THE ANIMAL CONTROL SHELTER PROPERTY

Case No. GJ 09-013

REASON FOR REPORT

The Grand Jury received a citizen complaint concerning the County's purchase in 2006 of a 10-acre parcel for the construction of a County Animal Control Shelter. The complaint raised a number of issues:

1. The Board of Supervisors authorized the purchase of a parcel owned by a friend of one Supervisor;
2. The parcel purchased by the County is 10 acres but only about 7 acres are useable;
3. The purchase agreement required the County to build a road and water lines at a cost of approximately \$1.5 million to reach the landlocked 10-acre parcel;
4. The road and water lines will enhance the surrounding privately-owned parcels, but the County will not be reimbursed for any of the cost;
5. The Board of Supervisors insisted on a concrete tilt-up design; however, this is not the most cost effective construction for this location.

BACKGROUND

For approximately twenty years prior to 2007, El Dorado County contracted with the City of Placerville to use Placerville's animal shelter facilities for the Western Slope. On February 25, 2004, the City of Placerville notified El Dorado County that because of the City's expansion of its wastewater treatment plant, El Dorado County could no longer lease the City of Placerville's animal shelter facilities. According to the City of Placerville's letter, the County would be required to vacate the site by the end of the lease, which expired on March 9, 2007.

The Department of General Services, in conjunction with the Public Health Department, conducted a search for a suitable location for the County to build a new Animal Control Shelter to service the Western Slope. In the interim, El Dorado County entered into a "temporary" agreement with the City of Placerville to house animals at the City's 511 Placerville Drive location. That "temporary" facility became operational in December 2007, and is still being used by the County as of the date of this report.

County personnel presented several alternative locations believed to be suitable for the construction of an animal control shelter, including land already owned by the County at Union Mine. However, on April 28, 2006, the Board of Supervisors approved the purchase of a 10-acre parcel located just east of the intersections of Mother Lode Drive and Pleasant Valley Road, near the town of El Dorado. The purchase price was \$450,000.

In September 2006, the Board of Supervisors approved an agreement with a well-known firm in the Bay Area for architectural services for the Western Slope Animal Shelter in the amount not to exceed \$574,400.

On May 3, 2009, the Board of Supervisors directed that \$6 million for the construction of the Animal Control Shelter be placed in the Capital Improvement Budget. The Board of Supervisors also directed that the facilities be redesigned to cost no more than \$6 million.

The County spent about \$400,000 to design and improve the current "temporary" animal shelter on Placerville Drive, and currently spends about \$145,000 per year to lease the "temporary" animal shelter, pay field and administrative staff, and to care for large animals through an outside private foundation.

El Dorado County has not built the Animal Control Shelter on the 10-acre parcel purchased in 2006, and is now looking at alternative locations, some of which already have structures that could be converted for use as an animal control shelter.

METHODOLOGY

The Grand Jury reviewed the Board of Supervisors Minutes and related documents, and the contract for purchase of the 10-acre parcel, interviewed members of the current and past years' Board of Supervisors, and prior heads of the County Departments involved in the purchase of the parcel and design of the Animal Control Shelter, as well as the citizen complainant.

Physical Inspections:

- Proposed site of the Western Slope Animal Shelter, Pleasant Valley Road," Placerville, California

Interviews Conducted:

- Chief Administrative Officer

- Chief Animal Services Officer
- Chief County Counsel
- Citizen Complainant
- County Counsel Staff Attorney
- Former County Architect
- Former Director of Department of General Services
- Past Members, Board of Supervisors
- Present members, Board of Supervisors

Documents Reviewed:

- Board of Supervisor Minutes and related documents:
 - May 9, 2006, Approving the Purchase and Sale Agreement in the amount of \$450,000 for the purchase of Assessor's Parcel Numbers #331-620-01 and #331-620-02
 - September 26, 2006, approving the agreement with the Architectural firm on the Western Slope Animal Shelter for a total amount not to exceed \$574,400.
 - March 3, 2009, Directing the Staff to maintain the Animal Control Shelter funds in the Capital Improvement Budget; Authorizing staff to revise proposal to assure that the total project costs do not exceed \$6 million.
- Letters from City of Placerville to El Dorado County regarding the termination of El Dorado County's use of Placerville's animal shelter facilities:
 - February 25, 2004
 - February 25, 2004 (#2)
 - August 9, 2004
 - September 15, 2005
- Master Report dated January 2, 2009, General Services, update for the West Slope Animal Services
- Purchase and Sale Agreement made by and between JOYCE SHINN, SCOTT LAWRENCE SHINN, THOMAS EDSON SHINN, and LINDA LOU FINE ("Sellers") and the COUNTY OF EL DORADO, a political subdivision of the State of California ("County" or "Buyer"), dated 5-9-06 (See Exhibit A, attached).

FINDINGS

In accordance with the California Penal Code §933 and §933.05, each numbered finding and recommendation will be responded to by the governmental entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court.

The 2009 - 2010 El Dorado County Grand Jury has arrived at the following findings:

1. The Board of Supervisors approved the purchase of the 10-acre parcel near the town of El Dorado without recognizing that only about 7 1/2 acres of the parcel are usable due to a seasonal creek flowing through the property.
2. The Board of Supervisors approved the purchase of the 10-acre parcel near the town of El Dorado without recognizing that the cost of improving access to the parcel and adjoining parcels as specified in the purchase agreement could be as much as \$1.5 million.
3. The Board of Supervisors approved the purchase of the 10-acre parcel near the town of El Dorado without requiring the Sellers to contribute to the costs of the improvements specified in the purchase agreement. Those improvements will greatly benefit the privately-owned parcels adjacent to the required roadway, which are still owned by the Sellers.
4. The Board of Supervisors approved the purchase of the 10-acre parcel near the town of El Dorado without recognizing that they may have obligated the County to build a road, water lines, and a fence, at an estimated cost of \$1 million to \$1.5 million (according to testimony), even if the County does not build the Animal Control Shelter on the 10-acre parcel.
5. The Board of Supervisors insisted that the Animal Control Shelter be built using "tilt-up" construction although the BOS was advised that "tilt-up" construction was not the most cost effective method, and that the next less expensive option, steel frame, could save as much as \$1 million.
6. The Board of Supervisors' involvement in the land selection, purchase, and the method of construction for the Animal Control Shelter was unusually high.
7. The Board of Supervisors has failed for more than four years to construct or otherwise acquire a permanent Animal Control Shelter for the West Slope even though the County purchased the 10-acre parcel in 2006 for \$450,000, and hired an architect, at a cost not to exceed \$574,400, to design the building (a significant portion of which was spent). An additional \$6 million in the Capital Improvement Budget has been set aside for the Animal Control Shelter.
8. The Board of Supervisors' decisions regarding the selection of the location for the Animal Control Shelter and the method of construction were strongly influenced by one Supervisor. According to authoritative sources with direct knowledge, that Supervisor "drove the bus". Nonetheless, all members of the Board of Supervisors share responsibility for approving the purchase.
9. The Board of Supervisors failed to make diligent inquiries into the usability of the entire 10-acre parcel, failed to ask important questions about the costs of improvements specified in the purchase agreement, and failed to negotiate a fair cost-sharing agreement with the Sellers for the costs of the improvements.

10. The Department of General Services, and the CAO, failed to provide the Board of Supervisors with all pertinent information concerning the costs of the improvements to be made by the County as described in the purchase agreement for the 10-acre parcel.
11. The County Counsel's office, who prepared the purchase agreement for the 10-acre parcel, made a glaring omission by neglecting to insert an "escape clause" that would permit the County to avoid making the specified improvements if the Animal Control Shelter were not actually constructed on the 10-acre parcel. Even if the County received a lower price for the 10-acre parcel because it agreed to build the road and make other improvements, any difference in price did not justify the County being left "holding the bag" or having a costly contractual obligation for the required improvements.

RECOMMENDATIONS

1. The Board of Supervisors should require a detailed, written cost analysis for any contract greater than a set dollar amount that it considers for approval.
2. The Board of Supervisors should give appropriate deference to experts, both in and outside the County, in matters of property acquisition and building construction, and should not ignore those recommendations without compelling reasons.
3. The lead County Department in each case, and the CAO, should provide the Board of Supervisors with all pertinent information, including financial cost, for all aspects of a proposed property acquisition and improvements.
4. County Counsel's office should insist that the County is protected in all contracts for foreseeable changes in circumstances and require appropriate protective language in all County contracts.
5. The Board of Supervisors should exercise due diligence by thoroughly reviewing all contracts, asking questions, and insisting on complete answers before approving action.
6. The 2006 Board of Supervisors, in their eagerness to construct the animal control shelter for the County of El Dorado, overstepped their involvement in the details of the negotiation and construction of the structure. The County had staff expertise in the area of real estate acquisition, negotiation and construction. The Board should have deferred to their expertise and taken an impartial posture. Instead, because of their close involvement in the details, an aura of conflict of interest has been created and serious ethical questions have been raised.

This Grand Jury, in light of the testimony received, raises the question that if the Board of Supervisors had not been so closely involved in the "day-to-day" decision making process, would the property that was purchased have been the final selection? The Board of Supervisors is a policy setting and final decision-making board. Decisions should be made based on the expertise and advice of County staff. By being overly involved in the decision-making process, the Board of Supervisors unduly influenced County professional staff to make recommendations that were more agreeable to the County Supervisors. Hence, the process was made much more complicated and controversial by their involvement and not without political overtones. This Grand Jury recommends review by the Board of Supervisors of their decision-making processes, and of the legal requirements that are in place to forestall these kinds of expensive errors incurred at the expense of County taxpayers.

RESPONSES

Responses to both findings and recommendations in this report are required from the Board of Supervisors, the Chief Administrative Officer, and County Counsel in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.