

# **Santa Cruz County Grand Jury**



**2006-2007**

## **Final Report with Responses**

**Santa Cruz County Grand Jury  
2006-2007 Final Report with Responses**

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## **Introduction to the Santa Cruz County Grand Jury**

### **Two Types of Grand Juries in Santa Cruz County**

As with many California counties, Santa Cruz County has two types of Grand Juries. The regular, or civil, Grand Jury is an investigative body that serves for one year. There are nineteen members on the jury. The civil Grand Jury is not involved with trials but rather serves as a watchdog over local government and other tax-supported entities.

The other Grand Jury is a criminal Grand Jury that deals with issuing indictments (charging a person with a criminal or public offense). This jury is called up as needed on a case-by-case basis.

### **Duties and Powers of the Civil Grand Jury**

The Civil Grand Jury has three primary functions:

- To randomly audit local governmental agencies and officials.
- to publish its investigative findings and recommendations toward improving those governmental operations in the interest of the community being served.
- To investigate citizens' complaints.

The Civil Grand Jury investigates local government agencies and officials to evaluate if they are acting properly. If a Grand Jury determines that they are not, it has various options. The most frequently used option is the presentation of a report outlining the Grand Jury's findings and recommendations in the matter. Such reports are public and sometimes attract media attention. Agencies or elected officials discussed in the report must respond specifically to the report's findings and recommendations according to a specific timeline.

Citizens may file complaints with the Grand Jury to request that it investigate what they perceive as wrongdoing by a public agency, such as a school district or a police department. The Jury decides if a complaint has merit and is not obligated to pursue every complaint. County complaint forms are available from the following address:

Santa Cruz County Grand Jury  
701 Ocean Street, Room 318-I  
Santa Cruz, CA 95060  
(831) 454-2099  
FAX (831) 454-3387  
[grandjury@co.santa-cruz.ca.us](mailto:grandjury@co.santa-cruz.ca.us)  
[www.co.santa-cruz.ca.us/grandjury](http://www.co.santa-cruz.ca.us/grandjury)

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**Grand Jurors  
2006-2007**

Yamindira KanagaSundaram, Foreperson

Margaret Cheney

Carol Felton

Janette George

Hilary Hamm

Carol Hara

Bill Hay

Jonathan Krupp

Armand Langmo

Charlie McFadden

Pat Rex

Eric Rice

Bob Shaw

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2006-2007 Santa Cruz County Grand Jurors, from left: Pat Rex, Hilary Hamm, Carol Hara, Janette George, Jon Krupp, Margaret Cheney, Bill Hay, Charlie McFadden, Eric Rice, Bob Shaw, Armand Langmo, and Yamindira KanagaSundaram. Not pictured: Carol Felton

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# **Santa Cruz County**

## **Grand Jury**

### **Final Report with Responses:**

Section 1

Audit and Finance Committee Reports





## **Window Dressing or Effective Oversight? Citizen Oversight Committee, Measure D Bonds Cabrillo Community College District**

### ***Synopsis***

An investigation was completed to determine if the Cabrillo Community College District had clearly identified and described the projects proposed to the voters and effectively initiated, structured and implemented the Citizen Oversight Committee (COC) required as part of Measure D, a \$118.5 million Bond Fund passed by county voters in March 2004. The investigation reviewed the performance of the oversight committee, including its reports to the public. The investigation did not reveal any misappropriation of funds or any violations of the law or regulations in the creation and operation of the committee. However, it did reveal several areas where the district and the committee could improve oversight and provide greater transparency to the public in the expenditure of the bond funds.

### ***Definitions***

#### **COC**

Citizen Oversight Committee.

#### **Independent Audit**

An audit by a Certified Public Accountant of the financial statement of the District's Measure D Bond Fund and a performance audit to assure that funds have only been expended on voter approved projects.

#### **Measure D Funds**

The \$118.5 million Measure D Bond Funds passed by the County voters in March 2004 to use for construction, rehabilitation and leasing of school facilities.

### ***Background***

#### **Legislation**

Proposition 39, an initiative constitutional amendment and statute, was passed by state voters in November of 2000. It amended the California Constitution and resulted in a revision to the California Education Code. It provided for a 55% vote to pass local bond measures, in lieu of the standard 2/3 vote requirement, if specific accountability requirements were incorporated in the bond measure. These "accountability requirements" (Article XIII A Sec 1 (b) (3) of the California Constitution) for school bond measures are summarized as follows:

- Must require that funds can only be spent for construction, rehabilitation, and/or leasing of facilities including furnishings and equipment.
- Must contain a list of specific school facilities projects to be funded.

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- Must require an independent annual performance audit to ensure that funds have only been spent for the projects listed in the measure.
- Must require an independent annual financial audit until funds have been spent.

In addition, California Education Code Sections 15278-15282 directs that the bond measure require the formation of an independent Citizen Oversight Committee. Its purpose is to inform the public as to the district’s compliance with the above accountability requirements. The scope of its activities is divided into two categories, required and optional, as follows:

Required	Optional
<ol style="list-style-type: none"> <li>1. Ensure that the district conforms to accountability requirements.</li> <li>2. Ensure that the district does not spend these funds on salaries or other operating expenses.</li> </ol>	<ol style="list-style-type: none"> <li>1. Receive and review performance audits.</li> <li>2. Receive and review financial audits.</li> <li>3. Inspect school facilities and grounds.</li> <li>4. Receive and review deferred maintenance proposals.</li> <li>5. Review efforts by the district to implement cost-saving measures</li> </ol>

The Education Code also specifies that the Citizen Oversight Committee shall:

- Consist of a least seven members. Four members shall come from specified interest groups.
- Have members who are not district employees, officials, contractors, vendors or consultants.
- Have members who serve for a term of two to four years without compensation.
- Receive from the district all necessary technical and administrative support to further its purpose.
- Hold meetings open to the public with published meeting minutes.
- Report on its activities to the public at least once per year.

Measure D bonds for the Cabrillo Community College District for \$118.5 million committed the district to incorporate statutory requirements described above to qualify for the 55% voter approval standard.

**Status of Measure D funds**

Design and construction is well under way on a number of projects. Some projects are complete. As of June 30, 2006, \$24.4 million had been expended and a total of \$101. 2 million had been committed. The oversight committee has published two annual reports, and two annual financial and performance audits have been conducted. Enough work has been completed to allow an initial evaluation of the performance of the district and the Citizen Oversight Committee in meeting their obligations under Measure D.

**Voter Pamphlet Information**

The California Constitution requires that a bond measure contain a list of specific school facility projects for accountability purposes. The list contained in the voter pamphlet for Measure D was organized into a paragraph format naming categories of projects, albeit with some specific projects noted. This specific list is not used in subsequent documents as the projects are reported on and tracked. In fact, a new approach to the list is developed for each type of report. The following illustrates the point:

Voter Pamphlet (VP).....	9 categories of projects
Master Plan of November 3 2004 (referenced in VP).....	29 projects/categories
COC 1 <sup>st</sup> Annual Report (2005).....	17 projects/categories
2005 Audit Report.....	8 projects/categories
2006 Audit Report.....	7 projects/categories
COC 2 <sup>nd</sup> Annual Report (2006).....	22 projects/categories
Master Plan, Measure D Project list January 18, 2007.....	70 projects

It’s understood that the format of the project descriptions used for the voter pamphlet may have been drafted for ease of reading; however, this format makes the reporting and accountability to the public problematic. It is not as transparent as it could be.

The reference to the District Facilities Master Plan and the November 3, 2003 amendment is not very helpful either. Even if a voter were to take the trouble to find this document, the amendment still deals largely in categories of projects, not strictly a list of specific projects. The net effect is that the specific project list is more obscure than necessary.

It seems clear from the language of the law that there is to be a certain level of specificity in the project list. It states, “A list of specific school facilities projects to be funded...” shall be included in the proposition as an “accountability requirement” (Article XIII A Sec 1 (b) (3). If the list is specific, clear and well defined, it will be traceable in reports to the public as to when funds are expended and when they are not. Accountability will thereby be maintained. It should start with the master plan and the voter pamphlet and then be carried through to other reports and documents.

It is recognized that the list will change somewhat over time to adjust to unforeseen circumstances. This should be covered by annotations to the list. There is no suggestion that anyone is trying to mislead the public, but the public has a right to understand what they are voting for and what they are getting as the projects progress.

### **Independence of the Citizen Oversight Committee**

The Education Code stipulates that an oversight committee member shall not be an employee, or an official of the district or a vendor, contractor or consultant to the district. In order for the committee to provide objective oversight, this independence is essential. It appears that the district has met the letter of the law. The question remains as to whether this specific legal requirement is all that is necessary to provide credible independent oversight.

There are several practical things that the district could do to enhance the independence and thus the credibility of the oversight committee and the district's standing in the eyes of the public. The normal review functions could include additional items which may result in recommendations to the board for consideration. After a response from the board, the oversight committee would go on record with its acceptance or its objection. Some examples that the committee could undertake are:

- By-laws
- Selection of the independent auditor
- Audit scope and methodology (prior to the audit)
- Final audit report (prior to board acceptance)

### **Citizen Oversight Committee Membership**

The seven-member minimum requirement listed in the Education Code allows for five members from interest groups (a business person, taxpayer, senior citizen, representative from a college support organization and a student) as well as two at-large members not belonging to one of these groups. Since it is likely that some expertise that would benefit the committee in its work would be found in the at-large members, the possibility of increasing the number of members to bring a broader range of expertise should be considered. The argument that more at-large members would dilute the voices of the stipulated interest groups is true. However, that was already contemplated in the law when it stipulated that seven members is a minimum.

There are a number of specific areas of expertise that could be invited in press releases and other solicitations and should be given weight in consideration for COC membership. Some of these areas are as follows:

- Accounting
- Financial Management
- Auditing

- Construction
- Construction Management
- School Administration
- Experience with DSA
- Value Engineering

### **Citizen Oversight Committee By-Laws**

The committee's by-laws were prepared by the district and issued to the committee. The by-laws authorize facility inspections and review functions for: the audit report, deferred maintenance proposals and cost-saving measures when offered by the district. The available meeting minutes do not reflect any review of deferred maintenance and cost saving proposals.

The by-laws do not define the process to deal with concerns or issues raised by the oversight committee itself. They do not authorize a committee role in working with the district to establish priorities when projects are delayed or cancelled, as suggested by the text of Measure D. In fact, the by-laws devote twice as much space to what the committee is not authorized to do than what they are authorized to do.

### **Independent Audit Report**

The performance audit dated June 30, 2005 reported on some categories of projects traceable to the Master Facilities Plan and the November 3, 2003 amendment, but not on a complete specific project list that could be regularly monitored in future reports. It did not list the authorized projects for which no funds have been expended. Such listing may not be required by the law but would enhance transparency and aid the voter in understanding the status of the Measure D projects. This first audit report does not mention the total number of invoices paid with Measure D funds and the number of invoices checked and their total value. Such numbers would give a better insight to the scope of the audit and the basis for accepting the conclusions of the audit. It merely states that they found no non-compliances. Since we do not know the size of the sample and the total number of invoices, the Grand Jury does not have a basis for judging the reliability of the implied conclusion that there have been no misappropriations of funds.

The performance audit dated June 30, 2006 has similar shortcomings. Although the inspected invoices (totaling 25% of expended funds) are listed, the total available invoices for inspection are not listed. Furthermore, the 25% value was not applied to each category of expenditure. All that is certified is that they found no misappropriations in what they looked at. We, therefore, do not have an independent auditor's opinion that there have been no misappropriations of funds.

### **Construction Quality Control and Construction Safety Programs**

The Citizen Oversight Committee appears to have no role in the review of construction quality control and construction safety programs. Although such a role is not required by

law, one might expect that the committee would insist on seeing program documentation to confirm that such programs are in place. Quality control problems could have a serious impact on cost and schedule. The public is reliant on the district to oversee these functions. The district contracts with contractors, the construction manager and inspector of record to assure quality and safety. However, in order to manage these areas and ensure compliance, an agreement on the definition of roles and responsibilities is critical.

The district has not fully implemented or defined an integrated program that captures all construction activities. The design team and the construction contractors play the key role, but the oversight function of the district over the contractors, construction manager and the inspector of record is critical to such projects. Many elements are in place, but there is no single document for each of these two areas that defines the role and responsibilities of all the parties.

## **Findings**

1. The specific project list which defines for the voters what they are voting on is not clear and consistent in the District Master Plan, voter pamphlet, COC Annual Report and the performance audits.

**Response: The Cabrillo Community College Governing Board DISAGREES.**

*Cabrillo College has consistently met all of the reporting and compliance requirements for school bond funds. The purposes of each of the reports, 1) District Facility Master Plan, 2) COC Annual Report and 3) Proposition 39 performance audit differ from the purpose of the voter pamphlet.*

- *The **District Facility Master Plan (FMP)** is a comprehensive document that sets forth a long term vision for the facility needs of the college. It includes projects funded not only by local bond funds, but also funds provided by the state capital outlay program, redevelopment agencies, and local contributions. Twice a year, the FMP is submitted to the Governing Board at a public meeting for approval and to the COC for review. This report provides a detailed summary of projects recently completed, projects under construction, and projects approved for future construction. This semi-annual report also provides recommendations for changes to FMP projects; scope, budget or schedule. In addition, a monthly FMP Project Status Report is submitted to the Governing Board and to members of the COC for their review. This report provides monthly updates on the status of major active FMP projects.*
- *In compliance with Proposition 39, the **voter pamphlet** is a brief summary of portions of the Facility Master Plan which are authorized projects to be funded with Measure D funds.*
- *The **COC Annual Report** contains a summary of the “results of its (COC) activities” for the prior year. (Ed. Code 15280) and a statement regarding whether the District is in compliance with state law in accounting for and expending public bond funds.*

- *The **Proposition 39 Annual Performance Audit** reflects only a description of the projects on which bond money was spent as authorized by Measure D and a conclusion as to whether or not bond funds were used for teacher or administrator salaries.*
2. The district has narrowly interpreted (as reflected by the development and provisions in the by-laws) the requirement for COC independence. It meets the minimum membership requirements specified in the California Education Code.

**Response: The Cabrillo Community College Governing Board DISAGREES.** *COC “independence” means that the committee is not populated with persons who have conflicts of interest with the District, the implementation of Measure D, or the consultants who assist in the execution of Measure D. In all respects the establishment and empowerment of the District COC satisfies all Proposition 39 requirements. The COC satisfies the membership requirements of Education Code 15282, is totally independent, and satisfies Education Code 15278(b) which states: “The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues.”*

3. The district limited the membership to the legally required seven members and did not pursue expanding the number of members to obtain relevant expertise on the oversight committee to provide more effective oversight.

**Response from the Cabrillo Community College Governing Board:** *The Cabrillo Community College Governing Board AGREES that the membership of the COC satisfies the legal requirements, and DISAGREES that the District did not pursue expanding the membership beyond the requirements of the Education Code. Expanding the membership was discussed with the District bond counsel who advised against membership expansion on the grounds it would defeat the legislative intent of Proposition 39 and dilute the voice of members who represent groups often opposed to bond taxes, i.e. taxpayers, seniors, and business persons. The expertise of the members of the COC represents the community's interest in providing effective and knowledgeable oversight of Measure D funds as follows:*

- *General contractor/developer with significant number of construction projects, apartments, homes, school facilities*
- *Local business owners: insurance, food franchise*
- *Previous experience on school oversight committees*
- *Public School Board Member*
- *Local Financial Institution Board Member*
- *Community relations*
- *Representative of very large local employer*
- *Santa Cruz County Assessor*
- *Technical writer, editor*
- *Student Senate leadership and budget management*



4. The Citizen Oversight Committee by-laws were, in effect, imposed on the committee without significant discussion or a vote by the committee members. These by-laws limited the committee's authorized activities (only four listed activities) to less than what was communicated to the voters that is to "work with the Citizen's Oversight Committee on prioritizing ... projects..." per the voter pamphlet.

**Response: The Cabrillo Community College Governing Board DISAGREES.**

*As formulated by the Education Code, the COC is an advisory committee empowered by State law, established by the Cabrillo College Governing Board, overseen by the Governing Board and the COC is without the authority to expand its powers or establish its own bylaws.*

*While the bylaws did not reflect the phrase from the Full Ballot Text that the "District would work with the Citizens' Oversight Committee on prioritizing those project in the event factors beyond the District's control require that projects be reconsidered," such inclusion was not necessary. The District has had a successful, open dialogue with the COC regarding what projects have been selected for funding, and how those projects progress; Student Activities Center, Arts Education Classrooms, Allied Health Classrooms, Watsonville Educational Center Expansion, accessibility projects, and remodeling and renovating existing and vacated classroom, lab and office space. In fact, only one Measure D project has been deferred, the second access bridge across Soquel Drive, and the deferral of the project was discussed with the COC.*

5. The independent performance audit reports by two CPAs did not express an opinion about whether or not there had been any misappropriation of funds.

**Response: The Cabrillo Community College Governing Board PARTIALLY AGREES.**

*Proposition 39 does not provide any guidance as to the content of a performance audit. In the absence of performance audit standards, Cabrillo worked with their auditors prior to the audit to define a process that fulfills the intent of Proposition 39. The critical component is to design a process that compares the amounts spent to the purposes specified in the bond language the voters approved. This type of report requires that the accountant not issue an opinion, either positive or negative. The auditors have reported in the performance audits the following for Cabrillo: "Our review of the expenditures for the period July 1, 2005 through June 30, 2006, did not reveal any items that were paid from the general obligation bond funds that did not comply with the purpose of the Bonds as approved by the registered voters of the District on March 2, 2004."*

*The financial audit reports include a summary of what projects were funded with bond monies and state a conclusion whether bond money was or was not used for teacher or administrative salaries or other school operating expenses.*

6. The district has not defined and published an integrated construction quality control program document and a construction safety program document for the Measure D projects.

**Response: The Cabrillo Community College Governing Board DISAGREES**

*The District has defined quality control and safety program requirements in the contracts with the construction managers, architects, inspectors and contractors.*

*The contractors are contractually responsible for the quality of their work as described in the contract documents, Section 2.3.4.2 (Construction Quality). The construction manager has the authority and responsibility to address defective or deficient construction or workmanship as stated in section 2.3.4.3 of the contract (Rejection of Work). The Inspector of Record also has responsibility for the quality of work on the site as required by Section 9-81130 of the Education Code. In addition the Architect of Record's agreement with the District requires that the Architect shall "advise the District regarding defects and deficiencies observed by the Architect in the work of the contractors."*

*With regards to safety, the contractors are clearly responsible for safety on the job site as defined in section 4.9.1 of their General Conditions which states:*

*The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code 8350 et seq.). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. With regards to safety each Contractor is defined as the "controlling employer" for purposes of the Multi-Employer Worksite Rules of the California Occupational Safety and Health Administration (California Code of Regulations 336.10).*

*The District has implemented more frequent safety inspections as a result of concerns from the Grand Jury. The District has contracted with Safework to conduct inspections on a twice per month basis and to insure that prior safety notices have been remedied.*

7. One inspector of record did not agree that he had responsibility for what was called "quality control" by the construction manager.

**Response from The Cabrillo Community College Governing Board:**

*The Cabrillo Community College Governing Board AGREES that the inspector of record may not have agreed to having responsibility for quality control, but DISAGREES with the inspector of record's opinion. As mentioned in item 6 the inspector of record is responsible for the document completion on the site as is required by Section 81130 of the Education Code as follows:*

*"(a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of, or addition to, any school building, if not exempted under Section*

*81133, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property.”*

*The District is not aware of any other inspector on site (of which there are currently five) who agrees with the opinion of the one cited.*

## **Conclusions**

1. Greater transparency can and should be achieved in tracking projects. In order for the oversight committee, auditors, district staff and the public to track the specific projects throughout the life of the Measure D program, it is necessary for the district to define and maintain a consistent, detailed specific list in all the public documents.
2. The oversight committee would be more credible and effective if it were to function with more independence and a broader scope of authorized activities.
3. The oversight committee could be more effective if it were to have members with expertise covering more of the relevant Measure D program activities.
4. The oversight committee should be given the opportunity to review, discuss, propose and then formally adopt its own by-laws.
5. The performance audits are not adequate to establish, with credibility, that there have been no misappropriations of funds.
6. Some projects have had significant quality control problems. One inspector of record was released from the program by the district in part due to disagreements over the inspector's role in quality control. With regard to construction safety, there have not been major safety incidents to date. In both these areas, however, a more defined and rigorous approach to management is needed.
7. The members of the COC are sincere and civic minded. They deserve our thanks for being willing to serve. Furthermore, the district staff was found to be cooperative and competent in their dealings with the Grand Jury.
8. The oversight of the Measure D Bond projects is more than “window dressing,” but it can be improved.

## **Recommendations**

1. For bond measures, the district should develop a clearly numbered specific facilities project list for the voter pamphlet and use that specific list in future tracking and reporting.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The District Facility Master Plan is a detailed and comprehensive report, expanding on the COC Annual Report. This report is submitted as an action item to the Governing Board and Citizens' Oversight Committee twice a year approving changes in scope, budget and/or scheduling. It tracks all of the Measure D projects to date and includes other projects funded by other sources as well. In addition, the FMP is submitted monthly to the Governing Board and Citizens' Oversight committee for review and discussion on the status of active projects.*

2. For future Citizen Oversight Committee annual reports, the committee should develop a specific facilities project list that translates all of the Measure D project categories to a project list and identifies those projects for which Measure D funds are planned but have not been expended to date.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The Education Code (15280) requires that "the citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year." The activities of the committee, as defined in Education Code 15278(b) are to review expenditures of bond funds, satisfy themselves that such expenditures were made for voter-approved purposes and that no money was applied to teacher or administrative salaries or other school operating expenses and then to inform the public concerning the past expenditures of those funds. The Governing Board and staff tracks all projects for which Measure D funds are planned but have not been expended to date.*

3. The independence of the oversight committee should be strengthened. The committee should be more proactive and take the following steps with the district's concurrence and cooperation:
  - Review, recommend changes to the district, if any and, formally adopt the by-laws, with or without comments.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The recommendations are not consistent with the requirements of the Education Code or are currently permitted by the operation of the committee. As previously stated, the committee's independence is assured by the membership selection requirements of the Education Code and the Ethics Policy Statement relating to the committee. Further, the Education Code contains no provision for an oversight committee to adopt its own bylaws. Currently, the committee has been advised that if the committee has any comments on the existing bylaws approved by the Board that such*

*suggestions may be made to district staff or may be presented to the Board of Trustees in public session.*

*With respect to the selection of independent auditor and the process of preparing and delivering the audit, California Constitution directs that it is a district responsibility, not a committee responsibility. The Committee, as required by law, does receive and review, to whatever extent they determine, the audit. The recommendations offered by the Grand Jury are inconsistent with the current laws allocation of the accountability safeguards in Proposition 39 between the District and the committee.*

- Review and formally comment on the selection of the independent auditor prior to the appointment.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The California Constitution directs that the process of preparing and delivering the audit is the District's responsibility.*

- Review and formally recommend changes to the District, if any, on the audit scope and methodology prior to the audit being conducted.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The California Constitution directs that the process of preparing and delivering the audit is the District's responsibility.*

- Review and comment to the District on the final audit report and formally accept with or without comments.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation has been implemented.*

4. Increase efforts to solicit membership in the Citizen Oversight Committee to a broader audience such as with newspaper advertisements and/or announcements inviting individuals with specific relevant expertise to apply.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation has been implemented. The District currently uses newspaper advertisements, as well as other forms of publicity, to attract applicants to serve on the Committee. The District will continue to seek individuals who satisfy the qualifications of membership as set forth in Education Code and if applicants also possess experience in construction projects, accounting, finance, etc., those applicants will have those experiences recognized in the selection process and, assuming they satisfy the Education Code categories, would be attractive members of the committee.*

5. Revise by-laws to describe the process for resolving issues of concern to the oversight committee.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The bylaws and operating practice currently provide ways through which concerns can be expressed. First, the committee has exclusive control over the agenda of its meetings. If a concern arose, the committee would agendaize the issue and discuss it at its next properly noticed public meeting. If the committee requests the District respond to a concern, the response is provided by the District at this meeting or at a subsequent meeting. If the committee is not satisfied with the answer of the staff, Section 5.8 of the bylaws states that "individual members of the committee retain the right to address the Board [of Trustees] either on behalf of the Committee or as an individual." The Board then has the duty to respond to any concerns expressed.*

6. Revise by-laws to include the committee's role in prioritizing projects for delays or cancellations as described in Measure D.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation has not been implemented, but will be implemented during the spring 2008 semester.*

7. The district should document the roles and responsibilities of the district, the construction manager, the contractors and the inspector of record for construction quality control and safety.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented on existing work due to the fact this is addressed in current contract language. On future projects, District will revise contract language as necessary to provide additional clarification regarding roles.*

8. In the future, the auditor should use a more specific facilities project list.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation has been implemented.*

9. In future audits, the processes and a sufficient number of invoices should be tested to allow the auditor to render an opinion with a high and defined level of confidence that there has been no misappropriation of funds.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation will not be implemented. The performance audit report requires that the accountant not issue an opinion, either positive or negative.*

10. In future audits, the auditor should report on the number of invoices examined and the total invoices processed for the Measure D fund.

**Response from the Cabrillo Community College Governing Board:**

*This recommendation has not been implemented, but will be implemented for the June 2008 audit.*

**Responses Requested**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Cabrillo Community College Governing Board	1 - 7	1 - 10	90 Days October 1, 2007

**References**

**Documents**

- Voter Pamphlet for Santa Cruz County March 2, 2004
- Cabrillo College District Facilities Master Plan November 3, 2003 update
- Cabrillo College District Facilities Master Plan March 7, 2007 update
- Cabrillo College Organizational Chart dated September 2, 2004
- Citizens Oversight Committee Annual Report March 2004 through June 2005
- Citizens Oversight Committee Annual Report March 2005 through June 2006
- COC Meeting Minutes dated August 24, 2004
- COC Meeting Minutes dated December 14, 2004
- COC Meeting Minutes dated March 8, 2005
- COC Meeting Minutes dated June 14, 2005
- COC Meeting Minutes dated July 12, 2005
- COC Meeting Minutes dated August 4, 2005
- COC Meeting Minutes dated Nov 9, 2005
- COC Meeting Minutes dated February 7, 2006
- COC Meeting Minutes dated May 9, 2006
- COC Meeting Minutes dated August 8, 2006
- Measure D Bond Fund Financial and Performance Audit June 2005
- Measure D Bond Fund Financial and Performance Audit June 2006
- District By-Laws for Citizens Oversight Committee — undated
- Stradling/Yocca/Carlson/Routh--Bond Council Agreement of May 1, 2003
- Bogard/Kitchell Agreement for Construction Management Services of January 7, 2004 and amended March 1, 2006
- Bogard/ Kitchel (David Tanza) letter of March 15, 2007 Subject: Quality Control

CA Constitution Article XIII A Section 1 Subdivision (b) Paragraph 3

CA Education Code Section 15278-15282

CA Building Standards Administrative Code, Part 1, Title 24, Sec 4-341 to 343

**Web Sites**

Cabrillo Community College and COC: [www.cabrillo.edu](http://www.cabrillo.edu)

California Constitution text: [www.leginfo.ca.gov/const.html](http://www.leginfo.ca.gov/const.html)

California Education Code: [www.leginfo.ca.gov](http://www.leginfo.ca.gov)

San Joaquin Delta College and COC: [www.bond.deltacollege.edu](http://www.bond.deltacollege.edu)

El Camino College and COC: [www.elcamino.edu](http://www.elcamino.edu)



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## **Property Assessment: What's business property really worth?**

### ***Synopsis***

The Santa Cruz County Grand Jury reviewed the process used by the Santa Cruz County Assessor's Office to establish value and determine the reduced assessment on a business property.

The Grand Jury used information from a previously decided case of a large commercial entity that involved a collection of businesses, parcels and associated improvements. One of the key elements of this case was the use of an assessment methodology known as the "income method" for, at least in part, determining the fair market value of a business property.

The Grand Jury's objective was not to validate or "second guess" the assessor's actual determination of the full cash value in the case reviewed but to understand the process employed in making that determination and to evaluate whether that process would deliver a fair and reasonable property valuation. No attempt was made to review all of the assessor's processes.

### ***Definitions***

#### **Assessment**

An estimate of the "full cash value" of a parcel and improvements for the purpose of determining the property tax.

#### **Capitalization**

Converting regular income over a period of time to an equivalent monetary value.

#### **Comparables**

Like properties, equipment and improvements having known market values that can be used to estimate the value of targeted properties, equipment and improvements.

#### **Consolidated Financial Reports**

A combined financial statement for a corporate entity which includes all of the profit centers in one combined financial statement.

#### **EBITDA**

Earnings Before Interest, Taxes, Depreciation, and Amortization — a measure of business income.

#### **Income Method**

A property assessment methodology used to establish the value of business property in which capitalization of a net income stream is used as one approximation. That is to say, we estimate the capital investment that would be required to produce the net revenue stream. We must assume a reasonable rate of return commensurate with the risk. The

resultant capital investment would include land and improvements. To arrive at a calculated land value, the value of the improvements would be subtracted.

**Parcel**

Basic unit of real property subject to an assessment.

**Proposition 13**

An amendment to the California Constitution passed by the voters in June 1978, governing the taxation of real property. Proposition 13 prescribed an assessment structure for establishing the base full cash value of a property and imposed limits on increases in the assessment above the base.

**Proposition 8**

An amendment to the California Constitution that amended portions of Proposition 13 (see below) passed by the voters in November 1978. Proposition 8 permits property tax payers to request a reassessment of their property when they believe that their property has been reduced in value due to damage or other economic conditions. As Proposition 13 did not provide a mechanism for reducing the assessment, Proposition 8 was passed a short time later to incorporate a reduction mechanism.

***Background***

**Assessor's Office Responsibilities**

Property taxes are based on the assessed value of a property. It is the responsibility of the assessor to establish the full cash value of the property upon which the amount of property tax is calculated. The assessor does not collect taxes nor set the rules for how a property is assessed. In order to meet the responsibilities of the office, the assessor must:

- Locate and identify the ownership of all taxable property in the county.
- Establish a value for each property subject to property taxation.
- List the value of each property on the assessment roll.
- Apply any applicable legal exemptions and exclusions.

**Assessed Valuations**

The assessed value of real property is determined by law which includes the effects of Proposition 13. Proposition 13, passed in June of 1978, requires that the assessed value of real property be set at the 1975-76 full cash value (base year value). Real property is then reappraised only when a change in ownership occurs, or after new construction is completed. Generally, a change in ownership is a sale or transfer of property; new construction is an addition or improvement to a property. Except for these two instances, property assessments can be increased annually by the percentage increase in the consumer price index but by not more than 2%.

However, business personal property (non-land/improvements such as equipment) and certain restricted properties are reappraised annually. The owners of all businesses must file a property statement each year detailing costs of all supplies, equipment and fixtures

at each location. This annual statement is required unless the property qualifies for direct assessment (appraised by assessor). Business inventory is exempt from taxation.

Proposition 8, passed in November of 1978, amended Proposition 13 providing clarifications and a mechanism allowing an assessor to reduce an assessment when a property has been substantially damaged or its value has been reduced by “other factors” such as economic conditions. A reduction to the base-year value under the auspices of Proposition 8 is not permanent. Assessors are required to track every reduction until the base year value is restored.

A number of factors are used in assessing or reassessing the value of business property:

- Market price of comparable land, considered at the most likely highest value usage.
- Construction costs.
- Equipment and improvements costs.
- Business income, commonly EBITDA – earnings before interest, taxes, depreciation, and amortization.

### **Disputed Assessments**

It is the assessor’s responsibility to establish a value for each property subject to property taxation. Property owners who disagree with the assessor’s appraisal can present their case to the assessor and provide evidence supporting a claim for a lower assessment.

In the event that the property owner fails to convince the assessor, the property owner has the right to appeal to the Assessment Appeals Board, a three-person board of citizens appointed by the Santa Cruz County Board of Supervisors.

Finally, property owners who are not satisfied with a determination by the Assessment Appeals Board can take their case to Superior Court.

### **Scope**

The scope of this Grand Jury investigation was limited to a review of the assessor’s process used to reassess a unique commercial property owned by a privately held company. No attempt was made by the Grand Jury to validate or “second guess” the assessed value determined by the assessor.

### **Findings**

1. The case studied involved one company having a large number of parcels and multiple businesses. It was necessary for the assessor, with the property owner’s eventual concurrence, to segregate the parcels and associated improvements and other assets in order to determine which parcels, improvements and other assets were related to the requested assessment reduction.

2. The business associated with the requested assessment reduction in this particular case is relatively unique making the use of “comparables” difficult. The Assessor’s Office, therefore, relied on the Income Method for determining the value of the property.
3. The initial assessment was established using base-year values adjusted per the requirements of Proposition 13 and augmented by annual valuations of equipment. Reductions under the auspices of Proposition 8 were based on multiple factors including the capitalization of the business’ five-year average income stream.
4. A one-year study of the business was conducted by the assessor. Industry experts were consulted to assure the assessor’s understanding of the business and the reasonableness of various valuations.
5. Externally audited consolidated financial reports were used as a starting point for the income analysis. Secondary financial reports, isolating the business associated with the requested assessment reduction from the consolidated financials, were prepared by the property owner.
6. The property owner’s accounting processes, audited consolidated financial reports and breakouts were tested by the assessor’s staff working both at the property owner’s site and in the Assessor’s Office.
7. An agreement stipulating the value of the property in question for tax purposes (Settlement Agreement and Mutual Release) was approved by the Assessment Appeals Board and executed by the property owner and the county.
8. Annual reviews by the assessor of the reduced assessment are being conducted as required.

## **Conclusions**

1. Based only on the case described in this report, the Grand Jury found the assessor’s process for handling the request for a reduced assessment of business property owned by a privately held company to be reasonable, thorough and professionally conducted.
2. A company’s stated income can be suppressed by paying excessive salaries or other benefits to owners, employees or vendors. This can affect the company’s Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), which can then artificially lower its assessment.
3. A higher level of confidence in the financial statements provided by business property owners would be realized by having an external auditing firm review and certify the statements. The certification should apply to that portion of the business which is being used for property evaluation purposes.

4. The current Assessor's Office web site does a reasonably good job of describing the assessor's functions for the majority of the county's properties. However, many citizens are concerned about how the larger county taxpayers are assessed and whether their size and influence leads to preferential treatment.
5. A more effective public outreach could reduce the concerns about possible preferential treatment for some large high profile land parcels.

## **Recommendations**

1. Expand the Assessor's Office web site to include a discussion of how business assessments are conducted. Without disclosing confidential financial information, the methodology used by the Assessor's Office should be explained for different categories of properties so that the appraisal approach is more transparent. This would enhance the public's understanding and perception of the fairness of the assessment process.

**Response: The Assessor PARTIALLY AGREES.**

*The Assessor's web site, under Property Tax Information, has a pamphlet titled "Business Property." It explains what we do, who must file, types of property, etc. Based on your recommendation we have added a direct link to the State Board of Equalization handbook, AH 504 Assessment Of Personal Property And Fixtures for additional reference.*

2. When the income method is used, thoroughly investigate the ownership structure of a business to assure that the Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) is not being reduced through expenses that principally benefit the owners or owner-related parties (e.g., excessive salaries, "consultancies," travel and entertainment, gifts). If such expenses are found to have reduced the income of the business being evaluated, they should be added back into the stated EBITDA.

**Response: The Assessor AGREES.**

*It is and has been our practice to review all expenses when analyzing EBITDA.*

3. When using a business property owner's financial statements to determine the income stream to be used in the assessment of business property, require that those statements be audited and certified by an independent external auditing firm for the applicable portion of the business.

**Response: The Assessor DISAGREES.**

*The Assessor has a staff of State Certified Auditor-Appraisers who are qualified to perform all types of business audits. It would be an undue burden on the small business owners to require certification of their financial records by an independent auditing firm.*

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Assessor		1-3	60 Days September 1, 2007

**Appendix – Sources**

**Documents**

Property owner’s financial reports — audited consolidated financial reports, breakout of financials describing the business associated with requested assessment reduction.

Assessor’s working documents — spreadsheets used in validating property owner’s breakout.

Settlement Agreement and Mutual Release (“Stipulation Agreement”).

Other legal documents — Assessor’s Office.

**Web Sites**

Proposition 8 (1978) — <http://traynor.uchastings.edu/cgi-bin/starfinder/18364/calprop.txt>

Proposition 13 (1978) — [http://www.leginfo.ca.gov/.const/.article\\_13A](http://www.leginfo.ca.gov/.const/.article_13A)

Santa Cruz County Assessor — <http://www.co.santa-cruz.ca.us/asr/index.htm>



# **Santa Cruz County**

## **Grand Jury**

### **Final Report with Responses:**

Section 2

Cities and County Committee Report





## **Electronic Voting A Strategy for Managing the Voting Process**

### **Synopsis**

The Grand Jury investigated Santa Cruz County's response to the requirements of the "Help America Vote Act" and the county's effectiveness in implementing so-called "electronic" or "computerized" voting machines. The investigation revealed that the county's strategy in deploying new voting machines was effective. The overall security, reliability and accuracy of the voting and counting process were found to have met reasonable expectations. In general, the suitability of polling stations and worker training was also found to have been adequate. Public reaction to electronic voting was measured in an exit poll on the day of the November 2006 election. There were areas that could be further improved from the standpoint of efficiency and public confidence and understanding of the process. These areas are identified in this report.

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*"This is the biggest change we've seen in the elections process in the history of the nation."* Bruce McPherson, former California Secretary of State

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### **Background**

"The Help America Vote Act" (HAVA or the Act) was passed by Congress in 2002 to provide assistance with the establishment of minimum election administration standards for federal elections. HAVA provides the states with funds, which in part are to be disseminated to the counties to meet the various provisions of the Act. The Act requires:

- Nationwide implementation of provisional voting.
- Voter ID requirements for new voters in federal elections.
- Replacement of punch card and lever voting machines.
- Voting system accessibility for voters with specific needs.
- A centralized statewide voter registration database in each state and territory.
- Specialized handling of absentee ballot applications for military and overseas voters.
- Each state and territory to define what constitutes a valid vote.

As the result of both federal and state legislation, HAVA and California's Proposition 41 (the Voting Modernization Act), major changes are occurring in the processes by which state and Santa Cruz County voters cast their ballots, as well as in the way votes are tabulated. Regarding the move to electronic voting machines, the former California Secretary of State, Bruce McPherson, said: "This is the biggest change we've seen in the elections process in the history of the nation."

With this change, specialized computers are used directly by voters in casting their ballots and provide for automation of the tabulation of the votes.

Early attempts to use such machines around the country have led to a number of problems — from power outages that made machines unusable, to machines rebooting for unknown reasons mid-day during an election, to difficulties experienced by precinct staff in starting the machines and properly capturing totals.

There are several vendors of voting machines, including: Sequoia Systems (the system used by Santa Cruz County in the November 2006 election), Diebold Machine, and ES&S Machine. To date, there have not been any reports of significant Sequoia failures, but serious concerns have been raised about the reliability of other systems. In North Carolina, it was reported that 16,000 votes were lost (Diebold Machine). Also, there were 18,000 missing votes in Florida, which have not been resolved (ES&S Machine).

Reliability concerns arise both from questions about the workings of the generally privately owned and proprietary software and the vulnerability of the machines to fraud. According to an expert, fraud results from manipulations of the operating software (hacking) or of physical manipulations, such as swapping out memory cards containing the machine software and/or the vote totals. The new California Secretary of State, Debra Bowen, has recently commissioned a study of the matter. She has formed a team of highly technical members. They will be doing a “top to bottom” review of the various voting systems. This study will include:

- Reviewing the source code. It is proposed to maintain the source code at the state level.
- Performing “attack” testing to ensure that the system cannot be hacked.
- Conducting a voting system documentation study.

This will be the first time that Sequoia Voting Systems has been reviewed by the State of California.

Santa Cruz County evaluated several options before selecting Sequoia Systems as the vendor for new voting equipment. Santa Cruz County has been notably cautious in their approach to changing the voting processes, both because of concerns regarding the reliability of the new systems and because of cost issues. Our county has opted to implement the minimum legally required system — which is to have a single touch screen machine in each precinct polling location and to allow voters to choose between paper ballots capable of being optically scanned or the touch screen machine. Although optical scanning had been used in earlier elections, voters began using touch screen machines in the last election (November 2006).

## **Scope**

The Grand Jury has chosen to review the following issues as they relate to the new voting process:

- Adequacy of security in the election process.
- Performance of the voting machines.
- Reliability and accuracy of the vote tallies.
- Adequacy of poll worker training.
- Suitability of polling place physical arrangements.
- Adequacy of election staffing.
- Adequacy of public education of the voting process.
- Suitability of the current strategy to comply with the Help America Vote Act.
- Poll worker and voter opinions of the new process.
  - Poll worker and voter surveys.
  - Grand Jury observations.

## **Definitions**

### **400C Ballot Counter**

Machine that counts the paper absentee ballots.

### **Electronic Voting**

Using computers to capture, record and tally votes.

### **HAVA**

Help American Vote Act — act passed by Congress in 2002 which specifies that all federal elections must meet certain minimum standards.

### **Memory Pack**

A cartridge which plugs into scanner and contains the files unique to that precinct.

### **Memory Stick**

A portable device which stores data.

### **Optical Scanner**

Computer equipment that scans, counts, and accumulates the paper ballots.

### **Paper Trail**

Verification of each voter's choices. The paper trail on the touch screen computer consists of a compilation of the voter's votes that is visible to the voter at the end of the ballot process.

### **Polling Place**

A place where people vote, usually — but not always — voting precincts have their own polling places.

**Poll Worker**

A person who is trained to work in the polling place.

**Proposition 41**

Voting Modernization Act of 2002 — state proposition which authorized the state to sell \$200 million in bonds for updating voting systems.

**Proprietary**

Exclusive; secret; may not be accessed by anyone but the owner.

**Results Cartridge**

A cartridge which plugs into the touch screen machine; it contains the unique form for that precinct and a data field for counting the votes as they are input on the screen by the voter.

**Sequoia Systems**

One of several voting computer system vendors; the vendor chosen by Santa Cruz County and used in the November 2006 election.

**SERVE**

Secure Electronic Registration and Voting Equipment.

**SQL Server**

SQL (Structured Query Language) is the programming language that communicates or interfaces with the database that stores voting data. The server is the main computer on which the database resides.

**Touch Screen**

A computer display which the voter can control by touching the screen.

**Voting Precinct**

One of several districts into which a city or county is divided for voting. Most precincts have their own polling places, but in Santa Cruz County’s November 2006 election, some precincts shared polling places.

**Findings**

**1. Adequacy of Security in the Election Process**

**A. Data Security**

1. The Sequoia Systems (Sequoia) software is privately owned and proprietary. California is requesting that the code be accessible to the state.

**Response from the Elections Officer:**

*Correct. The software has undergone a top-to-bottom review by Secretary of State Debra Bowen, results of which were released on August 3. The Secretary of State withdrew approval of the system then re-approved it subject to meeting 39 conditions.*

2. Sequoia equipment and software goes through extensive testing by Sequoia Systems. This testing is required by the state.

**Response from the Elections Officer:**

*Correct. The system then must be qualified at the federal level and certified at the state level.*

3. The Sequoia Systems' touch screen voting machine uses a voter verified paper trail which is the fundamental protection against software errors in recording the vote, provided there is a good audit procedure following the election.

**Response from the Elections Officer:**

*Correct. The Voter Verified Paper Audit Trail (VVPAT) provides the voters with an opportunity to verify their vote. Each touch screen unit is tested for logic and accuracy by an elections official prior to being deployed to ensure accuracy. In addition, we conducted in November 2006 a 10 percent random manual recount of the machines during the canvass to verify accuracy. The SOS conditions require a 100 percent manual recount of the VVPATs beginning with the February 2008 election. It is uncertain whether this will be the standard for all future elections.*

4. Procedures are in place to protect the integrity of the data on the voting machines' memory packs and results cartridges. These items are external and removable and protected with traceable seals. Any sign of tampering with the seals is reported to the Election Department and investigated. There is a standard reporting form, and written procedures are provided to the poll workers.

**Response from the Elections Officer:**

*Correct. Seals must be physically broken in order to access the Memory Packs and Result Cartridges. The voting units' seals must be verified by other poll workers and any tampering with the seal must be immediately reported to the elections official. All seals have a unique number and are traceable to the unit in which it was installed.*

5. The ballot information file for each precinct was created by the Santa Cruz County Election's Department's Information Systems Analyst and the program coordinators. It was sent electronically to Sequoia, the vendor, where the ballot election files were created. Sequoia also provided the printed paper ballots. There was a unique file created for each precinct. Files were then sent back electronically to the SQL server which resides in the Information Systems Analyst's office for updating and testing. Sequoia provided all testing scripts and assisted in the testing this past election.

**Response from the Elections Officer:**

*Sequoia provided the testing scripts according to the specifications of the Santa Cruz County elections officials. Sequoia did not assist with testing. All testing was done by Santa Cruz County elections staff. Sequoia staff observed testing and assisted with equipment repairs, but did not assist with testing equipment.*

6. Prior to the November 2006 election, the ballot information was reviewed, modified and approved by the county program coordinators and the Information Systems Analyst until it was ready to be sealed. The Information Systems Analyst, via a memory stick, manually extracted the data and loaded it onto a stand-alone laptop system. The cartridges for the voting machines were written from this system. They were sealed and coded. Once sealed, they were ready for distribution to the voting machines.

**Response from the Elections Officer:**

*Correct for the DREs. For the Insight optical scanner, the memory stick was then used to take the ballot information and transfer it to a desktop computer attached to a memory pack reader/writer that put the information into the Insight.*

7. During the last election, some areas for improvement on warehouse check-in and out of equipment were noted. For example, the person checking out equipment was not identified.

**Response from the Elections Officer:**

*The person checking out equipment was identified by name and checked against a list of who was checking out equipment. In most cases, these people were known personally by the people checking out the equipment. In the future, persons picking up voting equipment will be required to show photo identification upon checking out equipment and supplies. The Department is also looking into requiring background checks of persons responsible for picking up equipment.*

*Voting equipment deployment is currently being reviewed and discussed by the Secretary of State. It is uncertain whether we will be able to continue to check out voting equipment to Inspectors prior to Election Day. A SOS-approved method for safe and secure equipment deployment has not been resolved at this time.*

## **B. Warehouse Security**

8. All voting equipment and accessories for Santa Cruz County are stored in a secure warehouse within the city of Santa Cruz. The exception to this is the SQL server, which is used as a network server for the Elections Department, and the 400C (absentee paper ballot counter) which resides in the Information Systems Analyst's secured office. All files are backed up and stored in a storage area offsite at the Elections Department warehouse.

**Response from the Elections Officer:**

*Correct.*

9. The results cartridges for the touch screens and memory packs for the scanners are created on a stand-alone computer at the warehouse. They are then loaded and sealed into the appropriate precinct equipment and stored until ready to be shipped to the polling place. Access to both the warehouse and office are controlled through the use of color-coded security badges.

Four Elections Department supervisors with the widest access to the county's voting machines and voting materials have their own color-coded badge. Temporary employees, who must be escorted and supervised inside the secure area, have a different color badge, as do permanent Elections Department employees, visitors and exhibitors, and voting machine vendors.

**Response from the Elections Officer:**

*In addition, entrance into the secured area where voting equipment is stored and programmed is locked in a separate caged facility within the warehouse and entrance is restricted only to three people who have clearance.*

10. The warehouse has an alarm system, provided by First Alarm. An access card is required in order to enter. The Information Systems Analyst, Department Information Systems Specialist and the Election Officer have the First Alarm access code.

**Response from the Elections Officer:**

*Only the County Clerk, Assistant County Clerk and Department Information Systems Specialist have the access code and magnetic card for access.*

11. A large door is locked from the inside. All equipment is within a caged area of the warehouse with controlled access.

**Response from the Elections Officer:**

*In addition, there is 24-hour camera surveillance of the warehouse facility.*

### **C. Poll Site Security/Physical Equipment**

12. The assigned person at each precinct picks up the voting equipment from the warehouse the day before the election. The cartridges are already in place and sealed. A poll worker takes the equipment home. On election day, they take it to the polling place and set it up.

**Response from the Elections Officer:**

*We have four distribution centers: the Warehouse, Felton Fire, Aptos Library and Watsonville City Hall. In addition, we deliver equipment and supplies to the Inspectors at our Summit precincts on the Thursday before Election Day.*

13. At the close of the polls, two designated persons break the seals on the results cartridge and the memory pack and remove them from the machines. Cartridges and seals are put in a sealable orange bag. The printer is removed from the touch screen machine for transport. The orange bag and printer are prepared by an inspector and a designated person. These items are taken to the election department, where the bags are checked, verified, and stored in the Information Systems Analyst office until ready to tally. The person who checked out the equipment and brought it to the polling site is also responsible for taking it back to the county building. All voting equipment is eventually returned to the warehouse for storage.



**Response from the Elections Officer:**

*There are three return centers: The County Government Center, Watsonville City Hall and Felton Fire Station. We are looking into adding more in the future.*

14. After the November 2006 election, the above process was reviewed by election staff. It was found that there were delays in equipment check-in.

**Response from the Elections Officer:**

*In the future, the number of return centers will increase in an effort to decrease the time it takes for poll workers to return equipment and supplies.*

15. The issue of fire protection of the polling places was not addressed when the polling places were chosen. Since most poll sites are in public buildings, it was assumed that the fire protection available at the poll site location would be relied on.

**Response from the Elections Officer:**

*Correct.*

## **2. Performance of the Voting Machines**

17. Sequoia Systems is a state-approved vendor for the new voting equipment. They were chosen by Santa Cruz County to provide the voting equipment.

**Response from the Elections Officer:**

*The system is federally-qualified and state-certified. On August 3, 2007, the SOS re-certified the system subject to conditions.*

18. The touch screen voting machine has a printer which records the votes. It has 300 feet of paper inside the machine. During the last election, the paper often jammed.

**Response from the Elections Officer:**

*There were a dozen paper jams on 140 units deployed. Personnel have since been trained to identify and correct most of the paper jamming problems.*

19. During the November 2006 election, two or three scanners failed and at least 12 printers jammed. When the failed scanners were tested, it was determined that they probably had been damaged in transport.

**Response from the Elections Officer:**

*Two scanners were replaced at the beginning of the day due to malfunctions. Processes were in place for replacement equipment to be rapidly deployed. There was no delay in voting. Other scanner problems occurred, but they were operator error and were resolved via phone conversations with trained staff.*

20. The 400C Ballot Counter Machine reads the ballots very quickly. However, the catch basket, which is located outside the machine, is not large enough to hold all of the ballots. As a result, ballots can get bent or be ejected onto the floor.

**Response from the Elections Officer:**

*One person operates the 400C while two people collect ballots. This system ensures the least amount of stress on the ballots, so they are easily stored in ballot storage containers. We had 2 ballots fall on the floor and they were retrieved.*

**3. Reliability and Accuracy of the Vote Tallies**

21. The results cartridge plugs into touch screen equipment. It contains a database for capturing the votes as they are input by the voter. This cartridge cannot be removed without breaking a seal.

**Response from the Elections Officer:**

*Correct.*

22. The memory pack plugs into the optical scanner. It also uses a database for capturing the votes as they are input when the ballot is scanned. The memory pack cannot be removed without breaking a seal.

**Response from the Elections Officer:**

*Correct.*

23. Firmware (software imbedded in the machine) operates the machines. The Secretary of State demands the firmware be at a specific level (version). It cannot be changed after 60 days prior to election. A test is run to ensure the firmware level (version) is correct.

**Response from the Elections Officer:**

*Correct.*

24. To ensure the reliability and accuracy of the equipment, logic and accuracy testing is conducted by the vendor and county personnel. Some experts believe that this testing is insufficient for validating the accuracy and reliability of the vote. They argue that it consists only of verifying whether the equipment is working. It does not evaluate the equipment's security.

**Response from the Elections Officer:**

*Logic and Accuracy tests are done by elections staff and a Logic and Accuracy board made up of people from our community. The vendor is not involved in this test. The test uses ballots, either paper or electronic, where the vote totals are known. The tests are run to ensure that the machines are counting correctly. An observation panel is invited to watch these tests. It is not a security test. Security is achieved through the processes and procedures we have in place as well as meeting the conditions required by the Secretary of State. Equipment security improvements are also being implemented by the vendor. Sequoia currently has voting system upgrades going through the federal qualification process that address identified security concerns.*

25. After they are finished voting, voters who use the touch screen equipment can verify the accuracy of their votes by looking at a compilation of their votes that is displayed in a window on the machine.

**Response from the Elections Officer:**

*It is displayed on a Voter Verified Paper Audit Trail that is under a window attached to the machine.*

26. Following a written procedure, the designated poll worker and one other poll worker break the outer seal and assist the first voter to verify prior to his or her vote that the “total votes” displayed is zero. Both the poll worker and the voter sign an official document verifying that the vote count is zero.

**Response from the Elections Officer:**

*The zero vote report is verified in writing by the first voter on the touch screen and the first voter who uses a paper ballot that is scanned into the scanner.*

27. On 10 percent of machines, a random sample with full paper recount is taken to check that the machines are tallying correctly.

**Response from the Elections Officer:**

*Correct. SOS conditions require a 100 percent manual recount.*

28. After the November 2006 election, Capitola initiated a manual recount. Each precinct was reconciled separately. With approximately 3000 votes to count, it came out to within one vote of the machine count. The final election results did not change.

**Response from the Elections Officer:**

*There was a recount requested for the Capitola City Council contest as well as the Watsonville City Council, District 5 contest. In both cases, a voter marked a vote on a paper ballot outside of the voting target area so the vote could not be read and tallied by the ballot counters. In both cases, this one ballot did not affect the outcome of the contests.*

29. During the November 2006 election, a number of absentee ballots had to be redone due to the types of pens used. Some voters used pens that bled through the paper and could not be read by the scanner.

**Response from the Elections Officer:**

*Better instruction will be provided to voters in the future. Voters are instructed to use a blue or black ink pen. Pencil also works. But when voters use a Sharpie or felt-tip pen, the mark bled through the back-side of the ballot and resulted in unintended votes on contests printed on the back side. A better stock of paper could also help this situation, but could increase postage due to weight. Ballots that had to be remade to reflect voter intent were done so in accordance with the law.*

30. Provisional ballots were being used for voters who had come to the wrong polling place. Some provisional ballots had to be redone because they were folded the wrong way.

**Response from the Elections Officer:**

*There are fold marks on the paper ballots. In the future, poll workers will be trained on how to fold the ballot correctly. Ballots that had to be remade to reflect voter intent were done so in accordance with the law.*

#### **4. Adequacy of Poll Worker Training**

31. An organized training plan with documentation was provided for the poll workers and inspectors. One person at each polling site was trained and certified to use the machines. There were “rovers” who traveled between polling sites to check on machines and supplies.

**Response from the Elections Officer:**

*In most cases, there were two people assigned to each polling place who were trained on the machines. In addition, there were two other people one Technical Rover and one Roving Inspector who were assigned a few sites to visit frequently during the day. In one case, one person served in both roles of the Technical Rover and Roving Inspector. The Technical Rover had additional training on how to troubleshoot problems with voting equipment at the polls. The Roving Inspector was trained on overall polling site operations and access issues. In addition, there were Runners at the elections headquarters who were trained to be dispatched where needed.*

32. Before the November 2006 election, county staff did a lot of on-the-job training while concurrently preparing for the election because the equipment arrived late.

**Response from the Elections Officer:**

*Correct. We work under very tight deadlines that cannot be extended.*

33. The training documentation from the vendor had to be completely redone because it had to be customized to the design of the Santa Cruz County election model.

**Response from the Elections Officer:**

*Correct.*

34. In the future, the Elections Department plans to create a professional DVD to supplement poll worker training.

**Response from the Elections Officer:**

*Correct. It is currently in process.*

35. Poll workers have documentation binders which have flip charts and checklists. Also, they are trained how to deal with the press and observers.

**Response from the Elections Officer:**

*Correct.*

36. Poll workers indicated they wanted more “hands-on training” with the machines in addition to having more poll workers trained on the equipment. These machines are sophisticated computer equipment, and if something goes wrong, many poll workers don’t know what to do. (See Poll Worker Survey in the Appendix for more information.)

**Response from the Elections Officer:**

*The Department offered an open lab from 8 a.m. to 5 p.m. Monday – Friday during the weeks prior to the Election with extra hours available in the evening and on the weekend upon request. Election workers were encouraged to take advantage of this extra hands-on training. Many did. In the future, we plan to move this lab to another location and better communicate to our election workers its availability.*

**5. Suitability of Polling Place Physical Arrangements**

37. The physical arrangement of the polling places was similar to past elections. This consistency contributed to a stable atmosphere.

**Response from the Elections Officer:**

*Correct.*

38. The touch screen machine was positioned with the back of the machine to the wall. This placement meant that the voter’s selections could be seen by others standing nearby.

**Response from the Elections Officer:**

*We wanted to protect the back side of the machine which needs to be manual activated to pull up a ballot. The machines do not lend themselves to be turned around easily. A solution to this issue is being discussed with staff and the vendor.*

39. The county was proactive in making the touch screen machine wheel chair accessible by re-engineering the support legs. In addition, they custom designed carrying bags for the scanner.

**Response from the Elections Officer:**

*Correct.*

40. Santa Cruz County was sued by the State Attorney General for not following Americans with Disabilities Act (ADA) regulations for polling sites. The parties agreed to settle the lawsuit without finding that the county had violated the ADA regulations.

**Response from the Elections Officer:**

*Correct.*

41. Some polling places that were shared by more than one precinct also shared touch screen machines. This arrangement caused some confusion because voters had to identify which precinct they were voting in as the first step in the voting process, and many did not know.

**Response from the Elections Officer:**

*Our plan is to purchase additional touchscreens and scanners to allow us to assign one of each to each voting precinct. This plan is on hold pending final clarification from the SOS on the conditional certification of the voting equipment and renewal of the Help America Vote Act contract to allow these costs to be covered by the federal funds. It is very possible the additional equipment will not be received in time for February 2008, but we anticipate having them in time for June 2008.*

**6. Adequacy of Election Department staffing**

42. In the start-up process for the new voting system, the Department Information Systems Specialist, Elections Officer, Assistant County Clerk and the Information Systems Analyst were trained first, and then they were able to provide training for others. Sometimes training occurred simultaneously with the installation of the new equipment.

**Response from the Elections Officer:**

*Correct.*

43. The staffing for the poll places was conducted in the same manner as in previous elections. Polling place staff is typically temporary help from the community. The polling place supervisors are relied upon to pick up the equipment at the warehouse the day before the election, keep it at their houses overnight and take it to their polling places in the morning for set up.

**Response from the Elections Officer:**

*We had additional staff at the polls and had the addition of the Technical Rovers. We also rely heavily on county workers to serve in the polls. For the 2008 election cycle, the Board has agreed not to hold board meetings thereby freeing up additional county workers who can serve in the polls.*

**7. Adequacy of Public Education of the Voting Process**

44. In an effort to educate the public, the Elections Department distributed thousands of voter pamphlets to the public via U.S. mail. The department personnel also gave speeches and distributed educational material at local public schools, bookstores, the Capitola Mall, and the county fair. Media promotion included television and public radio interviews and press releases.

**Response from the Elections Officer:**

*In addition, a flyer introducing the new voting system was mailed to every registered voter. County Sample Ballots are also mailed to every registered voter in addition to being available on our website at [www.votescount.com](http://www.votescount.com)*

45. Despite the education campaign, some voters were confused as to how to mark their ballots. For example, some voters who used the paper ballots did not understand how to connect the arrows to the candidate or issue they were voting on.

**Response from the Elections Officer:**

*We found voters were better able to follow this new voting method than when we switched from a punch card voting system to a marking system. Even with the previous Mark-A-Vote ballot, voters often circled choices or made some other mark to make their selections. We continue to try to improve ways to educate voters on how to mark their ballots.*

46. In general, voters who used the touch screen machine seemed unaware of the importance of verifying their votes by comparing them with the compilation of their ballot that was visible through a window on the machine.

**Response from the Elections Officer:**

*It's hard to say what voters find important. Some voters mark a paper ballot so quickly they fail to vote the back side. I believe all voting takes time, care and consideration and choices whether made electronically or on paper require double checking to ensure the voter marked his/her choices as intended. Certainly checking the paper record on a touch screen unit to confirm the electronic record provides reassurance that the vote was recorded accurately, if the voter wants that reassurance. Poll workers will be asked to remind touch screen voters to verify their votes on the VVPAT.*

**8. Suitability of the Current Strategy to Comply with HAVA**

47. County election officials determined that there would be one touch screen at each polling place. The new scanner would be the main voting machine. They reported that this choice proved to be a good decision. Not only did it provide the necessary accommodations for voters with disabilities, but it also ensured the reliability of the voting process. Having a mixture of technologies ensured that votes could be cast in the event of equipment failures. For example, if the touch screen printer jammed, except for those who are sight impaired, voters had an option to use a paper ballot.
48. A recent news release announced that Florida will shift its voting system to a system of casting paper ballots counted by scanning machines. Several counties around the country will be moving to adopt the touch screen system with the paper trail.

**9. Poll Worker and Voter Opinions of the New Process**

**A. Poll Worker and Voter Surveys**

49. On election day, the Grand Jury conducted a two-part poll worker survey and collected 104 surveys for analysis. The first part of the survey covered the poll worker training (see #4 above — Adequacy of Poll Worker Training), and the second part was a critique of the election day process. While most were extremely positive as to the work of the Elections Department, they made substantive recommendations for continued improvement of the elections process including the use and placement of the equipment. [See Appendix for full results of the survey.]

One hundred and four poll workers out of a total of 917 in Santa Cruz County were surveyed. They were asked to rate aspects of the voting experience from 1 to 5, with five being the best rating possible. The results were as follows:

- Training materials: 4.3
  - Overall preparation: 4.0
  - Adequacy of election day staffing: 4.5
  - Ease of equipment set up: 4.3
  - Workers indicated they wanted more training on the machines and “hands on” practice.
50. The Grand Jury also conducted exit surveys with 320 voters throughout the county. (The total votes cast was recorded as 50,189 in 170 polling places.) The results of the survey are as follows:
- Only about 19 percent of the sample chose to use the touch screen machines.
  - One hundred percent of those who chose to use the touch screen felt comfortable using it.
  - Ten percent of those who chose to use the paper ballot with optical scanner felt uncomfortable using it.

## **B. Grand Jury Observations**

51. Members of the Grand Jury made general observations while conducting the exit voter and poll worker’ surveys at the November 2006 election. They witnessed the failure of some equipment and agreed with many of the solutions suggested by the poll workers. [See Appendix for more information about the survey.]
52. During the November 2006 election, it was observed that most poll workers gave paper ballots to the voters and did not indicate that the touch screen method was available.
53. It was also observed that not all voters were offered a receipt for voting when they used the touch screen machine.

## **Conclusions**

1. It is a matter of national priority to have a transparent electronic process and accurate election results.
2. The County Elections Department has done a good job of securing the voting data. It has provided traceable seals, “stand-alone” cartridge creation and storage, extensive testing, detailed procedures and complete systems backup.



3. The touch screen voting machine adopted by the county uses a voter-verified paper trail which provides verifiable voting results and a method for testing. This system, combined with a good audit procedure, ensures voting accuracy.
4. For the November 2006 election, Sequoia Systems not only supplied the test cases, but also assisted in the testing. There was no independently controlled testing in addition to what the vendor provided.
5. The Elections Department warehouse — where the cartridges are prepared and stored until ready for shipment to the polling place — is sufficiently secure. Besides being badge access controlled, it is protected by the First Alarm Security System.
6. Proper procedures are in place to ensure the security of the data.
7. All types of equipment had problems. Printers jammed, and two or three scanners failed. Proactive planning by the Elections Department helped mitigate these problems.
8. The 400C Ballot Counter had problems that need to be corrected in the future. Although it counted the votes quickly, some ballots were damaged when they were ejected from the machine.
9. The Elections Department was proactive in creating written procedures for all aspects of the election process and identifying areas of improvement after the election. Poll workers were supplied with good procedures to do their jobs.
10. The touch screen set up provided adequate wheel chair access. The Elections Department was proactive in re-engineering the machine support legs to accommodate a wheel chair. However, the placement of the touch screen computers in some polling places contributed to the lack of voter privacy, Also, some co-located precincts shared a touch screen, which confused some voters when they were asked to identify their precinct.
11. The fact that Santa Cruz County is not flat in several locations and uses many older buildings as polling sites led to a lawsuit against the county alleging the county's failure to comply with accessibility regulations. The parties agreed to settle the lawsuit without finding that the county had violated the Americans with Disabilities Act requirements.
12. Because several staffers had to be both trainers and trainees, the Elections Department was stretched very thin in training for the new voting system. Due to this shortage of staff and time crunches, some poll workers were not completely prepared. Even though the poll workers were trained to advise voters that the touch screen was available for their use, most workers presented the paper ballot as the only option.
13. Voter awareness and understanding of the new voting process could have been better. Even though voters were informed about the new process, many lacked a good understanding of how it differed from the previous process,

and some were confused about the new ballots. Many understood that the touch screen was new but did not realize that their paper ballot was being scanned, which was a new process.

14. Although there was some confusion over the new process, most voters felt comfortable using the new equipment.
15. Although this change in the voting system complied with the “Help America Vote Act,” using the new technology did, in fact, take longer, cost the county more and required more staff and testing.
16. The strategy to put just one touch screen at each polling place proved to be a good one. It satisfied the requirements for voter accessibility while providing more current technology for voters. The mixture of technology also provided backup. If the printer or other equipment had a problem, voters had another way to cast their votes.

### **Recommendations**

1. The Elections Department should continue to make security improvements, thereby ensuring the integrity of the data.

**Response from the Elections Officer:**

*Yes. We are continually making security improvements and developing plans to comply with the requirements of the SOS.*

2. Because this was the first year using the new electronic voting system, the Elections Department relied heavily upon the vendor for testing and support. In the future, the Election Department needs to create and conduct its own testing program.

**Response from the Elections Officer:**

*The department did its own testing with the assistance of a Logic and Accuracy Board. The vendor was not involved with testing. The vendor did help make repairs, but staff have now been trained to make all repairs.*

3. The use of the verifiable paper trail on the touch screen voting machine has proven successful. Public awareness of this method of verification should be stressed in the future.

**Response from the Elections Officer:**

*Verification and careful voting on all systems is imperative and will continue to be stressed.*

4. The poll workers should continue to follow procedures established for ensuring the security of the data, which include traceable seals on the memory packs and results cartridges and procedures for handling the seals. If a seal is found broken on a machine, that machine should not be used. In addition, all machines which have a broken seal at the end of the day, should undergo a full manual count.

**Response: The Elections Officer AGREES.**

*This is also included in the SOS conditions for use of the equipment.*

5. The Elections Department should work with the vendor to solve the various problems that arose with the ballot counter damaging ballots.

**Response from the Elections Officer:**

*User group meetings with the vendor are held regularly and always have been to solve various problems that come up at all elections.*

6. The Elections Department should set up procedures for auditing the absentee ballots.

**Response from the Elections Officer:**

*State law requires this and it will be done.*

7. Because comprehensive poll worker training proved difficult to provide with a limited staff and it is important to have most poll workers trained on the machines, staffing should be increased so that the management is not stretched too far by overseeing the election process while also training other staff and temporary employees.

**Response from the Board of Supervisors:**

*This recommendation has been implemented. One new Program Coordinator was added to the Elections Department in the 2006-07 budget. In addition, the training process was complicated last year due to the new system and the short planning/preparation time available due to the state process. The department will also be utilizing training videos to enhance training of poll workers.*

**Response from the Elections Officer:**

*The Elections Department has a new position added to our 2007/08 budget that will focus on polling places and voting equipment. The training videos will also provide a great resource to enhance our training.*

8. In future elections, the touch screen machines should be set up to provide more privacy for the voter. The side panels should also be larger for privacy in voting.

**Response from the Elections Officer:**

*We continue to work with the vendor on this.*

9. Each precinct should have its own touch screen in the future to avoid voter confusion.

**Response from the Elections Officer:**

*This will be accomplished following the SOS review and approval of the extended HAVA contracts, but it may not occur in time for the February 2008 Presidential Primary.*

10. Because the “ledger” size of the paper ballots was too large to fit comfortably in the old polling booths, the size of the paper should be adjusted to solve this problem.

**Response from the Elections Officer:**

*It was an extra long ballot. Ballots in the primary will not be so long. It also saved us from moving to a two-card ballot that can cause problems when voters lose one card or only notice one card.*

11. Because of the common practice of storing the equipment at the polling place supervisor's house overnight, these supervisors should be identified as far in advance as possible to allow for additional training on security procedures and the vulnerability of the equipment.

**Response from the Elections Officer:**

*That is always our plan to recruit our inspectors early on and train them. However, cancellations always occur and we have to fill the position and provide last-minute training when needed. We are looking into a tamper-proof bag for the voting units and development of a security plan that will be given SOS approval so we can continue this method of equipment deployment. In the meantime, we are looking into other ways to ensure practical and secure voting equipment deployment.*

12. The Elections Department should plan to strengthen its “advertising” campaign for future elections. It should focus on educating the voters to verify the paper trail when using the touch screen equipment.

**Response from the Elections Officer:**

*Verifying correctly voted electronic and paper ballots will be stressed.*

13. The Elections Department should review the appendix to this report and take appropriate action based on poll worker and public responses.

**Response: The Elections Officer AGREES.**

14. Since a number of poll workers dropped out the night before and morning of election day, requiring substitutes that were not trained, a pool of trained alternate poll workers should be available on election day to substitute in case of poll worker absenteeism.

**Response from the Elections Officer:**

*We always have about a dozen people who are trained report to our office at 6 a.m. on Election Day to be deployed as needed. Election Code Section 12313 does allow the following: If any member of a precinct board does not appear at the opening of the polls on the morning of an election, those voters present, including members of the board, shall appoint a voter to fill the vacancy. If none of the members appointed appears at that time, the voters of the precinct present at that time may appoint a board.*

## **Commendations**

1. The Elections Department has provided a secure warehouse to protect the equipment and store the data. They have done an excellent job with physical security.

2. Since all types of the new voting equipment had operational problems, the Elections Department should be commended for using a mixed equipment approach that allowed for backup in case a machine had problems. Except for the visually impaired, this approach mitigated most problems.
3. The Elections Department did an excellent job of ensuring that the votes were tallied correctly. Procedures were put in place to ensure a starting count of zero, traceable seals, verifiable paper trail and a 10 percent manual count.
4. The Election Department provided all workers with good procedures to do their jobs. Written procedures will ensure the smooth operations of future elections.
5. The Elections Department should be commended for being proactive in making the environment available for the voters with disabilities.
6. The Elections Department deserves a major commendation on its strategy of putting just one touch screen at each polling place.

**Responses Required**

<i>Entity</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within</i>
Santa Cruz County Board of Supervisors		7	60 Days September 1, 2007
Elections Officer	1 - 46	1-14	90 Days October 1, 2007

**Sources**

**Interviewed:**

- County Clerk and Election Department staff
- Department Information Systems Specialist
- Information Systems Analyst
- Assistant County Clerk
- Electronic Voting Expert

**Reviewed:**

- Board Minutes
- County Reports.

- Newspaper Articles

**Web Sites:**

- Santa Cruz County Elections Department. This has a great deal of information about the plan for the last November election and links to info on the products to be used. There is also information about the bidding and selection process. (<http://votescount.com/>).
- Online flash demo of use of a touch screen voting machine. <http://sequoiavote.com/demo.php?lang=vv>
- Brochure of the new optical scan system. <http://www.sequoiavote.com/docs/insight.pdf>
- Link to the Sequoia Brochure describing the touch screen machines. <http://sequoiavote.com/docs/AVCEdge.pdf>
- A national website devoted to the controversy. [www.blackboxvoting.org](http://www.blackboxvoting.org)
- A 38 page report from an Secretary of State funded study. <http://accurate-voting.org/2006/02/19/security-analysis-of-the-accubasic-interpreter.pdf>
- A panel appeared on the News Hour with Jim Lehrer, discussing this issue. This is a transcript of that telecast. [http://www.pbs.org/newshour/bb/politics/jan-june06/voting\\_06-15.html](http://www.pbs.org/newshour/bb/politics/jan-june06/voting_06-15.html)
- An executive summary of the “Secure Electronic Registration and Voting Experiment” (SERVE) A few lines down is a link to click to the author’s bios. <http://servesecurityreport.org/>
- The official site of the California Secretary of State: <http://www.ss.ca.gov/>

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## **Electronic Voting A Strategy for Managing the Voting Process Appendix**

### ***Voter & Poll Worker Surveys – Procedure***

As part of the inquiry into the electronic voting, the Grand Jury was interested in the voter response to the changes, poll worker training, and observing Election Day procedures.

Two informal survey forms were developed to gather voter and poll worker response.

Grand Jury members signed up to observe at the polling places of their choice and at the time they desired to participate.

Attending a poll worker training was an option offered to the jury members. Some but not all jury members elected to attend the training.

Each participating jury member was given a packet of materials at the full panel meeting. This packet included the following:

- Blank Voter Survey Forms in English and Spanish
- Blank Poll Worker Survey Forms
- An ID Badge from the County Elections Department
- A letter of introduction from the Registrar of Voters
- Poll observation instructions from the Registrar of Voters
- Clipboards and pencils

Voters could either fill out the survey on their own or give their answers to the jury member who recorded their responses.

Poll workers were given the opportunity to fill out the surveys on the spot or when they had time during the day, with a jury member coming back to collect them.

At the end of Election Day, each participating jury member returned their materials to a box in the jury room along with their observations at various precincts. The results were tallied and all responses recorded. The following is the compilation results of the voter and poll worker surveys. Due to the volume of written comments, a sampling of the comments is included here.

A total of 320 voter surveys were collected and tallied.

A total of 104 poll workers surveys were collected and tallied.



## Voters Survey and Talled Responses

**Total: 320**

1. Did you vote using the touch screen or the optical scanner, and why?

- Touch Screen:**..... 57
- Optical Scanner:**..... 245
- Absentee:**.....17
- Audio system:**.....1

Why?	<u>Touch Screen</u>	<u>Optical</u>	<u>Absentee</u>	<u>Audio</u>
<input type="radio"/> <b>Available:</b> .....	16	82	1	0
<input type="radio"/> <b>Ease of Use:</b> .....	14	53	3	0
<input type="radio"/> <b>Trustworthy:</b> .....	3	55	0	0
<input type="radio"/> <b>Other:</b> .....	22	40	0	0

A) If you used the touch screen, how did you check your vote?

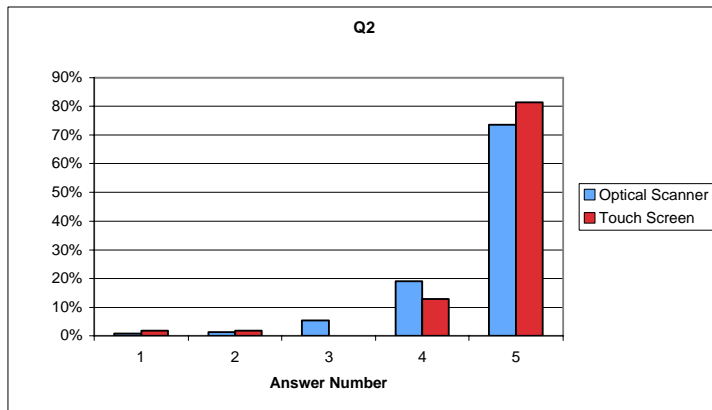
- Touch Screen:**..... 10
- Voter Verified Paper Trail:**.. 12
- Both:**..... 28
- Neither:**..... 2

B) If you used the optical scanner, did it accept your ballot easily?

- Yes:**..... 207
- No:**..... 7

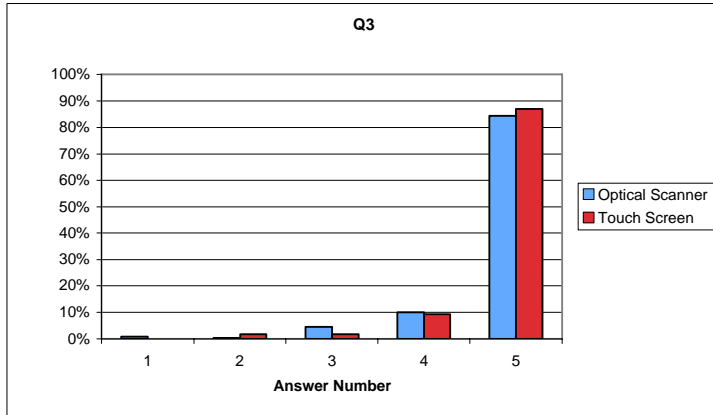
Please answer the following questions on a scale of 1 to 5.

2. Were the instructions for voting clear and easy to understand?



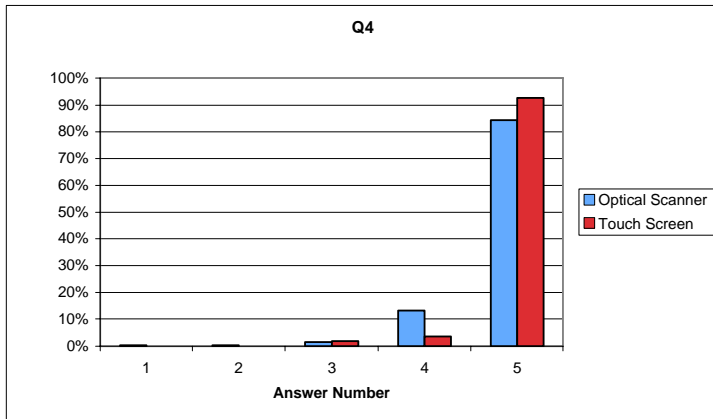
	1	2	3	4	5	N/A
<b>Touch Screen</b>	1	1	0	7	44	1
<b>Optical Scanner</b>	2	3	13	46	177	
<b>Absentee/Audio</b>			1		9	

3. How easy was it to cast your vote?



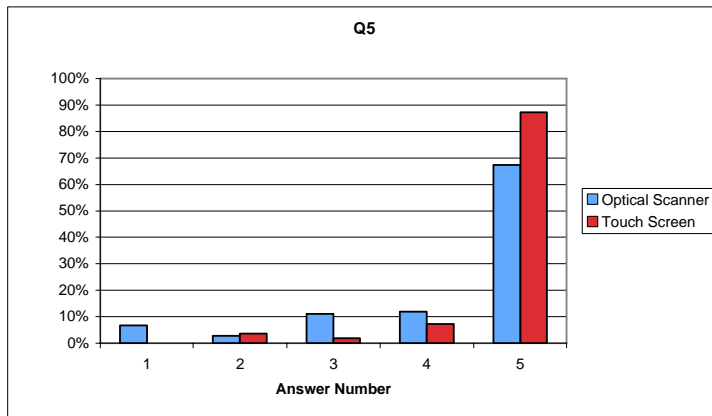
<b>Touch Screen</b>	<b>1</b> 0	<b>2</b> 1	<b>3</b> 1	<b>4</b> 5	<b>5</b> 47	
	Difficult-----Easy					
<b>Optical Scanner</b>	<b>1</b> 2	<b>2</b> 1	<b>3</b> 11	<b>4</b> 24	<b>5</b> 205	
	Difficult-----Easy					
<b>Absentee/Audio</b>				<b>4</b> 1	<b>5</b> 7	<b>N/A</b> ---- 1

4. Were the poll workers helpful?



<b>Touch Screen</b>	<b>1</b> 0	<b>2</b> 0	<b>3</b> 1	<b>4</b> 2	<b>5</b> 50	<b>N/A</b> ---- 1
	Not Helpful-----Helpful					
<b>Optical Scanner</b>	<b>1</b> 1	<b>2</b> 1	<b>3</b> 4	<b>4</b> 33	<b>5</b> 212	
	Not Helpful-----Helpful					
<b>Absentee/Audio</b>					<b>5</b> 8	<b>N/A</b> ---- 1

5. Do you feel comfortable with the new voting methods?



<b>Touch Screen</b>	<b>1</b> 0	<b>2</b> 2	<b>3</b> 1	<b>4</b> 4	<b>5</b> 48	
	Uncomfortable-----				Comfortable	
<b>Optical Scanner</b>	<b>1</b> 17	<b>2</b> 7	<b>3</b> 28	<b>4</b> 30	<b>5</b> 170	
	Uncomfortable-----				Comfortable	
<b>Absentee</b>			<b>3</b> 1		<b>5</b> 5	<b>N/A</b> ---- 2
<b>Audio</b>					<b>5</b> 1	

**Absentee Voter Comments:**

- Voters surveyed said they chose to vote absentee because of the convenience it affords and out of a lack of trust of voting machines. Two respondents said taking time during the day to vote did not fit in with their work hours, and three reported that they appreciated the additional time they could take filling out the ballot. Respondents also pointed to voting machine software being “too easy to hack into,” news reports of tampering with voting machine software and concern that their vote “might not count” as reasons for voting absentee.

**Voter Comments on Touch Screen:**

- Asked whether they used the touch screen or optical scanner, and why, voters responded that they chose the touch screen out of curiosity, a desire to “try the latest technology,” and to generate less paper waste.
- Regarding whether the machines were easy to use, voters responded that “the instructions weren’t clear and the system wasn’t very well thought-out,” and that they could envision “the elderly having a lot of problems with the touch screen system.” Some voters thought that the system was “not particularly user friendly,” while others responded that “it was as easy as pie to use.”

A comment was received that “poll workers should be better screened as to their ability to perform needed tasks.” However, another voter admitted that they had not read instructions in using the touch screen.

Voters were also asked about reviewing their ballot after they had voted. “The only problem was in reviewing my ballot. I made a mistake – how to make a correction was not intuitive,” said one respondent. “You had to actually touch the button of the candidate you mistakenly voted for to “undo” your vote. And then vote for the correct candidate,” another responded.

- General comments regarding the touch screen voting machine included enthusiasm for the new technology in comments such as “it was fun to be the first,” “it went pretty fast,” and “there were too few machines so we had to wait in line. But the machines were great!” Wariness of the new system was also clearly evident through comments such as “needed pencil eraser to actually ‘touch’ screen,” “unclear what to do with a mistake,” “change of vote not easy or clear,” “did not get a receipt; did I really vote?” and “I am a computer/electronics engineer, and do not trust the new electronic system. The ability will always exist with them to tamper with the results and not leave a trace.”  
 “Great new technology!”/ “Great system and location. Easy parking!<sup>[e2]</sup> Thank you.”/  
 “I am slow catching on - curious – good idea – I could really check corrected / mistake”

### ***Voter Comments on Optical Scanner:***

- Asked whether they had used the touch screen or optical scanner, and why, voters said they did not know there was a choice, that they had been “directed” to the optical scanner, or that they had been handed a paper ballot. Others said they had tried the touch screen, but had trouble working with it and given up, that a touch screen was not available at the precinct at the time they voted, that they felt there was less opportunity for failure than with the touch screen, and that they felt it was a faster way of voting than the touch screen. Other voters responded that they felt the optical scanner was more “trustworthy” than the touch screen and that “one mistake (on the touch screen) spoils the ballot” and it then has to be entirely redone. Many respondents offered positive comments regarding the optical scanners, including “great—easy and quick,” “liked the paper,” “I feel good that my vote will count,” “very convenient and easy,” and “so much better than in the past.”
- Asked about poll worker assistance with the optical scanners, voters surveyed were highly complimentary of the poll workers. One said it “would have been helpful for poll workers to advise/warn that paper method writing has changed from bubble to fill in arrow,” while another suggested vests or arm bands to distinguish poll workers from voters in some of the larger precinct voting stations.
- Asked specifically about their impressions of the optical scanner ballot and equipment, voters noted confusion over the supposed need for a “special pen” to record votes when a regular ball point pen seemed to work fine,” and uncertainty involving where and how to draw an arrow on the screen to register a vote for a particular person or issue compared with the previous method of punching a hole on the ballot. Other concerns involved the ballot being “too big” “bulky,” or “cumbersome,” a need for more voting booths and booths to be bigger, and a desire that the Election Day ballot more closely mirror the appearance of the Sample Ballot sent out before the election so that voters are familiar with it. One voter expressed concern that the system can be intimidating to people who are not naturally assertive.
- Voters were surveyed about the paper trail created by using an optical scanner ballot. Several voters expressed a strong preference for a paper trail, again citing concern over the possibility for

fraud. One voter expressed acceptance of the current system, responding that problems are “yet to be seen,” but much more frequently voters expressed distrust in the use of computers in voting, citing the possibility that voting data can be “manipulated,” or that computer voter fraud could contribute to a “bloodless coup.” Some voter comments included: “our system has lost control to possible fraud;” “I’m against computers, unless the (there) is a clear paper trail to back up the results;” “I like the paper trail in case of recount;” “don’t trust the touch screen!” and “electronic voting is problematic and requires a paper trail ... to protect American democracy.” However, the paper trail generated by the optical scanner did not satisfy all voters. One voter responded that “I get my stub to prove I voted, but no printout of what I voted for. I am suspicious of any electronic machine counting my vote!”

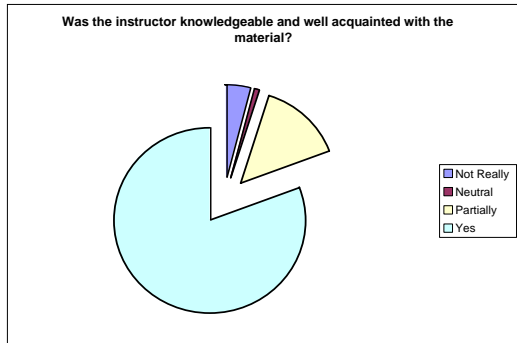
**Poll workers Survey (Part – 1)**

Declined ---- 1

**Total: 104**

**Training**

1. Was the instructor knowledgeable and well acquainted with the material?



1 0                      2 4                      3 1                      4 14                      5 80                      N/A -----1

**Unknowledgeable-----Knowledgeable**

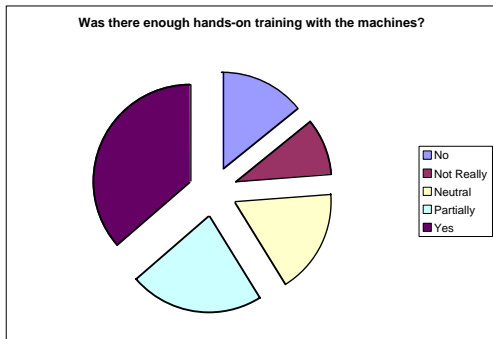
2. Were the training materials well prepared and easy to understand?



1 2                      2 2                      3 9                      4 31                      5 51                      N/A -----1

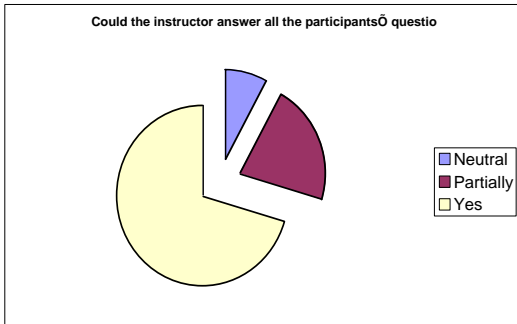
**Difficult-----Easy**

3. Was there enough hands-on training with the machines?



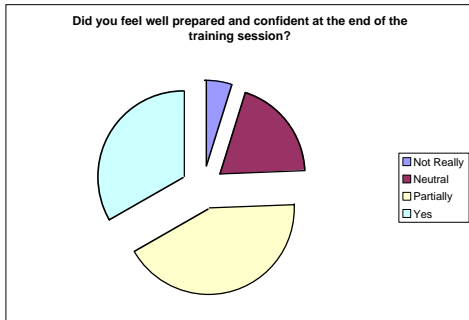
1 12                      2 8                      3 15                      4 19                      5 31                      **No training --1**  
**N/A ----- 6**

4. Could the instructor answer all the participants' questions?



1 0                      2 0                      3 8                      4 21                      5 69  
 None-----All                      N/A -----1

5. Did you feel well prepared and confident at the end of the training session?



1 0                      2 5                      3 19                      4 42                      5 33  
 Unprepared-----Prepared

**Poll Worker Training Comments:**

- Poll workers reported positive experiences. They included: “It was unsettling when you first beginning but (the Elections Department was) able to answer all questions I had;” and “our inspector made the training and the voting poll experience a great one.” Santa Cruz County Clerk Gail Pellerin and her training staff were complimented by poll workers.
- Some poll workers reported that they had not taken a training class provided by the Elections Department and had not undergone training in how to use the new touch screen voting system. Some who had not undergone training, however, reported that they felt they were able to perform their job capably either with training on Election Day or with assistance from other more experienced poll workers at their precinct.

Comments by poll workers who experienced problems or had recommendations included: “Disorganized training materials. The presenters were not experienced with presenting the information even though they were clearly the experts in the election material;” “not enough training on the process – too much on machines with no context.” A recurring response by poll workers suggested more hands-on training with the voting computers used on Election Day is needed. One poll worker responded, “I felt well prepared by training and the handouts – the ‘special circumstances’ material was very, very helpful! My recommendation is that when there is more

than one precinct at a polling site, that an ‘inspector general’ would help alleviate confusion ... in (interpreting) the guidelines and directions.”

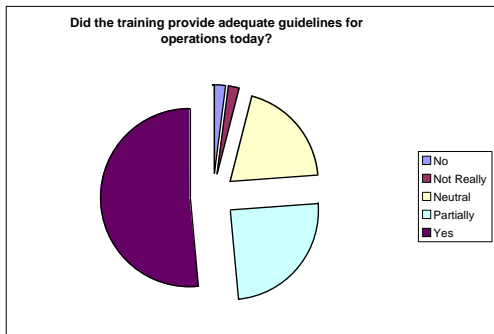
- Two poll workers echoed voters in responding that “ballots are too big for booth,” while another observed, “the sample ballot used was too simple—needs to be more real.”

**Poll workers Survey (Part 2)**

**Same 104 surveys continued.**

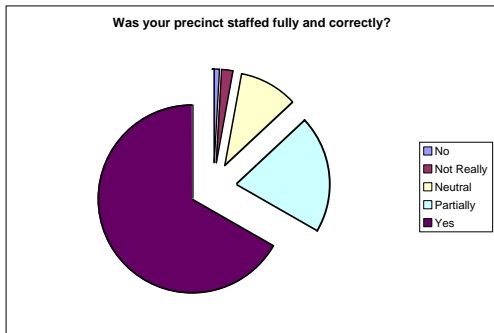
**Election day**

6. Did the training provide adequate guidelines for operations today?



1 2 2 3 18 4 23 5 48 N/A ----- 1  
**Inadequate-----Adequate**

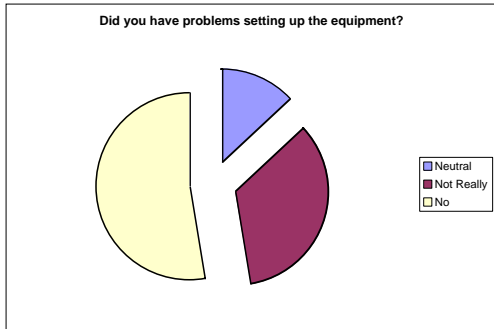
7. Was your precinct staffed fully and correctly?



1 1 2 2 3 10 4 20 5 66  
**Understaffed-----Well staffed**



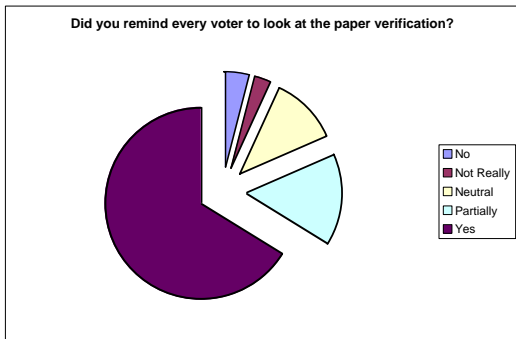
8. Did you have problems setting up the equipment?



1 0      2 0      3 12      4 31      5 48  
**Difficult**-----**Easy**

N/A ----- 2

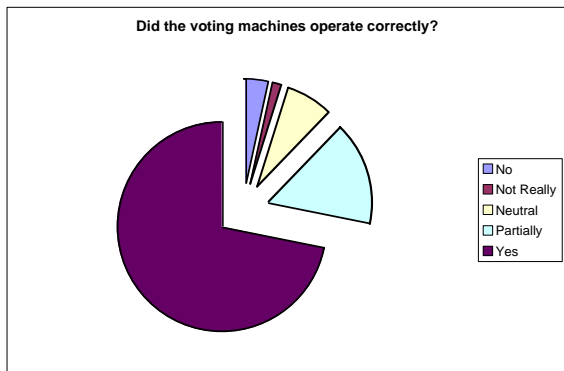
9. Did you remind every voter to look at the paper verification?



1 3      2 2      3 8      4 11      5 47  
**None**-----**All**

N/A ----- 7

10. Did the voting machines operate correctly? If not, please describe the problems.



1 3      2 1      3 6      4 13      5 58  
**Incorrect**-----**Correct**

N/A ----- 5



“sometimes timely, sometimes not;” “machine tech was called about problem, arrived in about 10 minutes—will bring new machine.”

**Observations/Suggestions:**

- Some general observations and suggestions offered by poll workers included: “Paper ballots are **very** difficult to remove with voter stub. Takes extra time to tear off properly. Need a sign on scanner that says BALLOT BOX;” “precinct number on voter pamphlet should be in much larger print;” “need more touch screens! Too many people had to wait!” and “I am amazed and impressed by the thoroughness of the checks to make sure the election is not tampered with by anyone. Kudos to Santa Cruz Election Dept.”

***Election Day Observations by Grand Jury Members Observing at the Polls***

- A number of precincts were combined to make better use of handicapped access. In one instance three precincts were combined because of facility handicapped access. In attempting to follow the mandates of the law, other voters were displaced from their usual voting places and expressed concern and frustration when they had to leave to find their “new” polling place. The county moved precincts around and voters were observed being confused and sent to other sites. Touch screen machines were shared by three precincts at one voting location. Only the operator enters the precinct number into the machine, which can create confusion.
- A number of voters told poll workers that they did not get their absentee ballots. One precinct had so many absentee ballots they had to band them with rubber bands. Absentee ballots are not secured; they can’t fit in the envelope provided by the Elections Department.
- An inspector was sitting next to the voting machine which limited privacy for those voting with the electronic voting machine. People who came up to talk to the poll worker stood behind the voter and were not directed away from the voting area by the poll worker.
- The time required to cast a vote seemed about the same for both electronic and paper.
- Most people used the paper ballot at the U.C. Santa Cruz polling station. Some did so and commented they were using it because they did not trust the touch screen. As is typical at campus precincts, many of the voters who came to the UCSC polling station did not understand or know they had to go to their registered polling place. Many had registered at a different location and forgot where they were supposed to go. It happens all the time. A phone number was offered for them to call and find out their polling place. One student thought the county should provide a phone for voters to use to make the call to find their polling place.
- This was a long ballot and took some time for voters to complete. There was one touch screen and at times the wait for the unit was 20 minutes or more. Most voters opted for paper if they thought the wait for the touch screen was too long. Not many actually wanted to use the touch screen, but a few who thought about it went to paper when the wait was too long.



# **Santa Cruz County**

## **Grand Jury**

### **Final Report with Responses:**

Section 3

Criminal Justice Committee Reports



## **Santa Cruz County Jails Review**

### ***Background***

There are seven detention facilities that comprise the jail system in Santa Cruz County. Six are operated by the Santa Cruz County; the seventh, Camp 45, is operated by the state:

1. Main Jail
2. Rountree Medium
3. Rountree Minimum
4. Juvenile Hall
5. Blaine Street
6. Court Holding
7. Camp 45

The Main Jail, Rountree facilities, Blaine Street and the Court Holding cells are operated by the Santa Cruz County Sheriff. Juvenile Hall is operated by the Probation Department. The budget for each of these facilities is under the control of the county Board of Supervisors. Camp 45 is operated by the California Department of Corrections, and its budget is under the control of the State of California.

### ***Scope***

The Grand Jury is mandated by California Penal Code § 919(b) to inspect and report on the conditions and management of the jail facilities within the county. To satisfy this mandate, the Criminal Justice Committee and other members of the Grand Jury: (1) inspected the Main Jail, Rountree facilities, Blaine Street, and Juvenile Hall; (2) spoke with management, staff, and inmates at each facility; (3) reviewed previous Grand Jury reports, paying particular attention to prior recommendations; and (4) reviewed California Department of Corrections and Rehabilitation inspection reports for each facility.

### ***Main Jail***

The Santa Cruz Main Jail is located at 259 Water Street, across the street from the County Courthouse. Three visits were made. The first visit was during the afternoon and early evening on September 29, 2006, the second visit in the afternoon on Sept. 30, 2006, and the third visit in the evening on Feb. 2, 2007.

## **Main Jail Findings**

1. In 2006, the average daily number of inmates housed in the Main Jail was 340. On September 29 and 30, 2006, the total inmate population was 317. Approximately 10 percent of these inmates were female. On Feb. 2, 2007, the population was 321. Although there are a maximum of 424 beds available, the Main Jail's rated capacity is 311. This capacity is set by the California Corrections Standards Authority, which inspects the jail every two years.
2. The Sheriff's 2007 report on overcrowding, presented to the County Board of Supervisors in February 2007, reported that, "Although jail bookings decreased by only 1 percent, the average monthly population at the Main Jail is down 10 percent compared to 2005. The average monthly Main Jail population in 2005 was 386 in comparison to 346 in 2006."

**Response: The Santa Cruz County Sheriff's Office AGREES.**

3. In April 2007, the Governor and California State Legislature approved a prison reform measure aimed at easing overcrowding at state prisons. The measure includes \$1.2 billion in funding to increase the number of beds at county jails statewide by 13,000, with a requirement that counties receiving state funds match 25 percent of the state's contribution. Counties that assist the state in providing re-entry facilities and mental health programs for state prison parolees will receive preference from the state for the local jail funding.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

4. The jail population consists of both male and female inmates who have cases pending, have been sentenced, or who are awaiting sentencing. Approximately 75 percent of inmates housed in the jail are repeat offenders. On Sept. 30, 2006, 80 percent were not yet sentenced.
5. The jail population is segregated, with members of competing gangs housed in separate units, each with their own recreation room and exercise yard. Inmates with psychological problems, sex offenders and those who are violent are also segregated from the rest of the Main Jail population. Meals are served separately to eliminate contact. Jail inmates come into contact with inmates from other wings only during travel to court appearances.
6. At least one bilingual officer is on duty during every shift. Corrections officers said the Sheriff's Office neither actively encourages nor discourages officers to learn Spanish, a prevalent language of inmates at the jail.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*Although English is spoken by 90% plus of the inmate population, the Sheriff's Office continues to prioritize hiring of bilingual staff.*

7. The Sheriff's Office spent \$99,000 in 2006 on remodeling and mildew removal in one of the shower facilities at the Main Jail.
8. Arrestees who are drunk at the time of their arrest are put in the jail's drunk tank for a minimum of five hours. The Sheriff's Office collects information on "serial

- inebriates,” those arrested at least four times within a 30-day period on suspicion of being drunk in public. The Santa Cruz County District Attorney’s office uses the information as part of the implementation of Proposition 36, the statewide measure passed in 2000 that allows first- and second-time nonviolent, simple drug possession offenders the opportunity to receive substance abuse treatment instead of incarceration.
9. Everyone who is admitted to the jail for 14 days or longer is examined by a doctor. The jail also offers limited dentistry (including pulling teeth, but not fillings or more extensive dental work). Testing of inmates for tuberculosis is now mandatory.
  10. There are two nurses on duty overnight, more during days.
  11. The entire corrections staff was retrained in the use of stun guns in fall 2006 following the death of an inmate in custody who had been subdued by a stun gun. Stun guns were reintroduced back into the jail in October 2006.
  12. Medical records during the September visits were found stored out in the open in a hallway, possibly in violation of Health Insurance Portability and Accountability Act privacy requirements. The records were stored properly in a storage room during the February visit.
  13. In November 2006, the Sheriff’s Office initiated regular one-hour Sunday tours of the Main Jail that are open to the public. Approximately 250 people had toured the Main Jail as of May 2007.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

14. Corrections officers work 12-hour shifts with no overlap of shifts.

**Response from the County:**

*The Sheriff determines the shifts of staff. Twelve hour shifts are provided for the Memorandum of Understanding between the County and the Sheriff's staff.*

15. As of March 13, 2007, 12 corrections officer positions at the jails were unfilled.
16. On busy nights, particularly Fridays and Saturdays, the jail cannot accept and process persons arrested as fast as they are brought to the jail. As a result, police cars from all the county’s law enforcement jurisdictions often queue up outside the jail, with police personnel forced to wait, sometimes more than an hour, for their turn. During this time, the officers are off the streets rather than patrolling.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*At times, especially during large events, a transportation officer will be designated by some police agencies to take other officer's arrestees to jail, allowing them to continue handling calls.*

17. The Main Jail is scheduled to install a new fingerprinting system that will enable officers to scan a prisoner’s thumb print as soon as they drive into the intake port. This system will begin the process of identifying the prisoner, saving the officer time later into the intake process. The same fingerprinting system will also be used to scan prisoners before they are released from jail, providing positive identification and reducing the chance that an inmate will be released erroneously.



**Response: The Santa Cruz County Sheriff's Office AGREES.**

18. The county's only booking facility is in the Main Jail. Police working in the south part of the county must transport persons who are arrested to the Main Jail in Santa Cruz for booking.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

19. Creation of a new "prisoner classification system," recommended by the National Institute of Corrections, is due to be completed this spring or summer. One of the expected benefits of the new system will be a more comprehensive analysis of new prisoners, possibly resulting in an increase in the number of inmates qualifying for rehabilitation programs rather than incarceration in the Main Jail. Also, as recommended by the National Institute of Corrections, a "Jail Population Control Officer" has been appointed temporarily to monitor jail overcrowding until the new classification system is completed, at which time a "classification team" of corrections officers will take over the task.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*The new classification system has been completed and implemented.*

20. Medical services at the Main Jail, as well as at the other corrections facilities in the county, are provided by the Santa Cruz County Health Services Agency.
21. In the majority of counties in California, medical services are contracted out by the county's Sheriff's Department to private companies. In most of the remaining counties, the Sheriff's Department is responsible for providing medical care for inmates. The model used in Santa Cruz County with the county's Health Services Agency responsible for providing medical care for inmates is unusual, though not unique.
22. The California Code of Regulations establishes requirements for medical care in county jails. Title 15, Minimum Standards for Local Detention Facilities, Article 11, Medical/Mental Health Services, Sec. 1200, establishes that the Sheriff's Office is ultimately responsible for the provision of health care within the jails. It states, "Responsibility for Health Care Services: (a) In Type I, II, III, and IV facilities, the facility administrator shall have the responsibility to ensure provision of emergency and basic health care services to all inmates."

**Response: The County AGREES with this finding.**

**Response: The Santa Cruz County Sheriff's Office AGREES.**

23. Detention Medical Services is a small portion of the Santa Cruz County Health Services Agency's responsibilities and budget. The overall budget for the Health Services Agency is \$135 million; the total budget for Detention Medical Services is \$3 million. Of the 20 Health Services Agency's Detention Medical Services positions, two-thirds are nurses. Four and a half positions in Detention Medical Services were vacant as of March 2007.

24. The Health Services Agency is working toward computerization of all reports and paperwork, but computerization of jail reports for the handling of medications and tracking medical reports has been delayed.
25. Nursing staff turnover at the jail has been high, partly attributable to the higher salaries nurses can earn both locally at private health institutions in the county, including the hospital, and in jails in other counties. There have been suggestions that the Detention Medical Services department, because it comprises only a fraction of the entire Health Services Agency's mission, is not being given the attention or resources necessary to operate efficiently, and that Detention Medical Services is losing trained, experienced personnel, resulting in lost productivity and expertise and higher training costs. Salaries for detention medical services personnel are currently under review to determine their competitiveness with other similar positions. County administrators and labor representatives for nurses initiated negotiations for a new contract in spring, 2007.

**Response from the County:**

*The County AGREES with findings related to nursing staff turnover and anticipated salary review. The County DISAGREES with the portion of the finding that indicates that Detention Medical Services has not been given the attention or resources necessary to operate efficiently.*

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*Many of the County jail medical staff are leaving for state prison jobs because of a court order dramatically increasing state medical salaries.*

26. The Interim Director of Detention Medical Services is conducting an assessment of costs, staffing, issues involving who has authority over detention medical services staff, and state statutory guidelines for providing medical care to inmates. The goal of the assessment is to determine, 1) whether inmate care is best managed through the county's Health Services Agency; 2) if the county would be better served by having the Sheriff's Office manage Detention Medical Services itself; or 3) if the Sheriff's Office should contract out to a private health provider. The report is projected to be completed sometime in 2008.

**Response: The County PARTIALLY AGREES.**

*The review is being conducted by the Health Services Agency, the Sheriff's Office, and the County Administrative Office.*

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*This assessment is ongoing with the involvement of the Sheriff's Office, HSA, and the CAO's Office.*

### **Main Jail Conclusions**

1. The facility is well-managed. Officers and staff conducted themselves in a professional manner during inspections, answered questions asked of them in a thorough and knowledgeable manner, promptly provided backup information when requested and exhibited a sense of pride in their work.
2. Overcrowding at the Main Jail continues to be a problem. Although the Sheriff's Office is actively working to find solutions, the state's recently approved prison reform package may increase the number of prisoners serving their sentence in county jail who previously would have been incarcerated in a state prison.
3. The institution of mandatory testing for tuberculosis has reduced the risk to staff and inmates of contracting this illness.
4. The new program of public tours at the Main Jail is a positive step in developing stronger community relations between the Sheriff's Office and the public.
5. The Health Services Agency does a professional and adequate job of providing detention medical services for the Main Jail and other corrections facilities in Santa Cruz County, but it does not appear that this arrangement is the most effective and efficient for either the Health Services Agency or the Sheriff's Office.
6. Noncompetitive pay scales for both health services workers in the jail and corrections officers continue to make it difficult to attract and retain experienced employees.
7. The lack of computerization in handling medications and tracking of medical reports exacerbates the difficult and time-consuming work that nurses must perform at the Main Jail.
8. The lack of a booking facility in the southern portion of Santa Cruz County reduces the time officers are available in their own jurisdictions.

### **Main Jail Recommendations**

1. The Sheriff's Office should implement its new prisoner classification system as soon as possible and continue to look for additional ways to reduce overcrowding.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation has been implemented.*

2. The Sheriff's Office should aggressively pursue opening a second booking facility in the southern portion of the county, as well as additional methods of expediting the process for officers delivering arrestees to the jail.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY DISAGREES.**

*This recommendation will not be implemented. Although it may create some efficiencies, the creation of a second booking facility will be very expensive and requires State approval by the Corrections Standards Authority.*

3. The Sheriff's Office should continue to offer tours of the Main Jail to the public and consider extending the practice to its Rountree facilities in Watsonville.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation has been implemented and is considering Rountree facility tours at this time.*

4. The Board of Supervisors should evaluate the compensation given to Sheriff's Office corrections staff and the Health Services Agency's Detention Medical Services staff to assure the parity of pay of those positions compared with similar jobs elsewhere.

**Response from the County:**

*The recommendation will be implemented. County salaries and benefits are regularly reviewed as a part of negotiations in the various budget units.*

5. The Sheriff's Office and Health Services Agency should expedite their review of the most effective and cost-efficient way to provide health services to the jails, including reviewing the possibility of contracting out some or all of the jails' health care needs to a private company.

**Response from the County:**

*This recommendation will be implemented. The Director of Detention Medical Services, Medical Director, and Physicians Assistant are now part of the Sheriff's staff. If evaluation of the data shows this change to be beneficial, additional reorganization and transfers to the Sheriff's Office may occur in future years.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation requires further analysis. At this time, the positions of Director of Detention Medical Services, Medical Director, and Physicians Assistant are now part of the Sheriff's staff with the eventual goal of transitioning the Detention Nursing and support staff to the Sheriff's Office in future years.*

6. The Sheriff's Office should encourage Spanish language training for correctional officers.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation requires further analysis for potential training venues and cost.*

**Main Jail Commendation**

Jail administrators and staff and Detention Medical Services staff should be commended for their professionalism.

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Board of Supervisors	14, 25, 26	4	60 Days September 1, 2007
Santa Cruz County Sheriff-Coroner	2, 3, 6, 13, 16-19, 22, 25, 26	1 2 3 5 6	60 Days September 1, 2007
Santa Cruz County Health Services Agency	22, 25, 26	5	60 Days September 1, 2007

**Rountree Medium and Minimum Security jails**

**Background**

The Rountree Facility is located on Rountree Lane in Watsonville. The facility was built in 1993 on 11 acres and incorporates both medium and minimum security facilities for male inmates who have been sentenced. The medium security facility houses inmates who have been determined to not require the maximum segregation provided by the Main Jail, but who still require locked incarceration and/or segregation from other prisoners; the minimum security facility houses inmates who are determined not to pose a threat, qualify for work-release programs and do not have a high level of criminal sophistication. Both Rountree facilities house inmates who have been convicted and sentenced for up to one year in jail.

**Rountree Findings**

1. The Grand Jury visited the Rountree facilities on Nov. 11, 2006. The maximum capacity of the Rountree medium security facility is 100 inmates; the population on Nov. 11 was 70. The minimum security facility has a maximum capacity of 280 inmates; the population on Nov. 11 was 90.

2. There are at least five correctional officers on duty at any given time at the medium security facility. Three officers work the day shift at the minimum security facility, three work the swing shift, and two work the overnight shift.
3. The living areas are dormitory style. A correctional officer is present in the dormitory at all times.
4. The annual state inspection for Rountree, conducted on June 27, 2006, found the facility in substantial compliance with environmental health, nutritional, and medical/mental health policies. It noted, however, "the lack of any onsite medical records for use by medical staff raises concerns regarding the ability to make accurate diagnostic and treatment decisions onsite. Currently, the Main Jail staff must be contacted to receive any medical history, diagnoses, or treatment decisions. This degree of communication is intensive and occasionally results in lack of sufficient data being transmitted."
5. The dining halls in both the medium and minimum security facilities were clean, the floors mopped, tables wiped clean. Prisoners are served a sufficient quantity of food to meet state-mandated daily caloric requirements.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

6. A brick pathway on the south side of the medium security building is cracked and presents a trip hazard.
7. A nurse is on site at the facility four days a week, Tuesday through Friday, for eight hours each day. Medications are distributed twice a day in marked bubble packs that help prevent the wrong medications from being distributed to inmates. If an inmate is injured when a nurse is not present, or the injury requires more extensive treatment, the inmate is taken to the Main Jail or Watsonville Medical Clinic.
8. The SAFE (Substance Abuse Free Environment) Program, which involved counselors visiting the facility every day with voluntary programs for prisoners aimed at ending drug use, was cancelled as of June 30, 2006. Funding for the program, which had been court-ordered, was not renewed by the county. The Sheriff's Office determined that the program was ineffective. Inmates who participated in the last SAFE Program offered at Rountree in 2006 before it was cancelled had already re-offended and been rearrested several months later.
9. There is an automated external defibrillator (AED) at Rountree, but staff does not feel comfortable operating it.

**Response: The County PARTIALLY AGREES.**

*The primary function of Sheriff's staff's is to house inmates. Any medical type of responsibility, though important, is an ancillary duty. Health Services Agency staff are responsible for medical functions within the Sheriff's custody facilities.*

10. A program modeled after the minimum security facility requires prisoners to begin their day by sitting up and being active when they wake rather than simply lying in bed all day and sleeping and then being more disruptive at night. The

program was initiated in the medium security facility in October 2006. On Monday through Friday, inmates are required after eating breakfast to make their beds and clean themselves up. They can go to classes, or if they choose, they can sit on their bunk, but they are not allowed to lie down and go back to sleep.

11. The number of activities available to inmates in the medium security facility, including ping pong tables, weights, and additional educational opportunities, has been expanded to provide inmates with more incentive to be more active during the daytime.
12. Spanish is the primary language for approximately half of the inmates in the medium-security facility. Seventy percent of the Rountree staff speaks Spanish and a Spanish-speaking officer is on duty most, but not all, of the time.

**Response from the County:**

*The County defers to the Sheriff to assess the accuracy of findings related to daily operations.*

13. Security cameras are being added above the guard watch stations in each unit in the medium security facility to increase officer safety and inmate monitoring at night.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

14. The Rountree medium security facility does not house women. There is presently no medium security detention facility in Santa Cruz County for women; they are either housed in the high security Main Jail, or if they have been sentenced and meet certain criteria, they are housed at the minimum security Blaine Street facility.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*The women's custody population is growing throughout the State (16-20%), which includes Santa Cruz County. Presently, Santa Cruz County does not have a women's medium jail facility. Any future jail facility planning that the County considers should include a women's medium facility component.*

15. Rountree does not house mentally unstable inmates who need frequent medical attention medication. It also does not house inmates with chronic medical conditions that require regular medical care. Those inmates are housed in the Main Jail facility.
16. As noted in previous years' Grand Jury reports, the lack of an on-site nurse precludes inmates who require cardiac, psychotropic drug combinations, or injectable medications from being placed in the medium or minimum security facility. The Health Services Agency, which is responsible for providing medical care for prisoners, is studying the possibility of expanding the availability of nursing care at Rountree to 24 hours a day, seven days a week. The results of that study were due this past spring.
17. Inmates at the minimum security facility, also known as "the farm," are monitored by head counts taken three times each day.

18. Between 7:00 a.m. and 3:00 p.m., Monday through Friday, inmates at the farm are outside the facility at work on work crews or off-premises on work-release programs.
19. The farm includes a well-equipped computer lab that provides basic computer skills and training, and an auto repair shop for learning basic automotive repair and body work skills.
20. The population center of the county is shifting to the south and there is no booking and intake facility other than at the Main Jail in the city of Santa Cruz.

**Response from the County:**

*The County AGREES with the finding that the population in South County is growing and concurs with the finding that bookings and intake are centralized at the Main Jail.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*Presently there exists one booking facility at the Main Jail in the City of Santa Cruz, which services the entire County. Any future county jail construction should include a component for a south county booking facility.*

### **Rountree Conclusions**

1. The physical appearance of the facility, including the kitchen and living areas, is exemplary.
2. Staff confidence in how to use the facility's automated external defibrillator is not sufficient.
3. Facility administrators have increased the number and variety of activities available to inmates in the medium security facility during the daytime. Concurrently, the program initiated to prevent inmates from sleeping or lying in bed all day helps redirect their energy, resulting in more productive days and less disruptive nights.
4. Staffing is not adequate to ensure that at least one Spanish-speaking corrections officer is on duty at all times.
5. The lack of a medium security facility that can house lower-risk female inmates and chronically ill inmates results in inmates who would qualify for such a facility continuing to serve sentences in the more severe environment of the Main Jail.
6. Round-the-clock nursing staff would enable the Sheriff's Office to shift some low-risk prisoners out of the overcrowded Main Jail and into the less-utilized medium security facility. It could also decrease costs related to transportation and treatment of inmates to the Main Jail or a local clinic when they are sick. It may or may not be cost-effective to expand the nursing staff at Rountree, given that it has not been determined how many inmates would benefit or what the transport costs would be.



7. The minimum security facility continues to be a positive and productive alternative to more restrictive incarceration for low-risk inmates to serve their time productively and take advantage of educational opportunities that can decrease their potential to re-offend.
8. Medical records for inmates are not kept onsite at the Rountree facility. However, the county's Detention Medical Services utilizes a screening process that prevents inmates with medical conditions that necessitate a higher level of medical care from being transferred from the Main Jail to Rountree, minimizing the potential for diagnosis and treatment complications.
9. Security and safety within the medium security units will be improved by the planned addition of cameras above the guard watch stations.
10. Having a booking and intake facility at Rountree would reduce travel time for officers coming from South County.

### ***Rountree Recommendations***

1. The Sheriff's Office should provide guards with additional training in using the onsite automated external defibrillator.

**Response from the County:**

*The County defers to the Sheriff to respond to recommendations related to the training of his staff. The assignment of health related duties are coordinated with the Health Services Agency.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation will be implemented in the future. HSA should provide custody personnel with additional AED training.*

2. The Sheriff's Office should encourage additional Spanish language training for corrections officers.

**Response from the County:**

*The County defers to the Sheriff to respond to recommendations related to the training of his staff.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*The majority of officers assigned to that facility speak Spanish.*

3. The Sheriff's Office should review the report from the Health Services Agency when completed to determine whether expanding nursing at Rountree is warranted.

**Response from the County:**

*This recommendation is being implemented. The report is completed and the Sheriff's Office and the Health Services Agency are evaluating all staffing plans.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation has been completed and HSA and the Sheriff's Office are evaluating nurse staffing plans.*

4. The Sheriff's Office should aggressively pursue adding a booking and intake facility at Rountree.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY DISAGREES.**

*This recommendation will not be implemented. Although a south county booking and intake facility may create some efficiencies, the creation of such a facility at this time would be cost prohibitive and requires State approval by the California Corrections Standards Authority and local approval by the Board of Supervisors.*

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Board of Supervisors	9 12 20	1 2 3	60 Days September 1, 2007
Santa Cruz County Sheriff's Dept.	5, 13, 14	4	90 Days October 1, 2007

**Juvenile Hall**

**Background**

Santa Cruz County Juvenile Hall, located at 3650 Graham Hill Road, was built in 1968. Undergoing several modifications over the years, the facility currently has a capacity level of 42 beds. The Juvenile Hall site also houses Juvenile Court and some of the Probation Departments' offices. About 25 of the county's approximately 70 probation officers are dedicated to serving juveniles.

Santa Cruz County Juvenile Hall has been designated a model site for the Annie E. Casey Foundation Juvenile Detention Alternative Initiative (JDAI) — one of only four facilities in the nation. The objectives of JDAI are:

- To reduce the number of children unnecessarily or inappropriately detained.
- To minimize the number of youth who fail to appear in court or re-offend pending adjudication.
- To redirect public funds toward successful reform strategies.
- To improve conditions of confinement.

The Grand Jury visited on Oct. 21, 2006, and again on March 23, 2007. This year's budget included an allocation of \$175,000 to install new video monitoring cameras and new intercoms to communicate with inmates in their rooms; as of March 23rd, proposals for the work were being evaluated with installation anticipated to start in the next few weeks; the new cameras and intercoms will make staff feel safer and wards more comfortable.

## ***Juvenile Hall Findings***

### **Facilities**

1. Juvenile Hall has been rated to house 42 juveniles by the California Department of Corrections. The average daily population in October 2006 was 24 and in March 2007, it was 35. In recent years, Juvenile Hall regularly housed more than 50 juveniles at a time. The Santa Cruz County Probation Department has experienced considerable success at finding alternatives to incarceration for juveniles arrested or awaiting trial.
2. Juveniles between the ages of 12 to 18 are housed in two different units: the "A" unit houses older, more sophisticated offenders who have committed more serious crimes, and the "B" unit houses girls and the younger and less sophisticated detainees. There have been no escapes during the past year.
3. Juveniles who are sentenced are sent out of county to one of the facilities operated by the Department of Juvenile Justice to serve their sentence. There are no DJJ facilities in Santa Cruz County.
4. The facility is over 30 years old but appears to be well maintained. It is clean and orderly. There is a modest capital investment made annually.
5. The recreation yard is relatively small, uncovered and paved with asphalt and concrete. There is an attractive ball field, an asphalt volleyball court and grassy areas adjacent to the building. These areas are not currently used by the facility since they are not secured by necessary fencing. And, while less serious offenders could use the area without the secure fencing, Juvenile Hall does not have enough staff with the new level of credentials necessary to cover the inside and outside areas at the same time.

### **Response: The County AGREES.**

6. An inspection of the kitchen and dining area found it clean and orderly. An evening meal ready for serving suggested that detainees are given food that is healthy, tastes good and meets nutritional guidelines set by the state.
7. Each juvenile is provided with a secure living space; they double up in some rooms but there appeared to be ample space. The rooms contain a sink and drinking fountain. Recently, the doors to the rooms were replaced and modified to swing out into the hall rather than into the rooms, freeing up living area and increasing safety.

8. The day rooms, classrooms and a library appeared to be clean, orderly and well stocked with reading materials, television, computers and video equipment (i.e., projector in classroom, video entertainment equipment in the day room).
9. According to staff, Juvenile Hall does not have adequate heating and there is no air conditioning. Replacement of the Heating, Ventilation and Air Conditioning system has been identified for future funding.

**Response: The County PARTIALLY AGREES.**

*The facility is not air conditioned, and the heating system is in need of improvement. Replacement of the Heating, Ventilation, and Air Conditioning system has been identified as a need for future funding.*

## **Operations**

10. The staff seemed genuinely concerned with the welfare of the youth brought to the facility. Their emphasis appeared to be on matching the needs of the juvenile to the appropriate community resource (versus detention and warehousing). Youth selected for detention are only those considered high-risk (e.g., danger to the community, unlikely to appear for court date) or those needing a place to stay while awaiting placement with parents, a social program or foster care.
11. Juveniles brought to Juvenile Hall undergo two extensive risk assessments to determine who poses a threat to the public and who can be released to house arrest. The assessment includes determining drug use and thoughts of suicide. Detainees are given a complete physical, including testing for tuberculosis and sexually transmitted diseases. The exams are private and one detainee at a time.
12. Two-thirds of the staff is bilingual; half speak Spanish.
13. Hot breakfasts are no longer served due to funding limitations. Some juveniles don't feel it is worth the effort to get up so early for cold cereal in the morning and expressed a desire to have hot meals reinstated.

**Response: The County AGREES.**

14. Juveniles detained are given medical attention including checks for physical abuse, an annual physical and immunizations. Nursing staff is available on-site (not around the clock). All staff is trained in CPR, 24 hours of training mandated each year. There is no automated external defibrillator on site (but they want one, primarily for staff due to remoteness of location).

**Response: The County AGREES.**

15. Santa Cruz County Juvenile Hall has child mental health services eight hours per day, seven days a week and drug and alcohol specialist services 40 hours a week.

16. Juvenile Hall has its own community school for instruction provided in three school rooms through the Santa Cruz County Office of Education. Juveniles receive 180 minutes of schooling each day, the same as public schools; school is year-round; students rotate during the day to different rooms; teachers stay in the same room.
17. A variety of programs are offered to youth, including those from Barrios Unidos, yoga, substance abuse counseling, writing, and poetry instruction. The poetry program is immensely popular among the wards and offers them instruction in the writing arts. It gives participants the opportunity to have their writing in a weekly newsletter published by Pacific News Service. This program provides a therapeutic opportunity and builds self-esteem.

### ***Juvenile Hall Conclusions***

1. The facility continues to be well managed with staff who appear to listen to the juveniles and work to improve, as best they can, the lives of the youth they serve.
2. Once the new video monitoring and intercom installation is completed, staff will be better able to communicate with inmates in their rooms and will make staff feel safer and the inmates more comfortable.
3. Installation of the new heating, ventilation and air conditioning system would improve conditions for staff and wards.
4. A covered (shaded) recreation yard would allow for greater outdoor physical activity during inclement weather.
5. Programs that get the juveniles outdoors on a more regular basis are extremely limited.
6. Securing the fencing around the upper field would allow the detainees to use the spacious grassy area, a basketball hoop and volleyball net and have access to a general open air feeling not found in the rest of the facility.
7. Staff needs to work to attain the new level of credentials to monitor the inside and outside areas at the same time.
8. Providing hot breakfasts, if only on weekends, would improve morale.
9. Putting an automated external defibrillator on site would be desirable due to the remoteness of the Juvenile Hall site.
10. Santa Cruz County can be proud that it is a model site of the Annie E. Casey Foundation Juvenile Detention Alternative Initiative.

## **Juvenile Hall Recommendations**

1. The Board of Supervisors should prioritize the fencing required to use the adjacent ball field, volleyball court and grassy courtyard to increase exercise opportunities for the juveniles.

**Response from the County:**

*The recommendation will be implemented in the future. Efforts are underway to install the necessary fencing to make the volleyball area available for outdoor play. In addition, funds have been allocated to remove a portion of the concrete berm and other obstacles in the courtyard to increase the safety of the volleyball court.*

2. The Board of Supervisors should ensure that the money budgeted to upgrade the heating and ventilation system at Juvenile Hall be implemented.

**Response from the County:**

*The recommendation will be implemented. This improvement is planned for the second phase of facility improvements, following the installation of necessary security infrastructure upgrades.*

3. Sufficient money should be budgeted and allocated by the Board of Supervisors for the construction of a covering over the courtyard area, which would provide an outdoor exercise area during poor weather conditions.

**Response from the County:**

*This recommendation requires further analysis. The Criminal Justice Research Foundation is currently under contract with the County to facilitate a planning process for the development of such a structure. A free standing structure would preserve the courtyard area for development into a green space, to better address recommendation number 4.*

4. Additional programs that would get the juveniles outdoors and provide an educational experience, such as Life Lab at the University of California, Santa Cruz, should be considered.

**Response from the County:**

*The recommendation is anticipated to be implemented in the future. When the outdoor volleyball court and Michael Gray Field become available for large motor recreation, sports skill building programs should be implemented which will reduce the reliance on the courtyard for recreation. The courtyard will be transformed into a green space and will require planting and plant maintenance. A program to teach these horticulture skills to youth could be implemented at that time. A reasonable timeframe for these improvements is considered to be six months.*

- Hot breakfasts should be reinstated, at least on weekends.

**Response from the County:**

*The recommendation will not be implemented. One of the results of the department's success in reducing the daily census at Juvenile Hall was the elimination of one full time cook in 2005. The elimination of this position reduced the amount of time available to prepare breakfast. The overall meal plan was also modified at this time to ensure that adequate nutrition is offered to residents. Although a few residents are committed for longer periods, it should be noted that the average length of stay in Juvenile Hall is 6.9 days.*

- Funds should be allocated for an automated external defibrillator.

**Response from the County:**

*The recommendation will be implemented. The Probation Department has included funds for this device in the 2007-08 budget, and it is anticipated that it will be ordered, delivered, and installed within the next three months.*

**Juvenile Hall Commendations**

- The Board of Supervisors should commend the Probation Department and Juvenile Hall staff for their professionalism and their dedication to the community.
- The Board of Supervisors is to be commended for its continuing support for investment in capital improvements to Juvenile Hall, such as the funds authorized for new video monitoring cameras and new intercoms.

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Board of Supervisors	9,	1 – 3, 6	60 Days September 1, 2007
Santa Cruz County Probation Dept.	5, 13, 14	4 & 5	90 Days October 1, 2007

## Blaine Street

### ***Background***

Blaine Street Women's Minimum Security Jail is located at 144 Blaine St., Santa Cruz. It has been in operation since 1984. Female inmates who have been sentenced and rated minimum security are housed here. The jail facility, a converted residence, is located in a residential neighborhood behind the Main Jail. It has a maximum capacity of 36 inmates. Blaine Street is currently operated at less-than-full capacity due to screening criteria, which disqualifies many inmates from being accepted.

### ***Blaine Street Findings***

1. To be housed at the Blaine Street facility, women must have no history of violence in jail and have not been charged with a violent crime.
2. Six inmates walked away from the facility in 2006. Four were caught in 2006 and two were caught in February 2007. If a woman walks away, she is not chased; instead, a warrant is issued. When captured, the woman is returned to the Main Jail facility and charged with a felony.
3. The average age is 20-30 years old, and the ethnic makeup mirrors the county population.
4. The recidivism rate is estimated at approximately 40 percent. Currently no records are kept to track recidivism.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**  
*Arrest records of female inmates are reviewed by Jail Classification Officers.*

5. Because there are no medical facilities at Blaine St. and a nurse only visits four times a week, women with mental health problems, with medical conditions such as diabetes, or those who are being treated with psychiatric medications are not housed at Blaine St. Inmates can be taken to the Main Jail next door or the classroom can be used when privacy is required, but in the event of a medical or safety emergency, it can take at least two minutes for emergency personnel to arrive from the Main Jail.
6. All staff is trained in CPR and first aid, but there is no automated external defibrillator located at Blaine Street.

**Response: The Santa Cruz County Sheriff's Office AGREES.**  
*The Sheriff's Office is planning to add AEDs to the jail facilities.*

7. All women housed in this facility at the time of the Grand Jury visits were incarcerated for drug and/or alcohol charges, and most are incarcerated for methamphetamine use. Some are charged with other crimes committed while under the influence of drugs.
8. Women are urine tested on admission. If there are any drugs identified in their systems, they are sent to detoxification at the Main Jail.



9. Inmates are allowed family visits of one two-hour visit per week. With supervision from Child Protective Services (CPS), they could have 2-3 visits per week. Visits usually take place in the dining and patio areas.
10. Several programs and services are available to the inmates.
- 10.1 A program called New Direction works to reduce the risks of children who live in the county and whose parents are incarcerated. This service is provided by a partnership of the Santa Cruz County Probation Department, Sheriff's Office, SAFE (Secure and Free Environment, a Residential Substance Abuse Treatment) Program and community-based, non-profit Pajaro Valley Prevention and Student Assistance.<sup>1</sup>
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.2 Friends Outside is a program available to help lessen the trauma of incarceration for inmates and their families, to provide information that can lead to positive changes, and to assist ex-offenders with their re-entry into the community.<sup>2</sup>
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.3 In addition to work release programs, inmates are kept busy with numerous facility work programs. Job assignments available are cooking at Blaine St. and the Main Jail, cleaning the facility, yard work on the grounds, laundry and a mending service for inmate uniforms.
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.4 There is a classroom with computers at Blaine Street where word processing and other computer skills are taught by Adult Education.
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.5 Walnut Ave. Women's Center offers inmates domestic violence services.
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.6 Religious programs are offered.
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.7 Voice Weavers comes quarterly to sing with the women.
- Response: The Santa Cruz County Sheriff's Office AGREES.**
- 10.8 Some of the in-house classes offered are GED, substance abuse education, Narcotics Anonymous, Alcohol Anonymous, positive parenting, yoga, crochet and knitting.
- Response: The Santa Cruz County Sheriff's Office AGREES.**

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<sup>1</sup> <http://sccounty01.co.santa-cruz.ca.us/prb/grants/newdirection.asp>, New Direction.

<sup>2</sup> <http://www.unitedwaysc.org/FriendsOutside.shtml>, Friends Outside.

- 10.9 Gemma is a non-profit organization that has just started offering classes to Blaine St. inmates. Gemma is committed to helping women reunite with the community after incarceration. Their program is structured toward assisting inmates recover from drugs and alcohol as well as empowering them in the transformation of their lives.<sup>3</sup>

At the time of the February Blaine St. review, six or seven inmates were taking classes in the new Gemma day program. These inmates were screened before being enrolled in the Gemma programs.

Some of the classes and services Gemma provides are: life skills; relapse prevention; anger management; assistance with career choices, job applications, resumes, job searches and resource directories; classes in reading, math, and GED preparation; domestic violence assistance and resources; help with obtaining birth certificates, California ID, and/or driver's license; and court advocacy assistance.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

- 11 The inmates the Grand Jury spoke to provided positive feedback.
- 11.1 Inmates were grateful they were at Blaine Street instead of the Main Jail.
- 11.2 Several inmates praised the staff, especially the supervisor, Minnie Rodriquez.
- 11.3 Many inmates felt they were being helped by the drug prevention programs. One person said that this was her first opportunity ever to go through a drug program. Most praised the support they were getting from the other women at the facility, and one said it felt like they were the family she never had.
12. Blaine Street staff hopes that the county could develop a new program to help them to reduce on-the-job stress. Exercise programs and gym memberships were suggested by staff members.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY DISAGREES.**

*Any program that deals with "benefits status" is an MOU issue. The County provides EAP (Employee Assistance Program) for counseling needs. Due to stress in public safety work, the Sheriff's Office offers private/confidential peer support.*

### **Blaine Street Conclusions**

1. The Blaine Street facility appeared to be well managed, orderly and exceptionally clean.
2. Programs like Gemma, New Direction and Friends Outside are beneficial to the well-being of inmates and aid in rehabilitation.

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<sup>3</sup> <http://www.gemmasantacruz.org/>, Gemma.

**Blaine Street Recommendations**

1. Because drug use crimes are consensual in nature, programs like Gemma, New Direction, Alcoholics Anonymous and Narcotics Anonymous are crucial to rehabilitation. These types of programs should continue to be available to inmates, and inmates should be encouraged to participate.

**Response: The Santa Cruz County Sheriff's Office AGREES.**  
*This recommendation has been implemented.*

2. An automated external defibrillator should be installed at Blaine Street.

**Response: The Santa Cruz County Sheriff's Office AGREES.**  
*This recommendation has not yet been implemented. The Sheriff's Office plans to add AEDs in the various jail facilities in the future.*

3. A stress relief program should be developed for correctional officers.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY DISAGREES.**  
*This recommendation requires further analysis. Any program that deals with "benefits status" is an MOU issue. The County provides EAP (Employee Assistance Program) for counseling needs. The Sheriff's Office offers private peer support.*

4. Specific records should be kept to track recidivism. This data could be used to develop programs to assist in reducing recidivism.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**  
*This recommendation has been partially implemented. We continue to work with the Probation Department on strategies to reduce recidivism along with our Inmate Program Coordinator. The Rountree facilities have just started to track recidivists to assist in Inmate Programs design. It is anticipated this mechanism will be forthcoming for Blaine Street.*

**Blaine Street Commendations**

1. The Grand Jury would like to commend the Sheriff and the Blaine Street staff for their excellent attitude toward the inmates. Our escort's manner toward the inmates was indistinguishable from her manner toward us. Deprivation of liberty is the court ordered punishment for inmates' offenses. Jail staff should not (and at Blaine Street does not) add to the punishment by their basic treatment of inmates.

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Sheriff-Coroner	4, 6, 10.1-10.9, 12	1-4	60 Days September 1, 2007

## **Court Holding Facility**

### ***Court Holding Facility***

The Court Holding Facility is located in the basement of the Superior Court building located at 701 Ocean Street in Santa Cruz and is operated by the Santa Cruz County Sheriff's Office. Inmates are transported by vehicle from their custodial facility and held at this facility before and after their court appearances.

### ***Court Holding Facility Findings***

1. The Court Holding Facility passed inspection June 26, 2006, by the California Department of Corrections and Rehabilitation.
2. The facility consists of five large concrete rooms for holding inmates. Three are for male inmates, one is for female inmates, and one is for juveniles and inmates who need to be segregated from others.
3. Approximately 50 inmates per day are held in the court holding rooms.
4. Inmates may change into personal clothing before appearance at a jury trial.
5. Holding rooms are monitored by video surveillance.
6. In the past year, the Sheriff's Office has added video surveillance cameras outside the entrance to the facility and stairwell leading to courtrooms. However, the Sheriff's Office does not possess the equipment needed to record the facility's video surveillance.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

7. The facility was found to be clean and well maintained.

### ***Court Holding Facility Conclusions***

1. The facility is well organized and operated in an efficient manner.
2. Because the video surveillance at the Holding Facility is not recorded, there is no record of activity at the holding facility in the event of a problem.

### ***Court Holding Facility Recommendation***

1. Video surveillance at the Holding Facility should be recorded to provide a record of activity at the holding facility in the event of a problem.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation has not yet been implemented but will be implemented in the future provided funding for this project is available.*

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Sheriff-Coroner	6	1	60 Days September 1, 2007

## **Last Night, First Right Police Surveillance of First Amendment Activity**

### ***Synopsis***

In this post-9/11 era, it can be particularly difficult for law enforcement to find the proper balance between protecting the public and upholding our constitutional rights of freedom of speech and assembly. A case in point is the controversy that arose over the Santa Cruz Police Department's undercover surveillance of the planning by a citizen group for a New Year's Eve parade in December 2005. This investigation was conducted as a result of that incident and subsequent police department follow-up.

Parade organizers and other members of the public have questioned the need for the Santa Cruz Police Department's undercover surveillance of the planning for this event and have raised questions about the police department's review of the operation. However, the process ultimately worked out to the benefit of both residents and law enforcement. The city's independent police auditor conducted a thorough and balanced report of the surveillance operation and the thinking behind it. That opened a community dialogue on the issue of surveillance of groups involved in political speech and activity, which, in turn, led to the adoption by the police department of new rules to govern these types of investigations in the future.

### ***Background***

In October 2005, officers with the Santa Cruz Police Department (SCPD) learned that a group of people were meeting to plan a New Year's Eve parade in downtown Santa Cruz on Dec. 31, 2005. The group intended to hold an event titled, "The Last Night Santa Cruz DIY (Do It Yourself) Parade." The event was to be "a decentralized, collective, spontaneous, open, public New Year's Eve celebration in Santa Cruz."<sup>1</sup>

For several years prior to New Year's Eve 2005, the City of Santa Cruz had officially sanctioned a "First Night" party whose organizers sought, paid for and received city permits, which allowed street closures, music, booths and increased police presence at the event. However, First Night was disbanded after the New Year's Eve 2004 event, and no city-authorized event was planned for New Year's Eve 2005. Organizers of the 2005 DIY parade did not apply for a parade permit because they neither wanted nor sought city involvement or approval. In addition to throwing a party, part of the purpose behind the event was to "reclaim"<sup>2</sup> the streets for the public by intentionally not involving city officials or police in the planning of or approval for the event and, in so doing they believed they were making a statement about the need to preserve individuals' rights of self-control and self-governance.

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<sup>1</sup> [http://www.seedwiki.com/wiki/last\\_night\\_diy/manifesto](http://www.seedwiki.com/wiki/last_night_diy/manifesto), Last Night Santa Cruz DIY Parade Manifesto.

<sup>2</sup> DIY Parade Manifesto.

When Santa Cruz police officers learned of the planning for the event in late October 2005, they briefly reviewed a “Last Night Santa Cruz DIY Parade” web site that was being used by the organizers to spread information about the upcoming event. Members of the Police Department, based on their experience with some previous public events downtown that got out of control, became concerned that such an uncontrolled event might cause a public safety traffic hazard or that people attending might become rowdy and dangerous. A decision was made to send two undercover police officers to the DIY Last Night group’s planning meeting on Oct. 29, 2005, to learn more about the event that was being planned and the people who were planning it. Two officers attended the meeting in plain clothes and gave false names when they identified themselves.

The two officers who attended the meeting were later recognized and identified by DIY parade organizers. In the days leading up to the New Year’s Eve DIY Last Night parade, organizers notified the Santa Cruz *Sentinel* that their meeting had been attended by undercover police officers and the *Sentinel* reported the story on Dec. 31, 2005.

In January 2006, in the wake of public sentiment that the use of undercover police surveillance amounted to a violation of the public’s right of free speech, the SCPD opened an internal investigation of the DIY Last Night Parade surveillance. An internal investigation was conducted by the police official who had authorized the undercover operation. His investigation determined that no laws or police policies had been violated by the operation.

In February 2006, the Independent Police Auditor for the City of Santa Cruz, initiated a review of the undercover operation. Aaronson issued his own report on the undercover operation on March 20, 2006, that included several conclusions:

- The undercover surveillance “more than likely ... violated the civil rights of the parade organizers.”<sup>3</sup>
- A permitless parade is a violation of the law, but it does not constitute much of a credible basis for intruding on anyone’s civil rights.<sup>4</sup>
- Police failed to recognize that the parade was intended as a form of civil disobedience and constituted political speech which should have prompted a higher level of scrutiny within the department of the validity of the undercover operation.<sup>5</sup>
- The department was obligated to attempt to collect information about the planned event, not to prevent it but to be in a position to respond to it as it unfolded.<sup>5</sup>
- The (Police) Department and its employees were entirely well-intentioned and acted without any recognition of how close the constitutional line was.<sup>6</sup>
- Neither Santa Cruz nor the vast majority of other law enforcement agencies, large or small, have explicit policies which adequately deal with this issue.<sup>7</sup>

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<sup>3</sup> Report by Robert H. Aaronson to Richard Wilson, Santa Cruz City Manager, p. 2, March 20, 2006.

<sup>4</sup> Aaronson, p. 31.

<sup>5</sup> Aaronson, p. 31.

<sup>6</sup> Aaronson, p. 33-34.

<sup>7</sup> Aaronson, p. 33.

In June 2006, following consultation with the Santa Cruz City Attorney, the City Council's Public Safety Committee and a representative of the American Civil Liberties Union, the Santa Cruz Police Department adopted Departmental Directive, Section 610, Undercover Operations—First Amendment Activity. The policy spells out the conditions necessary for the police department to initiate undercover operations of entities or activities that may be protected under the First Amendment of the U.S. Constitution. In considering whether to allow an undercover operation, and in reviewing it while it is ongoing and after it has concluded, the policy requires that:

- There be “reasonable suspicion to believe that the subject of the investigation is planning criminal activity.”<sup>8</sup>
- The Police Department first attempt “direct and open communication”<sup>9</sup> with the subject, as well as less-intrusive investigatory techniques like reviewing information on the Internet, before resorting to undercover operations.
- The police chief authorize all undercover operations of events that may fall under First Amendment activities, and that the city attorney also review the reasons for undertaking the investigation.<sup>10</sup>
- The city annually issue a public report outlining how many First Amendment activity undercover operations were sought, how many were approved, and how many were denied, and if the city's independent police auditor believes any investigations violated the policy.<sup>11</sup>

## **Scope**

This investigation originated as a review of the Santa Cruz Police Department's undercover police surveillance of the parade planning activities, its subsequent investigation of that undercover surveillance, and its response. The investigation also incorporated a review of other law enforcement agencies in Santa Cruz County and their policies regarding undercover surveillance of activities that could be reasonably claimed as protected by the First Amendment and any policies directing such surveillance.

## **Findings**

1. There is tension between the competing priorities of law enforcement's responsibility to ensure public safety while protecting constitutional rights of free speech and free assembly.
  - 1.1 Worldwide reports of terrorism, 9/11 and enactment of the U.S. Patriot Act have heightened public sensitivity toward criminal activity on every level, from the lowest local infraction to the most serious national acts.

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<sup>8</sup> Santa Cruz Police Departmental Directive Section 610, p. 1, July, 2006.

<sup>9</sup> S.C. Police Directive, p. 1.

<sup>10</sup> S.C. Police Directive, p. 2.

<sup>11</sup> S.C. Police Directive, p. 3.



Similarly, the public's sensitivity to and awareness of incursions into constitutionally protected freedom of speech and freedom of assembly is also heightened. Previous holiday-oriented gatherings downtown Santa Cruz had resulted in significant property damage and serious personal injury.

- 1.2 The officers involved in the undercover operation did not consider the political aims of the group they investigated, focusing instead on the public safety ramifications of the Last Night Parade.
- 1.3 Some Santa Cruz residents were eager to jump to the conclusion that the Last Night Santa Cruz DIY Parade surveillance was part of a larger conspiracy to squelch civil rights.

**Response: The Santa Cruz Police Department AGREES.**

**Response from the Capitola Police Department:**

*The Capitola Police Department has insufficient information upon which to base an opinion in this matter. However, what we can comment on is that the Capitola Police Department and its members have not engaged in a conspiratorial fashion, as an agency or in partnership with other law enforcement agencies, to squelch the civil rights of any citizen of Capitola or Santa Cruz County.*

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*Since the Sheriff has no personal knowledge on this point, he is unable to agree or partially disagree with it.*

**Response from the Watsonville Police Department:**

*We find it impossible to comment on what some people assume. We are not, have not ever, conspired to squelch civil rights.*

2. In addition to the police surveillance conducted by the Santa Cruz Police Department, there have been reports of law enforcement conducting surveillance of events that have subsequently been determined to be First Amendment-related activities in other areas across the country.
  - 2.1 In April 2005, students at the University of California, Santa Cruz, protested military recruiters' attendance at an on-campus career fair. It was learned eight months later that the Pentagon had classified the student protest as a "credible threat"<sup>12</sup> and Defense Department representatives had conducted undercover monitoring of the event.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*Our agency was made aware of these events as with all other members of the public: via the media. We cannot definitively say what was done by*

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<sup>12</sup> UC Santa Cruz Message from the Chancellor, Dec. 28, 2005.

*another agency in monitoring the event or what the rationale for such monitoring was used.*

**Response from the Capitola Police Department:**

*The Capitola Police Department did not have any role in this particular incident and no further basis upon which to comment on this matter.*

*However, it is important to note that in the past, military recruiters have been threatened and assaulted in various forums throughout the United States. Thus, it is reasonable for the government and law enforcement entities to conduct some reasonable level of threat assessment and intelligence gathering before placing recruiters and other employees in harms way.*

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*We only know what was reported in various media accounts and are not privy to what actions the Defense Department may or may not have taken.*

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*The Sheriff agrees with the first sentence and disagrees with the second sentence because he has no personal knowledge or verification on these points that would allow him to agree or partially disagree.*

**Response from the Watsonville Police Department:**

*There seems to be no question to be answered. We have no information to respond to the jury's statement.*

- 2.2 Monitoring of First Amendment-protected activities in recent years has occurred in Oakland, Fresno, Contra Costa County, San Francisco and New York City.<sup>13</sup>

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*The department is not able to confirm that such monitoring took place and does not have any specific information readily available that verifies such claims.*

**Response: The Capitola Police Department AGREES.**

*The Capitola Police Department agrees. Monitoring of First Amendment-protected activities is certainly not limited to the cities mentioned in the Grand Jury Report and likely has taken place for many years. Likewise, monitoring of First Amendment-protected activities if done correctly, for the right reasons, to include either "probable cause" or "a reasonable suspicion" of criminal activity associated with a First Amendment-protected activity is generally in compliance with the law and often assures and protects public safety.*

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<sup>13</sup> ACLU-NC report, "The State of Surveillance," pp. 12-19, July 2006.

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*We have seen this reported in ACLU documents and some media sources but have not confirmed their veracity nor context.*

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on this point that would allow him to agree or partially disagree with them, and this statement appears to be a quote from a publication.*

**Response from the Watsonville Police Department:**

*There seems to be no question to be answered. We have no information to respond to the jury's statement.*

- 2.3 No evidence has been found that the Santa Cruz Police Department or other Santa Cruz County law enforcement agencies have engaged in undercover surveillance of First Amendment-protected political activity in recent years beyond the Last Night DIY parade.
3. Parade organizers broke the law, but there is no evidence that the organizers posed a serious threat to public safety.
  - 3.1 By publicly stating they did not intend to apply for a parade permit, the Last Night DIY organizers knowingly intended to break the law. The law broken was an infraction, the lowest level of violation, generally indicative of not being of a serious or threatening nature.
  - 3.2 On New Year's Eve 2005, the Last Night Santa Cruz DIY Parade was held as planned, and no major problems were reported.
  - 3.3 Following the direction of its new First Amendment policy, a city official contacted organizers of the Dec. 31, 2006, New Year's Eve's parade prior to the event and attempted to convince them to apply for a free Noncommercial Event permit. Organizers declined, and the police department did not pursue the matter further. A second Last Night Santa Cruz DIY Parade was held on Dec. 31, 2006, at which no serious problems were reported.
4. There were no clear policies in place in Santa Cruz in 2005 to provide guidance for this type of surveillance.
  - 4.1 There is little recent case law establishing what is permissible and what is not permissible in the area of police undercover surveillance of First Amendment-protected activities. Much of the case law that guides undercover infiltration of free speech groups dates to the 1960s and 1970s and is not entirely applicable to the civil rights and law enforcement issues that predominate in the post-9/11 world.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*However, there is a recent Ninth Circuit Court case that addresses many of these issues raised.*

**Response: The Capitola Police Department DISAGREES.**

*In today's litigious society, where lawsuits and public records act requests often overwhelm public agencies, access to public records and information retained by the government is at an all time high. Likewise, challenges to local, state and federal agencies Intelligence Gathering and Criminal Intelligence Guidelines are also undergoing close scrutiny and substantial revision at all levels of government. The laws governing intelligence and criminal intelligence file guidelines are contained and distributed by the California Peace Officers Association, Criminal Intelligence Standards and Guidelines manual dated July 2003; the State of California Attorney General's Office; U.S. Department of Justice, Criminal Intelligence Systems Operating Policies for 28 CFR Part 23 Compliance. There are numerous publications available to local law enforcement agencies, which routinely discuss the law and case precedence established by current cases relative to constitutionally protected rights, to include First Amendment-protected activities.*

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*We have not conducted independent research to corroborate this finding.*

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on these points that would allow him to agree or partially disagree with them.*

**Response: The Watsonville Police Department DISAGREES.**

*In today's litigious society, where lawsuits and public records act requests often overwhelm public agencies, access to public records and information retained by the government is at an all time high. Likewise, challenges to local, state, and federal agencies Intelligence Gathering and Criminal Intelligence Guidelines are also undergoing close scrutiny and substantial revision at all levels of government. The laws governing intelligence and criminal intelligence file guidelines are contained and distributed by the California Police Officers Association, Criminal Intelligence Standards and Guidelines manual dated July 2003; the State of California Attorney General's Office; U.S. Department of Justice, Criminal Intelligence Systems Operating Policies for 28 CFR Part 23 Compliance. There are numerous publications available to local law enforcement agencies, which routinely discuss the law and case precedence established by current cases relative to constitutionally protected rights, to include First Amendment-protected activities.*

- 4.2 The office of the California Attorney General in 2003 issued a report that provided a summary of state law regarding police intelligence collection operations titled "Criminal Intelligence Systems: A California Perspective," but local law enforcement have found it difficult to interpret.

**Response: The Capitola Police Department PARTIALLY AGREES.**

*The Capitola Police Department has reviewed the referenced report and*

*guidelines. To better understand the recommended policies and procedures contained in the manual, along with the contemporary issues of: Criminal Intelligence Guidelines and the Criminal Intelligence System, the Capitola Police Department has elected to send all command officers to the Criminal Intelligence for Executives Course. This course is taught by staff from the California Attorney General's Office, along with featured guest speakers. The structure of the course and the information provided helps executives and police command staff better understand the importance of both an effective and legal intelligence gathering process.*

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*The Sheriff agrees that the Attorney General issued this report but disagrees that local law enforcement agencies have found it difficult to interpret as he has no personal knowledge that would allow him to agree or partially disagree with this statement.*

**Response: The City of Santa Cruz PARTIALLY DISAGREES.**

*The 2003 report as issued by the Attorney General attempts to provide a framework for collection, analysis, and storage of criminal intelligence information. The report provides a series of recommendations culled from previous commissions and studies that emphasize standardization, accuracy, and information sharing between agencies. From the standpoint of the Santa Cruz Police Department, such information is only obtained on active criminal investigations, generally gang cases, and the information is purged pursuant to mandated purge criteria. The Santa Cruz Police Department already participates in countywide standardized information systems and accesses state databases that hold criminal intelligence information. The department does not maintain non-criminal information files on individuals. The report does not appear to focus on First Amendment activities and does not appear specifically germane to the Last Night event.*

**Response: The Watsonville Police Department AGREES.**

- 4.3 Prior to adoption of a new policy by the Santa Cruz Police Department regarding undercover operations of First Amendment-protected activities, only two cities, San Francisco and Washington, D.C., had explicit policies defining when and under what circumstances police may engage in undercover investigation of First Amendment-protected activities.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*Our agency queried the entire California Chief's listserv to determine if other California agencies had such a policy and received no affirmative response. Through basic research it was determined that very few agencies had such a policy. However, we are unsure if the two agencies listed in the above finding are the only other two agencies nationwide.*

**Response from the Capitola Police Department:**

*The Capitola Police Department has insufficient information upon which to base an opinion, or response, as we have not independently contacted all police agencies in the entire country regarding this matter. However, in reviewing numerous intelligence and surveillance policies from around the state, it is readily apparent that most agencies require either a “reasonable suspicion” or “probable cause” that criminal activity may be planned or exists, before authorizing either a police surveillance or a criminal intelligence gathering operation. This standard is consistent with the recommendations made by Robert Aaronson, Independent Police auditor, contained on page 3 of this report and may explain why other agencies may have previously been silent on First Amendment-protected activity. Generally, the Constitutional protections referenced as First Amendments activities are incongruous with an individual or individuals violating the law and hiding behind the cloak of Free Speech or other alleged protections.*

**Response: The Scotts Valley Police Department DISAGREES.**

*We cannot agree with this finding absent independent research and verification.*

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on this point that would allow him to agree or partially disagree with it.*

**Response from the Watsonville Police Department:**

*There seems to be no question to be answered. We take the jury’s word for Washington, D.C. and San Francisco Police Department having policies.*

- 4.4 Police officers receive minimal training in First Amendment and free-speech issues, usually prior to becoming an officer while they are in the police academy.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*While the agency agrees that First Amendment issues are covered in the policy academy, the department now expects all of our officers to adhere to the new internal policy.*

**Response: The Capitola Police Department DISAGREES.**

*As previously stated, the Chief of Police and all Command Officers attend the State sponsored Criminal Intelligence for Executives Course and receive instruction on both State and Federal guidelines concerning Criminal Intelligence and Intelligence File Guidelines. Likewise, all uniformed and investigative staff receive regular updates and review operational orders concerning all planned protests, demonstrations and labor management incidents, as it relates to the Constitutional rights of those persons involved in protected free speech activity. Additionally, Capitola Police Department Incident Commanders are required by policy and practice to coordinate operations, to the degree possible, with*

*demonstration and free speech organizers and participants, to insure the rights of demonstrators are protected and balanced in contrast to public safety concerns and private property rights. I refer the Grand Jury to the Governor's Office of Emergency Services, Law Enforcement Branch, Information Bulletin, dated March 12, 2003, entitled: Potential Military Action in the Middle East: Law Enforcement Planning Issues. I further direct the Grand Jury's attention to page two of that document, which states: "To reiterate, lawful First Amendment speech and protest activity must be respected and protected." Similar instructions are regularly discussed and incorporated into pre-incident briefings with all staff assigned to the Capitola Police Department.*

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*Academy curriculum includes general constitutional instruction. We cannot speak to what additional training independent police agencies provide their officers.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*The Sheriff agrees as it relates to the Santa Cruz County Sheriff's Office only.*

**Response: The Watsonville Police Department PARTIALLY AGREES.**

*All Peace Officers get continual training. Some of that training deals with the First Amendment, mostly as it relates to picketing, protests, sit-ins, etc. The Santa Cruz District Attorney has two attorneys assigned to assist agencies in such matters.*

- 4.5 None of the other local law enforcement agencies in Santa Cruz County have a policy in place regarding undercover surveillance of First Amendment activities. The Scott's Valley Police Department is reviewing its policies regarding surveillance and anticipates adopting changes this summer.

**Response: The Santa Cruz Police Department AGREES.**

*At the time of implementation the department was the only in the county (and one of the few in the state) to have adopted such a policy.*

**Response: The Capitola Police Department PARTIALLY AGREES.**

*The City of Capitola shares the same City Attorney as the City of Santa Cruz. As such, the City Attorney is reviewing our current policy as it applies to surveillance and criminal intelligence guidelines, files and surveillance operations. The review should be completed and submitted to the Police Department within the next month and the policy should be adopted and implemented shortly thereafter. However, the department currently appears to meet industry standards, having received training in the State of California, Department of Justice and the U.S. Department of Justice standards as they apply to Criminal Intelligence Gathering and Surveillance operations.*

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*Scotts Valley Police is drafting a policy similar to Santa Cruz Police. We cannot speak to what other local agencies have in regards to such policies.*

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*The Sheriff partially agrees with the first sentence as it relates to the Santa Cruz County Sheriff's Office only and disagrees with the second statement because he has no personal knowledge that would allow him to agree or partially disagree with that point.*

**Response from the Watsonville Police Department:**

*Our policy in this area is guided by case law and advice of District Attorney's staff. Our policies are currently being changed and updated through a company of lawyers.*

- 4.6 The police official who authorized the undercover operation was also the one who conducted the department's internal investigation.
  - 4.7 The Santa Cruz Police Department was reluctant to address the issue to the public's satisfaction. What was and was not released to the public was also complicated by state-mandated limitations upon what can be legally disclosed regarding police personnel matters, not by obfuscation by the police department.
5. In the wake of the surveillance incident, the Santa Cruz Police Department has created new policies to guide it in the future when balancing public safety and constitutional protections for free speech and assembly.

**Response: The Santa Cruz Police Department AGREES.**

**Response from the Capitola Police Department:**

*The Capitola Police Department agrees that the Santa Cruz Police Department has created a new policy by adopting Departmental Directive, Section 610.*

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*The Sheriff has heard that the Santa Cruz Police Department has adopted some changes to their policies but has not seen these changes.*

**Response: The Watsonville Police Department AGREES.**

- 5.1 The City of Santa Cruz employs an independent police auditor, who reports to the city manager, not the police department. He reviews internal affairs investigations for accuracy and thoroughness.

**Response from the Capitola Police Department:**

*The Capitola Police Department agrees that the City of Santa Cruz*



*employs an independent police auditor and has not further comment on the matter.*

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office AGREES.**

**Response: The Watsonville Police Department AGREES.**

- 5.2 No other law enforcement agencies in Santa Cruz County employ an independent police auditor as the City of Santa Cruz does.

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*We have not verified this finding.*

**Response: The Santa Cruz County Sheriff's Office AGREES.**

**Response: The Watsonville Police Department AGREES.**

- 5.3 The Santa Cruz City Council empowers a subcommittee of three council members to act as a Public Safety Committee and review police issues that come before the city, adding another layer of scrutiny of police actions beyond the independent auditor.

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on this point that would allow him to agree or partially disagree with it.*

**Response: The Watsonville Police Department AGREES.**

- 5.4 Santa Cruz Police Departmental Directive Section 610 establishes a minimum threshold of “reasonable suspicion” of anticipated criminal activity before police can initiate undercover surveillance of First Amendment-protected activity. However, there is no simple all-encompassing definition of what constitutes reasonable suspicion; it will be considered on a case-by-case basis.

**Response: The Santa Cruz Police Department AGREES.**

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on this point and has not viewed the Santa Cruz Police Department Directive Section 610.*

**Response: The City of Santa Cruz AGREES.**

**Response from the Watsonville Police Department:**

*We cannot agree or disagree. We have not read Santa Cruz Police Department Directive Section 610.*

- 5.5 The new Santa Cruz Police Departmental Directive Section 610 establishes a clear chain of command that includes the chief of police that must be followed in authorizing such undercover operations. Both the chief of police and the Santa Cruz city attorney must now review proposed undercover surveillance of First Amendment-protected activity.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*The directive specifically applies to potential criminal activity.*

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on this point and has not viewed the Santa Cruz Police Department Directive Section 610.*

**Response from the Watsonville Police Department:**

*Watsonville Police Department takes the jury's word for it.*

- 5.6 Several sections of the Santa Cruz Police Department's new policy regarding surveillance of political activities are now cited as "Best Practices Guidelines for First Amendment Activities,"<sup>14</sup> including acknowledgement of citizens' rights afforded under the U.S. Constitution; the chain of command to be followed in deciding whether to initiate a surveillance operation of political activity; and what police officers can and cannot do when investigating protected claims of political activity.

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*The policy as adopted by the Santa Cruz Police Department addresses the monitoring of First Amendment activities. It does not, however, specifically outline post-event investigations as implied by the above finding.*

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge as to Santa Cruz Police Department's new policy regarding surveillance of "political activities."*

**Response: The City of Santa Cruz PARTIALLY AGREES.**

*The policy as adopted by the Santa Cruz Police Department addresses the monitoring of First Amendment activities. It does not, however,*

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<sup>14</sup> ACLU, pp. 26-30.

*specifically outline post-event investigations as implied by the above finding.*

**Response from the Watsonville Police Department:**

*Watsonville Police Department takes the jury's word for it.*

- 5.7 The Santa Cruz City Council Public Safety Committee has requested further review of the new policy regarding surveillance of First Amendment-protected activities by the city manager with regard to five additional points the American Civil Liberties Union of Northern California, recommends be included in the policy. The ACLU recommends that the new policy be expanded to add these protections: Add a reference to the California Constitution's Right of Privacy; narrow the scope of "reasonable suspicion" in determining when undercover operations may be allowed; clarify the meaning of less intrusive tactics in the new policy; add guidance regarding video surveillance; and expand provisions for auditing and reporting of undercover operations.

**Response: The Santa Cruz Police Department AGREES.**

*Our agency complied with requests for information and participated in the capacity requested by the Public Safety Committee and City Manager. The recommendation was reviewed and the policy has been finalized.*

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department PARTIALLY AGREES.**

*We are aware that the City Council of Santa Cruz has reviewed the new policy, but we have not confirmed what directions the Public Safety Committee has issued, nor the extent to which they chose to adopt the ACLU's recommendations.*

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*The Sheriff has no personal knowledge on these points that would allow him to agree or partially disagree with them.*

**Response: The City of Santa Cruz AGREES.**

*The Santa Cruz Police Department complied with requests for information and participated in the capacity requested by the Public Safety Committee and City Manager. The recommendation was reviewed and the policy has been finalized.*

**Response from the Watsonville Police Department:**

*Watsonville Police Department takes the jury's word for it.*

## **Conclusions**

1. Every city has its own character which may influence where the appropriate balance lies between protecting free speech and guarding against possible threats of criminal acts, particularly in a post 9/11 world. The orientation of residents in the cities of Santa Cruz, Capitola, Watsonville, Scotts Valley, and the unincorporated areas of the county vis-à-vis police are unique to each municipality. But overlaying every community's consideration of this issue are the protections provided in the First Amendment of the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
2. The fluid nature of interpretation of the First Amendment, and the lag time between shifts in public attitudes and the creation of new case law, make it difficult for police departments to create policies that are specific enough to anticipate every possible scenario and provide police officers with definitive guidelines as to whether a particular form of surveillance is proper.
3. Undercover surveillance is an important and legitimate tool in the investigation of gangs, drug violations and a host of other criminal activities.
4. The organizers of the Last Night Santa Cruz DIY Parade did not pose a threat or hazard to public welfare.
5. The likelihood of this type of scenario repeating itself appears slight due to the exposure this incident received. Other Santa Cruz County law enforcement agencies should learn from the Santa Cruz Police Department's experience. Having an established policy in place to guide such investigations could prevent other law enforcement agencies from facing the same exposure. Also, an established policy could provide law enforcement agencies with a positive public relations tool to show that the department is trying to anticipate problems. However, it is important to recognize that the relationship between a city's residents and its police department varies from city to city, and there is no "one size fits all" solution that will work for every law enforcement agency.
6. Police were not out of line in viewing the Last Night DIY Santa Cruz Parade as a potential threat to public safety, given the history of stabbings and violence at previous downtown events. The parade's organizers did not intend to cause property damage or personal injury, but large gatherings where people consume alcohol can create dangerous situations which are unanticipated by those planning the event.
7. The absence of police policy in the area of surveillance of politically protected speech and activity suggests that police are involved with more immediate public safety issues and that the Last Night Santa Cruz DIY Parade surveillance was an anomaly rather than "the tip of the iceberg" of wider police surveillance.
8. The rightness or wrongness of the Last Night Santa Cruz DIY Parade investigation hinges upon interpretations of law and competing priorities upon which reasonable people on both sides of the issue differ.

9. Not considering the political element inherent in the Last Night DIY Santa Cruz Parade hampered police from recognizing potential free speech and First Amendment issues that may have caused them to reconsider the necessity of the undercover operation.
10. Police officers working the streets must navigate a complex web of directives and guidelines in the performance of their duties and are responsible for upholding a wide array of laws. It is the responsibility of police department management to be aware of these developments so that when a situation arises, they can correctly advise their officers how to proceed.
11. The adoption of Santa Cruz Police Departmental Directive Section 610 and the exposure that police handling of the Last Night Santa Cruz DIY Parade received makes it unlikely that undercover operations of First Amendment-protected activities will be undertaken in the future without more extensive advance scrutiny.
12. Although the Santa Cruz Police Department conducted its own internal investigation, the independence of the investigation was compromised by the fact that the police official who conducted the internal investigation was also the police official who authorized the undercover operation causing suspicion of the findings by some members of the public.
13. The report issued by the city's independent auditor served a useful role and aided in preventing further deterioration of the relationship between the Santa Cruz Police Department and residents. The report enabled residents and the police department to come together in the wake of the controversy to try and find some mutually acceptable common ground.
14. The Santa Cruz Police Department's adoption of Departmental Directive Section 610 puts it ahead of almost all other cities in the state and the nation in addressing the potential legalities surrounding this type of investigation.
15. The Santa Cruz Police Departmental Directive Section 610 is a step forward in spelling out under what conditions undercover surveillance of First Amendment activity may occur.
16. The more straightforward and less legally complicated Santa Cruz Police Departmental Directive Section 610 is kept, the more likely it is to be understood and adhered to.
17. Citizens often interact only with their police department when something bad happens—they receive a traffic citation, are stopped for drunk driving, are told they cannot do something—creating a skewed view of police by some of the public, and of the public by some of the police.

## **Recommendations**

1. Police chiefs and the county sheriff should ensure they are familiar with the most recent case law involving surveillance of activities involving free speech and freedom of assembly that are protected under the California and U.S. Constitutions.

**Response from the Santa Cruz Police Department:**

*The recommendation has been implemented by our agency. We are unable to respond to the status of other county law enforcement agencies.*

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation requires further analysis to determine and research the wide extent of case law on this very complex issue.*

**Response: The Watsonville Police Department PARTIALLY AGREES.**

*Our jobs are not to study case law, but to insure the advisors of our officers do. That would be the assistant district attorneys, city attorneys, California Police Chiefs Association Council, and the California District Attorneys Association. Court Decisions change often.*

2. Law enforcement must be cognizant of the wide range of activities that fall under the umbrella of the First Amendment when considering surveillance operations.

**Response from the Santa Cruz Police Department:**

*The recommendation has been implemented. The Santa Cruz Police Department implemented the first such policy that helps guide our agency.*

**Response: The Capitola Police Department AGREES.**

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation requires further analysis to determine potential training on this very complex issue.*

**Response: The Watsonville Police Department AGREES.**

3. Every law enforcement agency in the county should establish procedures, tailored within constitutional limitations to meet their own unique identities, for authorizing surveillance of groups or individuals that may be protected under the First Amendment. Any such approved surveillance operations should establish a clear chain of command for authorizing such surveillance and include provisions for review by the chief of police and legal counsel.

**Response from the Santa Cruz Police Department:**

*The recommendation has been implemented. At the time of implementation our agency was the first and only agency within the county to adopt such a policy.*

**Response: The Capitola Police Department PARTIALLY AGREES.**

*The Capitola Police Department agrees that surveillance and undercover operations*

*involving groups or individuals that may be protected under the First Amendment should require prior authorization by the Chief of Police. However, we do not agree that prior authorization requires the review and concurrence of the City Attorney, although in some cases the City Attorney may be asked for his/her legal opinion relative to a surveillance or undercover operation.*

**Response: The Scotts Valley Police Department AGREES.**

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation requires further analysis. The Sheriff's Office, as part of its normal policy review process, is revising several current policies and implementing new ones. A revised Criminal Intelligence policy is being drafted at this time and other police agencies' policies on this subject will be consulted.*

**Response: The Watsonville Police Department PARTIALLY DISAGREES.**

*The courts, through their decisions on many issues including this one, provide the path to follow with counsel from our legal advisors. It would be difficult at best to have a policy that covers every First Amendment possibility. Having said that, we are in the process of adopting new policies using a company, Lexipol, that is made up of lawyers that are experts in the field of law enforcement policies that use as a basis to form the policies: case law, statute law, and best practices. We will bring to their attention, the Grand Jury's recommendation.*

4. The City of Santa Cruz should carefully weigh recommendations by the American Civil Liberties Union (ACLU) that Santa Cruz Police Departmental Directive Section 610 be expanded against the desirability of keeping Departmental Directive Section 610 simple and easily understood.

**Response from the Santa Cruz Police Department:**

*The recommendation has been implemented. Working with the City Manager, City Attorney, ACLU and others the Santa Cruz Police Department weighed the recommendations outlined by the ACLU and Departmental Directive Section 610 has been finalized.*

**Response from the City of Santa Cruz:**

*The recommendation has been implemented. Working with the City Manager, City Attorney, ACLU, and others, the Santa Cruz Police Department weighed the recommendations outlined by the ACLU and Departmental Directive Section 610 has been finalized.*

5. The cities of Watsonville, Capitola and Scotts Valley, and the Santa Cruz County Sheriff's Department should consider contracting with an independent auditor who is not employed by the police department to review those grievances by the public that cannot be satisfactorily resolved within each department's internal affairs unit.

**Response: The Capitola Police Department DISAGREES.**

*The City of Capitola and the Capitola Police Department has a Citizen Complaint process, which includes options for both internal and external investigations conducted by either a member of the Police Department or an independent contract investigator. Likewise, an appeal process exists whereby citizens can appeal the*

*findings of an administrative investigation (internal affairs investigation) to the Chief of Police, City Manager, or directly to the City Council.*

**Response: The Scotts Valley Police Department DISAGREES.**

*Following an internal affairs investigation, Scotts Valley Police policy requires that the complainant be advised that they may take their complaint in the following order to: the city manager, the Santa Cruz County District Attorney's Office, any Judge of the Municipal Court, any Judge of the Superior Court, Grand Jury of Santa Cruz County and then the Federal Bureau of Investigation (FBI) which has investigative jurisdiction of all matters relating to violations of civil rights by police authorities.*

**Response: The Santa Cruz County Sheriff's Office DISAGREES.**

*This recommendation will not be implemented because it is not warranted. There are sufficient methods of reviewing complaints against members of the Sheriff's Office already in place. There is not a demonstrated need to add another layer of review, especially when the police surveillance described in this document was not conducted by the Sheriff's Office.*

**Response: The Watsonville Police Department DISAGREES.**

*Police have more oversight of any profession including physicians, lawyers, and stock brokers; all of which oversee themselves. If any principle party does not agree with an investigation or finding of a department after an internal affairs investigation, they may ask the Grand Jury and/or the civil rights division of the United States Attorney General to look at the matter. People may also file a lawsuit which allows both sides to present their case in public.*

6. People taking part in protests and other public activities that claim protection under the First Amendment must recognize the potential for events to spin out of their control, and for criminal elements to attach themselves to those events, creating real public safety problems that police must address.
7. Residents should take advantage of community outreach programs provided by police departments, including ride-alongs, neighborhood watch programs, and jail tours. These provide opportunities to get to know how police work in non-emergency situations and can foster a positive rapport that will facilitate mutual trust between the public and law enforcement.

## **Commendations**

1. The organizers of Last Night Santa Cruz for holding a peaceful event each of the past two New Year's Eves.
2. The City of Santa Cruz for employing an independent police auditor.
3. The Independent Police Auditor for conducting a thorough investigation.
4. The Santa Cruz Police Department for taking corrective action and being among the first municipalities in the nation to develop such a policy.



**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
City of Santa Cruz Police Department	1.3, 2.1, 2.2, 4.1, 4.3-4.5, 5, 5.4-5.7	1-4	60 days September 1, 2007
City of Capitola Police Department	1.3, 2.1, 2.2, 4.1, 4.2, 4.3-4.5, 5, 5.1-5.7	1-3, 5	60 days September 1, 2007
City of Watsonville Police Department	1.3, 2.1, 2.2, 4.1, 4.2, 4.3-4.5, 5, 5.1-5.7	1-3, 5	60 days September 1, 2007
City of Scotts Valley Police Department	1.3, 2.1, 2.2, 4.1, 4.2, 4.3-4.5, 5, 5.1-5.7	1-3, 5	60 days September 1, 2007
Santa Cruz County Sheriff-Coroner	1.3, 2.1, 2.2, 4.1, 4.2, 4.3-4.5, 5, 5.1-5.7	1-3, 5	60 days September 1, 2007
Santa Cruz City Council	4.2, 5.4, 5.6-5.7	4	60 days September 1, 2007

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- Criminal Intelligence Systems: A California Perspective, Office of the Attorney General of California, October 2003.
- Code of Federal Regulations, Title 28, Part 23, Criminal Intelligence Systems Operating Policies
- Schlossberg, Mark, Police Practices Policy Director, American Civil Liberties Union of Northern California, Letter to Santa Cruz City Council, March 2006.
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- Santa Cruz Police Departmental Directive, Section 610, Undercover Operations—First Amendment Activity, revised July 2006.
- Thompson, A.C., San Francisco Weekly, Cops Who Spy, Sept. 27, 2006.

### **Web sites**

- The Last Night Santa Cruz DIY Parade,  
[http://www.seedwiki.com/wiki/last\\_night\\_diy](http://www.seedwiki.com/wiki/last_night_diy).
- The Last Night Santa Cruz DIY Parade online discussion group,  
<http://lists.riseup.net/www/arc/lastnightdiy>.
- Santa Cruz Sentinel – Online Edition, [www.santacruzsentinel.com](http://www.santacruzsentinel.com).
- University of California, Santa Cruz, online News/Events,  
<http://messages.ucsc.edu/05-06/12-28.response.asp>.
- San Francisco Chronicle, <http://www.sfgate.com/>, Associated Press story, "Jury: WTO protesters' rights violated," Jan. 30, 2007.
- New York Times, <http://www.nytimes.com>, "Judge Restricts New York Police Surveillance," Feb. 15, 2007, and "Mayor Defends Spying by Police Before G.O.P. Convention," March 28, 2007.

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# **Santa Cruz County**

## **Grand Jury**

### **Final Report with Responses:**

Section 4

Health and Human Services Committee Report



## **Surviving Sudden Cardiac Arrest: Improving the Odds with Automated External Defibrillators**

### ***Synopsis***

The Grand Jury investigated the need for Automated External Defibrillators (AEDs) in Santa Cruz County, how they are currently being deployed, and what policies are in place for their use in saving the lives of sudden cardiac arrest (SCA) victims.

An estimated 325,000 lives are lost each year in the United States due to sudden cardiac arrest.<sup>1</sup> From October 2004 through September 2006, 484 people were victims of sudden cardiac arrest in Santa Cruz County alone.<sup>2</sup> With the recent advances in technology, the modern AED units are simple and relatively low cost. Many lives could be saved if they were made available and used within the first few minutes after the onset of sudden cardiac arrest. Although fire and ambulance services in the county are well equipped and have an excellent reputation for effective medical response, their ability to reach a patient who is suffering from sudden cardiac arrest in time is highly problematic. The solution lies with AEDs being more widely distributed at key sites throughout the county.

In providing what is fast becoming a “standard of care,” the county must keep up to date with technology, national trends and the legal liability associated with failure to be proactive. The county should re-examine its policy and its requirements for the placement of AEDs as recommended in this report.

### ***Definitions***

#### **AED**

Automated External Defibrillator — a computerized medical device that automates the process of administering an electrical shock to the heart to restore its natural rhythm.

#### **Advanced Life Support (ALS)**

Medical care provided by emergency medical technicians trained to assess a patient's condition, administer drugs, defibrillate and provide advanced airway management prior to transportation to the hospital.

#### **AMR**

American Medical Response — a private ambulance service that coordinates with emergency services agencies in the county for first responder Advanced Life Support service. AMR is the sole provider of medical transport in the county.

#### **Basic Life Support (BLS)**

Basic Life Support consists of a number of life-saving techniques focused on the ‘ABCs’ of pre-hospital emergency care: Airway, Breathing and Circulation. BLS generally does

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<sup>1</sup> Sudden Cardiac Arrest Association, <http://www.early-defib.org/learn.asp>

<sup>2</sup> Santa Cruz County Cardiac Arrest Audit 2004-2006, May 2007, p. 2 (hereafter referred to as “SCA Audit.”).

not include the use of drugs or invasive skills, but with advances in AEDs may now include defibrillation.

**CPR**

Cardio-Pulmonary Resuscitation.

**EMSIA**

Emergency Medical Services Integration Authority — a combination of county fire districts and departments that work together with American Medical Response to provide Advanced Life Support medical services in Santa Cruz County.

**Net Com**

Santa Cruz Consolidated Emergency Communications Center — the county’s primary response and dispatch center for 911 calls.

**PAD**

Public Access Defibrillator — an AED that is available in public and/or private places where large numbers of people gather or people who are at high risk for heart attacks live.

**Standard of Care**

The level of service that the average, prudent provider in a given community would practice.

**VF/VT**

Ventricular Fibrillation/Ventricular Tachycardia — chaotic heart rhythms that can be restored to a natural spontaneous rhythm through defibrillation.

***Background***

Heart disease is a serious public health issue. In the United States, at least 61 million people have cardiovascular disease, resulting in an estimated 1 million deaths per year. About one-third of these deaths, 300,000 to 400,000, are due to sudden cardiac arrest, the sudden and unexpected loss of heart function.<sup>3</sup>

Most often, sudden cardiac arrest is due to chaotic beating of the large chambers of the heart, called ventricular fibrillation. Typically, its victims have no warning and quickly collapse and lose consciousness. The only treatment that can save their lives is the quick use of a defibrillator, a medical device that administers an electrical shock to the heart to restore its synchronous pumping rhythm. Defibrillators work by giving the heart a controlled electric shock that has the chance to resynchronize the contraction of the heart muscle and restore its normal rhythm.

The overall survival rate for out-of-hospital cardiac arrest is 6.4 percent nationally and 6 percent in Santa Cruz County.<sup>4</sup> Immediate treatment with defibrillation can improve the odds of survival significantly — resulting in greater than 90 percent survival. Every

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<sup>3</sup> American Heart Association, <http://www.americanheart.org/presenter.jhtml?identifier=4478>

<sup>4</sup> SCA Audit, p. 4.

minute of delay decreases the survival rates by 10 percent; after 10 minutes without defibrillation, it is highly unlikely that a sudden cardiac arrest victim will survive.

Defibrillators are available in two forms, manual and automated. Only trained medical professionals are qualified to use manual defibrillators. Manual defibrillators require interpretation of the patient's condition and an understanding of the capabilities of the defibrillator to deliver an effective and safe shock.

Recently, as a result of technological advances and the development of special computer applications, a new kind of defibrillator has become available. Today's AED uses embedded computer chips and sophisticated programming to analyze heart rhythms quickly and accurately and determine if a shock should be given. It will only deliver a shock if the readings indicate that one is necessary. This automation makes it possible for non-medically trained individuals to deliver the same life-saving treatment as medical professionals without risking an accidental or inappropriate shock. Most modern AEDs are equipped with synthesized voice instructions telling the user how to proceed in the case of a cardiac emergency. This new equipment is very easy to use. In fact, in one study, untrained sixth graders took only 30 seconds longer than trained emergency service technicians to prepare a patient for a shock.<sup>5</sup>

Another advantage of modern automated defibrillators is the fact that, like most electronic equipment, they have become more affordable and available to the general public. In the past, their cost put them out of the reach of most people, but today they can be purchased through retail and online outlets for prices ranging from about \$1,000 to \$2,000.

The American Heart Association has recognized four critical factors associated with improved survival rates from sudden cardiac arrest in communities. More people survive when this sequence of events, called the Chain of Survival, happens as quickly as possible. These four steps are:

1. Early Access — recognizing that a cardiovascular emergency exists and immediately notifying the Emergency Medical Services (EMS) system, usually by calling 911.
2. Early CPR — starting CPR immediately after cardiac arrest to circulate blood to vital organs buys time for the victim until defibrillation can be administered.
3. Early Defibrillation — defibrillation of the victim as soon as equipment arrives.
4. Early Advanced Care — trained health care providers arriving quickly to administer advanced lifesaving interventions.

Establishing a viable chain of survival in a community requires an integrated plan that relies on the cooperation of local government agencies and ordinary citizens to know what to do and be prepared to take action when an emergency occurs.

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<sup>5</sup> Gundry, W., Comess, K., DeRook, F., and Jorgenson, D. AEDs user-friendly — even for children, October 17, 1999. [http://www.eurekalert.org/pub\\_releases/1999-10/AHA-Auef-171099.php](http://www.eurekalert.org/pub_releases/1999-10/AHA-Auef-171099.php)



## **Findings**

### **Status of Emergency Services in Santa Cruz County**

1. The 911 system for most of Santa Cruz County is administered through the Santa Cruz Consolidated Emergency Communications Center, commonly called Net Com. Additional public safety answering points for the 911 system are in Scotts Valley and at the University of California's Santa Cruz campus.

**Response: The Santa Cruz Consolidated Emergency Communications Center (NetCom) PARTIALLY AGREES.**

*In addition to the primary public safety answering points (PSAP) mentioned within the Finding, it should be noted that Cal Fire maintains a secondary PSAP located in Felton which receives transferred 9-1-1 calls relating to fire incidents occurring within the unincorporated areas of the County not serviced by a Fire District.*

**Response: The Santa Cruz County Emergency Medical Services Integration Authority (EMSIA) AGREES.**

*It is important to note that many 911 calls are made by cell phones. When 911 calls are made by cell phones on or close to major roadways, the California Highway Patrol acts as the public safety answering point. Calls are then routed to the appropriate jurisdictional dispatch center.*

2. Net Com is an up-to-date, modern facility. Dispatchers have access to computer-aided dispatch systems that allow them to rapidly send police, fire, and medical assistance when needed. For medical calls involving a person not breathing, such as sudden cardiac arrest, Net Com was able to dispatch Emergency Medical Service units within 60 seconds 92 percent of the time in 2006.

**Response: NetCom AGREES.**

**Response: The EMSIA AGREES.**

3. The Emergency Medical Services Integration Authority (EMSIA) — consisting of the Aptos/La Selva Fire District, Central Fire District, Scotts Valley Fire District, City of Watsonville Fire Department, and City of Santa Cruz Fire Department — provides first responder Advanced Life Support (ALS) medical services to the urban areas of the county.

**Response: The EMSIA PARTIALLY AGREES.**

*The EMSIA consists of 12 Fire agencies in Santa Cruz County; Aptos/La Selva Fire District, Ben Lomond Fire District, Boulder Creek Fire District, Branciforte Fire District, Central Fire District, Felton Fire District, Pajaro Valley Fire District, City of Santa Cruz Fire Department, Scotts Valley Fire District, UCSC Fire Department, City of Watsonville Fire Department, and Zayante Fire District and acts as a liaison between the fire service, the County, AMR, and other EMS related entities. It is the five agencies listed in the finding, not the EMSIA, that actually provide advanced life support services. The remaining agencies provide basic life support (BLS) medical services within their jurisdictions.*

4. The remainder of the county receives first responder Basic Life Support medical services from a variety of smaller fire departments and the California Department of Forestry.

**Response: The EMSIA MOSTLY AGREES.**

*As described in #3, the EMSIA BLS agencies provide BLS Services to much of the county. The California Department of Forestry and Fire Protection (CALFIRE) provides BLS through its contract as the Santa Cruz County Fire Department. CALFIRE and Santa Cruz County Fire Department are not member agencies of the EMSIA.*

5. American Medical Response (AMR), a private ambulance service, coordinates with the EMSIA agencies for first responder ALS service and through its contract with the County of Santa Cruz is the sole provider of medical transport in the county.

**Response: The EMSIA AGREES.**

6. EMSIA fire agencies are able to provide a paramedic to a medical emergency within eight minutes of dispatch 90 percent of the time in urban areas.

**Response: The EMSIA AGREES.**

*Urban areas, as defined for the purposes of this finding, are the jurisdictional service areas of the EMSIA ALS agencies (Aptos/La Selva Fire District, Central Fire District, Scotts Valley Fire District, City of Watsonville Fire Department and City of Santa Cruz Fire Department). The actual performance level hovers around 94% of all emergency calls within eight minutes.*

7. AMR is able to provide an ambulance to a medical emergency within 12 minutes of dispatch 90 percent of the time.

**Response: The EMSIA AGREES.**

8. A fire department paramedic is the first one to arrive at a medical emergency about 60 percent of the time.

**Response: The EMSIA AGREES.**

9. The expectations of service are carefully listed in the emergency services' contracts issued by the county to American Medical Response. AMR coordinates its services with the EMSIA to ensure the best possible service to the citizens of Santa Cruz County.

**Response: The EMSIA AGREES.**

## **AED Distribution and Training**

10. Manual defibrillators, such as those carried by fire department and AMR paramedics, are expensive and complex and require significant training and experience to be effective. Conversely, automated external defibrillators (AEDs) are reasonably priced and simple to operate by anyone with a minimum of training.

11. Santa Cruz County does not have a comprehensive policy regarding the distribution and installation of AEDs in public locations.

**Response: The County AGREES.**

*The County is not required by State law to adopt a policy regarding distribution and installation of Automatic External Defibrillators (AEDs) in public locations.*

12. AEDs are carried in police patrol cars in Scotts Valley. No other law enforcement agencies in the county require AEDs in their vehicles.

**Response: The Santa Cruz County Sheriff's Office PARTIALLY AGREES.**

*It is not known which law enforcement agencies in the county require AEDs in their vehicles.*

**Response: The Santa Cruz Police Department PARTIALLY AGREES.**

*Our agency does not require AEDs in all of our patrol vehicles but provides an AED in our supervisor's vehicle and outside of the main lobby of our police department.*

**Response: The Scotts Valley Police Department AGREES:**

*Scotts Valley Police carries AEDs in our cars. We do not know what the requirements are in other county law enforcement agencies.*

**Response: The Capitola Police Department DISAGREES.**

*Currently, the Capitola Police Department has five AEDs at its disposal. One AED is deployed at the Police Department for use by staff either in the field or at headquarters. An additional AED is located in City Hall for use by City Hall staff serving the public. Three additional AEDs are available and routinely assigned to the Lifeguard Unit located at the Capitola Main Beach, one AED in the Supervisors patrol vehicle and one unit deployed in a primary police cruiser. Additional AEDs are scheduled for acquisition in late 2007 or early 2008. Several of these AEDs have been in service for approximately two years. Eventually, the Police Department intends to equip each primary patrol unit with an AED, requiring acquisition of three to four more devices. It is important to note that an AED also are available at the Capitola Mall and readily available to department staff working at the Capitola Police Department's Community Outreach Center.*

**Response: The Watsonville Police Department PARTIALLY DISAGREES.**

*Capitola Police Department has many of them. Whether any other police department has them in the car, we don't know. We accept the jury's statement that Scotts Valley Police Department does.*

13. The locations of AEDs in the county are not available to Net Com dispatchers.

**Response: NetCom AGREES.**

14. When AEDs are deployed in public buildings, they are often not visible and therefore not accessible when needed.

15. CPR classes, including training in the use of AEDs, are available through a variety of sources in the county.

### **Need for AEDs**

16. While immediate CPR can buy valuable time for a sudden cardiac arrest victim, defibrillation is the only treatment that can save the victim's life by restoring the heart's spontaneous rhythm.

**Response: The EMSIA AGREES.**

*Defibrillation is the most definitive intervention shown to restore spontaneous circulation in cardiac arrest patients. However, studies also show that effective CPR significantly enhances the success of all defibrillation attempts. Proper compression and ventilation (especially with 100% oxygen) is therefore a critical component of this "chain of survival." To this end, early 911 access is also crucial; the study here in Santa Cruz County showed higher survival rates with witnessed arrests vs. unwitnessed arrests.*

17. People of any age may suffer sudden cardiac arrest and die suddenly.

**Response: The EMSIA AGREES.**

*While the predominance of sudden cardiac arrests occur among elderly patients, it is true that no age group is immune from sudden cardiac arrest.*

18. Sudden cardiac arrest is different from a heart attack although coronary artery disease may reduce heart circulation and eventually result in SCA.

**Response: The EMSIA AGREES.**

19. Often the first sign that a person is vulnerable to ventricular fibrillation is an attack that results in sudden cardiac arrest and death.

**Response: The EMSIA AGREES.**

20. In Santa Cruz County, approximately 250 people per year are victims of out-of-hospital sudden cardiac arrest. From October 2004 through September 2006, more than half of these victims (51 percent) were not candidates for resuscitation, mostly because too much time had elapsed before emergency medical services could be activated.<sup>6</sup>

**Response: The EMSIA AGREES.**

*The patients in this study who were not candidates for resuscitation fell into one of three groups:*

- 1. Patients who had been in cardiac arrest for too long before EMS was activated (the majority of patients were in this category);*
- 2. Patients who had signed paperwork indicating that they did not wish to be resuscitated, usually due to the presence of a terminal illness;*

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<sup>6</sup> SCA Audit, p. 6.

3. *Patients who had suffered traumatic injuries (58 cases) and were deemed unviable prior to a resuscitation attempt.*

21. Some common causes for sudden cardiac arrest include asphyxia due to drowning or other oxygen deprivation, congenital heart conditions, sudden blows to the chest, electrocution, and coronary artery disease.

**Response: The EMSIA AGREES.**

*The vast majority of cases of sudden cardiac arrest in adult patients across all age groups can be attributed to the presence of coronary artery disease and/or cardiomyopathy, and the subsequent fatal arrhythmias which can occur in these patients. The most common cause of cardiac arrest in children is respiratory arrest secondary to a host of causes including drowning, foreign body airway obstruction, and respiratory disease.*

*Sudden blows to the chest, electrocution, and congenital heart conditions are very rare causes of sudden cardiac arrest in any community. “Asphyxia” refers to fatal anoxia from respiratory failure (from drowning, foreign body airway obstruction, severe asthma attacks, etc.) and is a more common cause of SCA in any community, but certainly far less common than cardiac etiologies.*

22. The worst combination for cardiac arrest survival is if patients collapse without witnesses, and when discovered, receive no bystander CPR while emergency services personnel are en route. In a two-year period in Santa Cruz County, only two of 215 patients in this situation had their hearts begin to beat again, and neither survived. When sudden cardiac arrest was witnessed and immediate CPR was administered, nearly a quarter of the victims regained pulses and 10 percent survived. The survival rate jumped to 19 percent when EMS professionals witnessed cardiac arrest and could begin treatment immediately. There were 16 EMS-witnessed cases in the two-year period, and three of those were found to be in ventricular fibrillation (as opposed to those with no electrical activity or pulse). All three were successfully resuscitated with defibrillation only.<sup>7</sup>

**Response: The EMSIA AGREES.**

23. Some experts believe that a connection may exist between the use of ‘Tasers’ by law enforcement and sudden cardiac arrest in some individuals.

**Response from the EMSIA:**

*This concept is very hotly debated among legal, medical and law enforcement experts. Much of the medical data at this time suggests that sudden, in-custody deaths may in fact be attributable to a medical phenomenon known as “excited delirium.”*

*Excited delirium is thought to occur when individuals — often, but not always, drug or alcohol intoxicated — develop central nervous system dysfunction which leads to bizarre, violent behavior. When force of any kind is subsequently used*

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<sup>7</sup> SCA Audit, p. 6.

*— wrestling with the patient, batons, Tasers, pepper spray — the patient may experience respiratory and cardiac arrest. There is no indication that Tasers particularly are implicated in in-custody deaths any more than any other use of force to try to control and contain a violent or non-compliant subject who suffers from this phenomenon.*

24. To improve the survival rate of victims of out-of-hospital cardiac arrest in Santa Cruz County, the Emergency Medical Services Integration Authority recommends “promulgating citizen CPR programs, Public Access Defibrillator (PAD) programs, and continued rapid EMS response using all the latest AHA (American Heart Association) recommendations for CPR, defibrillation, and advanced life support care.”<sup>8</sup>

**Response: The EMSIA AGREES.**

### **Laws related to AEDs**

25. Effective July 1, 2007, the State of California will require all health clubs to be equipped with AEDs on site and establish a program of training, maintenance, and record keeping.

**Response: The EMSIA AGREES.**

26. Good Samaritan laws protect most citizens from liability if they take action in a medical emergency, which includes using an AED. Conversely, lawsuits have been filed against organizations such as amusement parks and airline companies for not having AEDs readily available.
27. AEDs are now required at FAA governed airports and on all commercial airliners.
28. The Federal Cardiac Survival Act of 2000 (Public Law 106-505) directed the Health and Human Services Department to establish guidelines for evaluating and installing AEDs in federal buildings.

### **Conclusions:**

1. In Santa Cruz County, the American Heart Association’s recommended ‘Chain of Survival’ for victims of sudden cardiac arrest is incomplete. Specifically, the availability of early CPR and early defibrillation is lacking.
2. Although Net Com and the Emergency Medical Services Integration Authority cooperate to ensure advanced life support (ALS) services are sent to medical emergencies as quickly as possible, even the most rapid dispatch and transit times by Net Com and ALS providers will rarely get a defibrillator to the victim within the three- to five-minute window recommended by the American Heart Association for best survival, especially in outlying areas of the county.

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<sup>8</sup> SCA Audit, p. 9.

3. Modern AEDs are simple to use and can improve the chances of surviving sudden cardiac arrest if they are deployed in the community and if there is a base population of trained citizens able to step in when a medical emergency requiring the use of an AED occurs.
4. When AEDs are deployed in the community, they need to be made visible and readily accessible to the public so they can be used immediately.
5. Net Com staff could improve response time in cases of sudden cardiac arrest if they knew the locations of nearby AEDs.
6. Deaths due to sudden cardiac arrest can be reduced through a combined program of public education in CPR and effective public access defibrillator (PAD) implementation.
7. The availability of an AED is becoming the expected ‘standard of care’ in many situations.
8. The availability of AEDs in county buildings — and their deployment in sudden cardiac arrest incidents — may protect the county from possible litigation and financial liability.
9. Providers of AEDs may be protected from liability if they comply with simple regulations regarding training, maintenance, record keeping, and medical oversight.

### **Recommendations**

1. The Santa Cruz County Health Services Agency should establish a public education program to enhance the community’s knowledge and awareness of CPR and the use of AEDs as a life-saving measure.

#### **Response from the County:**

*The recommendation is being implemented in conjunction with the Emergency Medical Care Commission’s Public Information and Education Subcommittee. The Subcommittee will continue to monitor local out-of-hospital cardiac arrest data and is working closely with Dominican Hospital to improve the survival rate.*

2. The locations of AEDs in the county should be entered in Net Com’s Computer-Assisted Dispatch system.

#### **Response from NetCom:**

*Requires further analysis and may not be implemented because it is beyond this agency’s scope of service. Netcom computer systems possess the ability to be programmed with AED location data tied to fixed telephone locations which would become available to call-takers upon call answering. While the technical capability and capacity exists, there is currently no program or system available to collect and update this location data, nor is there a requirement for businesses and individuals to “register” their AEDs by location. Furthermore, it is beyond the scope of our agency to mandate a registration and to be responsible for the collection of such data. In the event that a responsible agency should someday*

*register, collect, and update AED location data and make it available to our Agency in an electronic format, we in turn could enter it into our computer systems and make it available to call-takers handling 9-1-1 emergency calls. In the meantime, it is important to note that our computerized Emergency Medical Dispatch (EMD ProQA) software is configured to prompt call-takers to question callers who report “cardiac” incidents as to the availability and accessibility of an AED. In the event that a caller answers “Yes” to this prompt, EMD ProQA provides medically approved, step-by-step instructions which allows NetCom call-takers to “walk the caller through” the operation of an AED.*

3. Santa Cruz County should require AEDs in county buildings with more than 100 employees or daily visitors and in county detention facilities, including Juvenile Hall.

**Response from the County:**

*This recommendation will not be implemented at this time. While the County strongly supports the idea, funds are not available to purchase and install AEDs in all county buildings with more than 100 employees. The County will look for funding opportunities and will consider a phased in approach as part of County budget considerations.*

4. Santa Cruz County should encourage the use of AEDs in the following public locales and private settings:

- Public schools
- Public swimming pools
- Public libraries
- Large concerts and other public events
- Public golf courses
- Churches with a capacity of 100 or more
- Private schools
- Private recreation clubs
- Medium to large hotels and motels
- Shopping centers
- Medical and dental offices
- Private golf courses
- Senior citizen centers and care facilities

**Response from the County:**

*The recommendation is in the process of being implemented by the Emergency Medical Care Commission’s Public Information and Education Subcommittee that is focusing on cardiac care and stroke prevention. The Emergency Medical*



*Services Program will also be adding information about AEDs to the program's webpage.*

5. The county and each city should equip law enforcement vehicles with AEDs.

**Response: The Santa Cruz County Sheriff's Office AGREES.**

*This recommendation has not yet been implemented but will be implemented in the future. The Sheriff's Office has just purchased a few AEDs for deployment. However, due to the large number of Sheriff's vehicles, full deployment will have to occur in planned stages, along with the training of staff.*

**Response from the Santa Cruz Police Department:**

*The recommendation will not be implemented. Our agency is not a primary responder for medical calls and the Santa Cruz Fire Department staffs paramedics [are] primary responders for such emergencies. In order to outfit our patrol vehicles the department would have to outlay over \$50,000 in equipment and training costs.*

**Response: The Scotts Valley Police Department AGREES:**

*The Scotts Valley Police Department has carried AEDs in our patrol vehicles for several years now.*

**Response from the Capitola Police Department:**

*The Capitola Police Department agrees and is the process of acquiring additional AEDs and the requisite training and certification required to effectively deploy the devices in each primary patrol vehicle, office site and the Capitola Lifeguard Unit.*

**Response: The Watsonville Police Department AGREES.**

*Watsonville Police Department will put them in the next two-year budget cycle; FY2009/11 for consideration by the City Council.*

6. The county should establish a mechanism to ensure that once AEDs are deployed by public agencies, those responsible meet the requirements needed to shield the county from liability by providing training, maintenance, record keeping and medical oversight.

**Response from the County:**

*State law is clear that individuals and agencies that purchase and place AEDs are shielded from liability if they follow the requirements to maintain them and conduct training as required by the State.*

7. The county should establish a reporting and inspection mechanism to ensure that AEDs deployed in the community are identified by Net Com and thereby viable in case of an emergency.

**Response from the County:**

*Emergency medical dispatchers at NetCom routinely ask callers reporting suspected cardiac arrests to quickly look around for an AED. It would not be feasible to conduct inspections to ascertain where AEDs are located and to*

*establish and correct a database with any regularity. It is anticipated that in the near future AEDs will be as prolific as fire extinguishers.*

8. The county should develop a strategy for implementing a meaningful public access defibrillator program that meets the criteria of the American Heart Association and American Red Cross recommendations.

**Response from the County:**

*The recommendation is in the process of being implemented by the Emergency Medical Care Commission's Public Information and Education Subcommittee that is focusing on cardiac care and stroke prevention. The Emergency Medical Services Program will also be adding information about AEDs to the program's webpage.*

9. The county should explore funding opportunities to pay for an expanded public access defibrillator program from both public and private sources, possibly enlisting the aid of community service organizations.

**Response from the County:**

*The recommendation is being implemented by the Emergency Medical Care Commission's Public Information and Education Subcommittee that is focusing on cardiac care and stroke prevention.*

## **Commendation**

Santa Cruz County's emergency services teams and organizations for providing the most efficient and responsive services possible under current conditions.

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Santa Cruz County Consolidated Emergency Communications Center	1, 2, 13	2	90 days October 1, 2007
Santa Cruz County Health Services Agency	11	1, 3, 4, 6-9,	90 days October 1, 2007
Santa Cruz County Board of Supervisors		1, 3, 4, 6, 8, 9	60 days September 1, 2007
Santa Cruz County Emergency Medical Services Integration Authority	1-10, 16-24		90 days October 1, 2007
Santa Cruz County Sheriff	12	5	60 days September 1, 2007
City of Santa Cruz Police Department	12	5	90 days October 1, 2007
City of Scotts Valley Police Department	12	5	90 days October 1, 2007
City of Capitola Police Department	12	5	90 days October 1, 2007
City of Watsonville Police Department	12	5	90 days October 1, 2007

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### **Interviews**

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Survivors of sudden cardiac arrest.



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# **Santa Cruz County**

## **Grand Jury**

### **Final Report with Responses:**

Section 5

Schools and Libraries Committee Reports



## **Checked In: Santa Cruz City-County Library System Follow-up Review**

### ***Synopsis***

The 2006-2007 Grand Jury followed up on a 2004-2005 Grand Jury review of the Santa Cruz County Library System. In addition to investigating the status of previous recommendations, the 2006-2007 Grand Jury looked into worker safety and hiring practices. The Grand Jury gathered information by interviewing upper management, most branch managers and some employees. The Jury also toured library facilities, including most of the local branches. It was discovered that some previous recommendations been appropriately addressed, while others still require attention.

### ***Background***

#### **Prior Grand Jury Recommendations**

In 2004-2005, the Santa Cruz County Grand Jury did an extensive review of the Santa Cruz City-County Library System, an investigation which resulted in the following recommendations:

- “The Santa Cruz City Manager should review the Director of Libraries’ job performance according to the Library Joint Powers Authority Agreement.”
- “Library administration should conduct an efficiency study, to find reasonable alternatives to the way staff are located within the library system and are rotated in and out of the central branch.”
- “The Joint Powers Authority Board should immediately begin to find an alternative to the crowded and inefficient location at 1543 Pacific Avenue.”
- “Since the operation of the Santa Cruz City-County Library System depends on Measure B Sales tax revenue that will expire in 2013, economy measures and new funding sources must be found to maintain existing levels of service.”
- “The library staff and Joint Powers Authority Board must develop contingency plans for the future capital projects if a bond issue is unsuccessful at the polls.”

#### **Library System Mission Statement**

“Serving County residents since 1917, the mission of the Santa Cruz Public Libraries, California is to provide materials and services which help community residents meet their personal, educational, cultural, and professional information needs. Our mandate is to provide free information services to all residents of Santa Cruz, Scotts Valley, Capitola, and the County's unincorporated areas.

We do this through a system of branch libraries stretching from La Selva Beach to Boulder Creek, via an Outreach Program serving those unable to get to a library, through

telephone reference services, dial-up access to our computer catalog, and other electronic databases. Our collections are linked by an automation system which tells where any System book or other item is located and whether it is available for checkout.”<sup>1</sup>

**Library System-Branches-Current and Planned**

The following table represents the current status of the branches as of April 2007, and identifies priority projects for improvements.

BRANCH/DEPT	CURRENT FACILITY SQ FT	PLANNED FACILITY SQ FT	AVG DAILY USAGE	PRIORITY **
Aptos Branch (Tier II) *	8000	12,500	600	Deferred
Aptos Branch Parking Lot			N/A	Priority
Boulder Creek Branch (Tier I) *	7500	7,500	250	None
Branciforte Branch (Tier I)	7500	7,500	500	None
Capitola Branch (Tier I) *	4320	7,500	500	Priority
Central Branch (Tier III) *	44,000	55,000	1200	Priority
Felton Branch (Tier I) *	1,250	7,500	300	Priority
Garfield Park Branch (Tier I)	2,343	2,343	150	None
La Selva Beach Branch (Tier I)	2,200	2200	115	None
Live Oak Branch (Tier II) *	12,500	12,500	600	None
Scotts Valley Branch *	5,300	12,500	300	Priority
Pacific Ave Headquarters *	11,450	12,000	N/A	Priority
[1]	[2]	[3]	[4]	[5]

\*The Grand Jury interviewed staff and toured branch.

\*\*Priority (Capital Spending)

**Definitions**

**Joint Powers Authority Board**

The Joint Powers Authority Board (JPA Board) oversees the operations of the Santa Cruz County Library systems, setting policies and exercising responsibilities delegated to in the Joint Powers Agreement. The JPA Board consists of nine appointed members — two from the Santa Cruz City Council; two from the Santa Cruz County Board of Supervisors; one each from the Capitola and Scotts Valley City Councils; and three at-large citizens appointed by majority vote of the Board representing the geographic diversity of the area.

**Lock Box**

A secured locked box which contains emergency procedures and keys.

<sup>1</sup> Library Mission Statement, <http://www.santacruzpl.org/libraryadmin/libmiss.shtml>

### **Tier I Branches**

The smaller neighborhood libraries that have neither the space nor the resources to provide complete information services to their communities. Instead, a Tier I provides a popular materials collection, meets the ready reference needs of adults, and endeavors to meet the library information needs of children through the junior high level.

### **Tier II Branches**

Larger branches, serving regional populations. They have bigger collections, provide more reference services, and endeavor to meet the information needs of youngsters through the high school level. The service area of a Tier II branch usually encompasses Tier I branches as well.

### **Tier III Branch**

The single Tier III branch is the Central Branch in downtown Santa Cruz. It serves as system headquarters for the collections, reference and youth services, and has special collections such as local history, California, and genealogy.

## **Scope**

### **Follow up on Previous Investigation**

1. Verified that the change in the job performance review process for the director of libraries is an operational procedure.
2. Verified that the procedure of branch staff rotation is a viable procedure.
3. Investigated if alternatives to the 1543 Pacific Avenue facility were identified, as agreed.
4. Investigated the long-range facility plan to determine if the plan is on track.
5. Verified that a funding process is in place and determined if a financial plan was in place for FY2005-FY2006.
6. Investigated the status of contingency plans for any future capital projects, if a bond issue is unsuccessful at the polls.

### **Additional Investigation**

7. Reviewed the hiring practices for the library.
8. Investigated the safety/worker's compensation issue and actions taken.
9. Toured most library branches to understand their operation.

## **Findings**

1. *Director of Libraries Job Review Process:* In February of 2006, the JPA Board adopted an official procedure for appraising the performance of the director of libraries. A standard written job description, which is part of the City of Santa Cruz personnel system, has been established. It has been verified that the director of libraries' performance evaluations are now current.

**Response: The Library Joint Powers Authority Board AGREES.**

**Response: The Director of Libraries AGREES.**

**Response: The City of Santa Cruz AGREES.**

2. *Staff Rotation:* Contrary to previous findings, the Grand Jury found that library staff are happy with rotation practices. The library has been practicing staff rotation for more than ten years. The Central Branch circulation and reference staff is rotated in and out of the headquarters facility on Pacific Avenue. They rotate in four-hour shifts based on established work schedules. Staff rotation is in place to:

- Reduce injuries and stress illness.
- Cover required workload hours on the reference desk.
- Provide cross-training and job backup.
- Offer job enrichment.
- Improve staff morale.
- Reduce staff turnover.
- Reduce worker compensation claims.

Larger branches practice staff rotation internally while some small branches do not have enough staff to rotate. There is 'on call' staff to fill in occasionally if required. Some employees feel that the staff rotation gives most library employees a chance to work directly with customers and understand the public's needs.

**Response: The Director of Libraries AGREES.**

3. *Alternatives to 1543 Pacific Avenue:* The Director of Libraries is aware of the urgency for having a plan in place for this location. The city manager noted that they may extend the lease on Pacific Avenue until 2013 and that more financial analysis must be done. In 2006, the director appointed a Capital Projects Priorities Subcommittee. This committee is responsible for developing a long-range facilities plan.

**Response: The Library Joint Powers Authority Board AGREES.**

*The City of Santa Cruz has purchased property at 212 Locust/117 Union Street (across from the Central Branch Library) that Library System Services will occupy, sharing the space with the City Water Department. The Library will pay a fixed rent based on its share of the City debt amount, which will cease in twenty*

*years. Tenant improvements are currently underway, and the Library hopes to occupy the space by Spring, 2008. The City of Santa Cruz should be commended for going beyond its contractual obligation to the Library System, thereby enabling the Library to make substantial long term savings in its operating costs.*

**Response: The Director of Libraries AGREES.**

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**Response: The City of Santa Cruz AGREES.**

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4. *Funding Plans:* A five-year budget plan, “Library Strategic Financial Plan” was prepared in 2006. It was developed with the following funding assumptions:
- Sales tax revenues will increase 3% per year.
  - County Library Fund increased 7.5% in FY 2006-07 and will increase 5% each year thereafter.
  - Fees, fines and miscellaneous revenues will increase 1% per year.
  - Bequest appropriations will remain at the same level of funding.
  - The library will receive estimated carry over funds, grants, and gifts.

**Response: The Library Joint Powers Authority Board AGREES.**

**Response: The Director of Libraries AGREES.**

**Response: The City of Santa Cruz AGREES.**

5. *Contingency Planning:* In 2005, the JPA Board adopted a policy that keeping branches open was the “cornerstone” of the budget process and that closing branches should not be considered in contingency planning.

**Response: The Library Joint Powers Authority Board AGREES.**

**Response: The Director of Libraries AGREES.**

**Response: The City of Santa Cruz AGREES.**



6. *Worker Safety*: An outside consultant prepared a safety recommendations report for the JPA. The Director of Libraries was asked to come back with an action plan on the safety recommendations that were made. Upon review of this report entitled “Promoting Worker Safety at the Library — An Action Plan,” the JPA Board accepted it unanimously. In addition:
- The library added a “Safe/Ergonomic Practices” section to the standard employee appraisal form to raise the safety awareness of the employees.
  - The library has a safety committee which issues an annual report and periodic updates.
  - According to management, training the staff in ergonomics has reduced the workers compensation claims. Most work-groups have someone in charge of stretch breaks where three or more people use the same circulation desk.

**Response: The Library Joint Powers Authority Board AGREES.**

*The Library has made significant progress in reducing the number of worker injuries by training, evaluation of work sites, purchase of equipment, and on-going work with the Staff Safety Committee.*

**Response: The Director of Libraries AGREES.**

*The Library has made significant progress in reducing the number of worker injuries by training, evaluation of work sites, purchase of equipment, and on-going work with the Staff Safety Committee.*

**Response: The City of Santa Cruz AGREES.**

*The Library has made significant progress in reducing the number of worker injuries by training, evaluation of work sites, purchase of equipment, and ongoing work with the Staff Safety Committee.*

7. *Hiring Practices*: The library does considerable hiring from outside the county library system for higher-level positions. This practice has caused morale problems and has increased costs to the system. Many of the current staff have attended college to get their Masters in Library Science with the sole purpose of advancing their careers but have not found it helpful in getting promoted.

*Other Hiring Practice Issues:*

- The practice of hiring half-time employees enables the library to stay open more hours to serve the public. It also has some cost-savings benefits. Many of the branches are understaffed, based on the number of customers they serve. However, hiring half-time employees also limits opportunities for full-time staff to be promoted.
- The branches would like to have more frequent staff meetings, but find it hard to balance this need with the priority of keeping the library open for the public.

- In April 2006, the library had a meeting for all staff system-wide. The focus of this meeting was on the Central Branch. As a result of the meeting, work groups were formed to address issues. In December 2006, a summary report was sent to all staff system-wide. The employees reported that there was not adequate follow-up in the areas of communication and the update of job classifications. Library employees sometimes stay with their jobs because they like the Santa Cruz community and wish to make a career and home here, not because they feel there are equitable hiring practices or opportunities for job advancement.

**Response: The Library Joint Powers Authority Board DISAGREES.**

*The Library System follows the mandated procedures of the City of Santa Cruz Human Resources Department in its hiring practices. Every vacant position is advertised to all internal staff. Over the fifteen month period from March 2006 though June 2007, 45 positions were filled. Of these, fifteen went to “outsiders” and 30 were filled by current or former library employees. The Library’s practice is to hire the person who is the best “fit” for the opening available, which is not always a current staff person. Not every employee may agree with the decisions made, but then not every employee knows the full details about any particular hire.*

**Other Issues:**

*Half-time staff: no comment*

*More frequent branch staff meetings: no comment*

**April 2006 Staff Day**

*The topic of the day was **not** the Central Branch, but rather an all-staff discussion of how the library could improve the way it is providing services in a 21st Century environment.*

*One hundred and eleven suggestions made. These were organized and assigned to Work Groups for further discussion. One suggestion was a reclassification study in order to bring library job descriptions and classifications up to date. A Work Group composed of representatives all of non-professional classes and each Branch level was appointed. The group worked for five months to develop a plan, which was presented as an information item to the Library Joint Powers Authority Board and all staff. SEIU, the union representing most of the workers, rejected the plan and requested that further study take place. In the Spring of 2007 The City of Santa Cruz management was unwilling to undertake a study for the Library because of the implications for other City workers. Library management has done all it can on this issue until collective bargaining negotiations are completed.*

*A second Work Group on Communications was appointed. Each of the recommendations from Staff Day has been implemented or is planned for implementation.*

**Response: The Director of Libraries DISAGREES.**

*The Library System follows the mandated procedures of the City of Santa Cruz Human Resources Department in its hiring practices. Every vacant position is advertised to all internal staff. Over the fifteen month period from March 2006 though June 2007, 45 positions were filled. Of these, fifteen went to “outsiders” and 30 were filled by current or former library employees. The Library’s practice is to hire the person who is the best “fit” for the opening available, which is not always a current staff person. Not every employee may agree with the decisions made, but then not every employee knows the full details about any particular hire.*

**Other Issues:**

*Half-time staff: no comment*

*More frequent branch staff meetings: no comment*

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*A second Work Group on Communications was appointed. Each of the recommendations from Staff Day has been implemented or is planned for implementation.*

**Response: The City of Santa Cruz PARTIALLY AGREES.**

*The Library System complies with the procedures of the City of Santa Cruz Human Resources Department in its hiring practices. Every vacant position is advertised to all internal staff. Over the last eighteen months, 50% of the vacancies were filled with inside candidates, and 50% by outside candidates. The Library’s practice is to hire the best candidate for each opening.*

*The topic of the April 2006 Staff Day was not the Central Branch, but rather an all-staff discussion of how the Library could improve the way it is providing services in a 21<sup>st</sup> Century environment. One hundred and eleven suggestions were made. These were organized and assigned to work groups for further*

*discussion. One suggestion was a reclassification study in order to bring Library job descriptions and classifications up to date. A work group composed of representatives of all nonprofessional classes and each branch level was appointed. The group worked for five months to develop a plan, which was presented as an information item to the Library Joint Powers Authority Board and all staff. The Service Employees International Union, the union representing most of the workers, rejected the plan and demanded that further study take place. In the spring of 2007, the City of Santa Cruz management was unwilling to undertake a study for the Library because of the implications for other City workers. Library management has done all it can on this issue until collective bargaining negotiations are completed. A second work group on communications was appointed. Each of the recommendations from Staff Day has been implemented or is planned for implementation.*

8. *Branch Findings:* In at least one branch, emergency lock boxes were not easily accessible.

**Response: The Director of Libraries DISAGREES.**

*The Director has polled each Branch Manager regarding the location of an emergency lock box in an inaccessible place. Each Manager reports that the lock boxes are accessible and the padlocks with which they are secured work well.*

## **Conclusions**

1. The previous recommendation that the Santa Cruz City Manager review the Director of Libraries' job performance according to the Library Joint Powers Authority Agreement has been met. The Director of Libraries' Job Review Process is in place and operational.
2. In contrast to the previous Grand Jury's recommendations, staff rotation is now a viable process. Staff does not work more than four hours at a time on the reference desk, which relieves stress caused by repetitive work.
3. The recommendation that the JPA Board should immediately begin to find an alternative to the Pacific Avenue facility has not yet been met. Alternatives to this location have yet to be identified. Although the JPA Subcommittee on Capital Project Priorities has produced a plan for capital spending, the plan is very broad and does not provide enough detail for the JPA Board to make a funding decision.
4. While funding plans are in place in the form of a five-year strategic financial plan, new sources of funding have yet to be identified.
5. Contingency planning has not been addressed. In the event of reduced funding, there is no contingency plan in place. Although keeping branches open has been declared as a core service and may be desirable, this policy does not provide for the possibility of reduced funding.
6. The Director of Libraries' emphasis on worker safety and ergonomics and the on-going rotation of staff have had a positive effect on workers' compensation claims and employee morale.

7. Employees are aware of the Safety and Ergonomics Plan, but follow-up training has been overlooked and needs to be addressed.
8. The hiring practices of the library are in dire need of reform. The practice of hiring outside the local library system for the higher-level positions has caused low morale and poor expectations of job advancement.
9. During an emergency, staff at one location could not easily access the lock box key or operate it.

## **Recommendations**

1. *Worker safety* (including ergonomics training), should continue to be a priority. Additional emphasis should be placed on annual refresher courses. An annual training report reviewed and approved by the JPA Board would help ensure the on-going improvement of the program.

**Response from the Library Joint Powers Authority Board:**

*[This recommendation] has been implemented. The Library System mandates annual refresher training for all staff. An annual training report is presented to the Board in September of each year.*

**Response from the Director of Libraries:**

*[This recommendation] has been implemented. The Library System mandates annual refresher training for all staff. An annual training report is presented to the Board in September of each year.*

**Response from the City of Santa Cruz:**

*The recommendation has been implemented. The Library System mandates annual refresher training for all staff. An annual training report is presented to the JPA Board when it considers the budget for the coming fiscal year.*

2. *Staff rotation:* Because staff rotation is a viable process which has had a positive effect on employee safety, the staff rotation process should be continued.

**Response from the Library Joint Powers Authority Board:**

*[This recommendation] has been implemented.*

**Response from the Director of Libraries:**

*[This recommendation] has been implemented.*

**Response from the City of Santa Cruz:**

*The recommendation has been implemented.*

3. *Annual budget:* The annual budget process is in place and should be continued.

**Response from the Library Joint Powers Authority Board:**

*[This recommendation] has been implemented.*

**Response from the Director of Libraries:**

*[This recommendation] has been implemented.*

**Response from the City of Santa Cruz:**

*The recommendation has been implemented.*

4. *Hiring practices:* The library's hiring practices should undergo a complete review to determine whether reform is required. If employees felt that there was a career path with the Santa Cruz Library System, morale would improve and good employees would stay. A policy should be put in place which encourages internal employee advancement and incorporates methods such as career and succession planning. Career ladders or job families should be established so that employees can advance "in position" as their levels of expertise increase. Also, library job classifications should be updated.

**Response from the Library Joint Powers Authority Board:**

*[This recommendation] will not be implemented because it is not warranted. The Library System follows the hiring procedures mandated by the City of Santa Cruz, and has done extensive work to develop a reclassification plan that includes career ladders and "job families." This matter is the subject of collective bargaining negotiation.*

**Response from the Director of Libraries:**

*[This recommendation] will not be implemented because it is not warranted. The Library System follows the hiring procedures mandated by the City of Santa Cruz, and has done extensive work to develop a reclassification plan that includes career ladders and "job families." This matter is the subject of collective bargaining negotiation.*

**Response from the City of Santa Cruz:**

*The recommendation will not be implemented. The City believes that the existing system does provide many of the opportunities desired by the Grand Jury. In any event, the City cannot unilaterally change its structure, as each position is part of a larger system that requires the consent of multiple parties to change. The City will work over the longer term to realize the goals of the Grand Jury, because the City shares the values underlying those goals.*

5. *Capital spending plan:* The JPA Board should identify alternatives to the continued use of the 1543 Pacific Avenue facility. The JPA Subcommittee on Capital Project Priorities should prepare a more detailed plan for capital spending which would help them make an informed decision on future facility needs. For major projects, they should do a detailed financial analysis which discloses all costs, time to execute and return on investment.

**Response from the Director of Libraries:**

*[This recommendation] has been implemented.*

6. *Contingency funding:* A contingency funding plan needs to be put in place in the event of a worst-case scenario, such as a bond measure not passing or the revenues from sales tax not increasing.

**Response from the Director of Libraries:**

*[This recommendation] has been implemented. The Library System is the recipient of a dedicated quarter center sales tax that will expire in April 2013. During FY 2007-08 the Board and staff anticipate conducting opinion polling to determine the level of continuing public support for the library, and will consult with a communications expert on developing a plan for improving public understanding of the depth and breadth of library services.*

7. *Emergency procedures:* Branch managers need to review emergency response procedures and verify that all information, materials and equipment are up to date, functioning and accessible.

**Response from the Director of Libraries:**

*[This recommendation] has been implemented. Branch Managers review emergency plans and inventory all emergency equipment twice each year, in October and April. They also rehearse various emergency procedures with staff at those times.*

**Commendation**

The Joint Powers Authority, City Manager and Director of Libraries are to be commended for establishing current procedures for the job performance review of the Director of Libraries.

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
JPA Board	1, 3-7	1-4	90 Days October 1, 2007
Director of Libraries	1-8	1-5	90 Days October 1, 2007
Santa Cruz City	1, 3-7	1-4	90 Days October 1, 2007

## **Sources**

### **Web Sites**

- Library  
<http://www.santacruzpl.org/>
- Santa Cruz City Manager  
[citymgr@ci.santa-cruz.ca.us](mailto:citymgr@ci.santa-cruz.ca.us)
- The Santa Cruz Library System Facilities Master Plan FY 2001-02 – FY2005/06.  
<http://www.santacruzpl.org/libraryadmin/ljpb/members.shtml>
- 2004-2005 Civil Grand Jury Report, “Ready to Check Out? Santa Cruz City County Library System.”  
[http://www.co.santa-cruz.ca.us/grandjury/GJ2005\\_responses/](http://www.co.santa-cruz.ca.us/grandjury/GJ2005_responses/)
- Joint Powers Agreement  
<http://www.santacruzpl.org/libraryadmin/ljpb/index.shtml>

### **Reports & Memos**

- City of Santa Cruz Director of Libraries Job Description
- Joint Powers Authority Memo, January 17, 2006, Director of Libraries Job Description Approval
- Promoting Worker Safety at the Library, An Action Plan, Report, August 2004
- Joint Powers Authority Memo, May 23, 2005, Update on Library Worker Safety Activities
- Santa Cruz Public Library Safety Committee Annual Report 2005-06
- Joint Powers Authority Board Subcommittee on Capital Project Priorities, Report March 28, 2006
- Ready to Check-Out? Santa Cruz City-County Library System 2004-2005
- Memo: All Staff System-wide, Staff Morning Follow-up. December 26 ,2006

### **Board minutes**

- Library Joint Powers Board Minutes June 7, 2004 – December 31, 2005
- Library Joint Powers Board Minutes January 9, 2006 – June 5, 2006



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## **Report Card** **Pajaro Valley Unified School District**

### **Synopsis**

The 2006-2007 Grand Jury conducted an investigation into the performance of the Pajaro Valley Unified School District. The jury investigated how well the district's board of trustees has managed its fiscal oversight responsibilities and looked into allegations of an appearance of conflict of interest on the part of the superintendent. The jury found that the district, in particular its board of trustees, has in many respects failed in the performance of those duties. The board did not provide effective oversight of fiscal matters nor did it take corrective action for failed management tools and practices. The results of the investigation of the appearance of a conflict of interest are inconclusive.

### **Background**

The Pajaro Valley Unified School District (PVUSD) Board of Trustees is charged with providing the children in the district with the best possible education. It is the board's responsibility to assure the taxpayers that school funds are spent legitimately and efficiently and that the students are getting the highest quality teachers, curriculum, and school facilities possible. It is also the board's responsibility to hire and give direction to a superintendent who is responsible for managing school funds and instructional programs.

Not only has the PVUSD board failed to meet its responsibilities, but according to local papers, the school district continues to be in a state of chaos.<sup>1</sup> The board continues to be criticized by local newspapers and community members for years of failure to bring its students up to grade level and meet state and federal requirements.

The district has argued that political interference, unfair measurement tactics, lack of funds, impoverished families, the prevalence of speakers of English as a second language, cultural imperatives, and micromanagement have hindered the district's progress. However, the question remains — has the Pajaro Valley Unified School District provided its students with the education they deserve?

The Grand Jury investigated reported problems with the PVUSD and its superintendent of schools, as well as concerns that large sums of money and resources have been wasted. The Grand Jury discovered that the district not only paid more than \$1,300,000 for an educational program and related materials that were inadequate and inappropriate, but the materials were purchased from the new superintendent's recent employer and she did not exempt herself from the purchasing process. Did her position as superintendent have a direct or indirect influence over those purchases? That is one of the questions the Grand Jury set out to investigate. The Grand Jury also looked into how the Pajaro Valley Unified School District Board of Trustees handled its fiscal oversight responsibilities.

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<sup>1</sup> *Santa Cruz Sentinel*, "County school boards OKs office move, Pajaro Valley educators, trustees blast deal to buy Harvey West space," April 21, 2007.

## **Scope**

The Grand Jury investigated:

- The allegation of conflict of interest by the PVUSD Superintendent of Schools
- The PVUSD Board of Trustee's oversight of the district budget, expenditures and construction projects
- Possible Brown Act violations
- Teaching standards and related expenditures
- The viability of the "Zone System" — the geographically determined management structure by which the district is organized

The Grand Jury conducted 45 interviews of:

- Voters
- Parents
- Students
- Board members (past and present)
- Administrators
- Community Activists
- District and School Staff, Site Council Committee Members
- Teachers

The Grand Jury reviewed:

- Board minutes from the internet archives for the years 2000 – 2007
- Prior years' board reports
- Documentation
- Contracts
- Press releases
- Promotional materials from America's Choice and the National Center for Education and the Economy

## **Terms and Definitions**

### **America's Choice**

A for-profit company selling educational strategies, training, materials and texts. Was an integral part of National Center for Education and the Economy, an educational strategies developer and promoter.

### **Board**

Pajaro Valley Unified School District Board of Trustees.

### **COP**

Certificate of Participation — a type of financing where an investor purchases a share of the lease revenues of a program rather than the bond being secured by those revenues.

### **County Office of Education**

Santa Cruz County Office of Education (COE) has responsibility to oversee all school districts within the county for good governance, fiscal integrity and to supply centralized services.

### **DAG Report**

A report by the District Alternative Governance Committee on the failure of seven district schools to meet educational standards.

### **District**

Pajaro Valley Unified School District.

### **FCMAT**

Fiscal Crisis and Management Assistance Team — a State of California organization mandated by AB1200 to help California's local educational agencies fulfill their financial and management responsibilities.

### **FPPC**

Fair Political Practices Commission — a California State body charged to ensure fair, impartial interpretation of political campaign, lobbying and conflict of interest laws.

### **Gold Study**

*English Learner Programs Evaluation*, February 2007, Norm Gold Associates. A study which determined many of the problems of the districts' delivery of education to the English language learners population of the school district – approximately 45 percent of the schools' population.

### **Management Audit Study**

*Organizational and Efficiency Study*, October 12, 2004, School Services of California. A study commissioned by PVUSD Board of Trustees and prepared for the board's Management and Audit Committee. Its scope included interviewing more than 130 employees and community members and reviewing the organizational and functional practices of the PVUSD administration.

### **Nine Essential Program Components**

Nine teaching and administrative strategies to ensure quality education and grade level attainment for all students in English, reading, language arts and mathematics, as designated by the California Department of Education, September 2006.

**NCEE**

The National Center for Education and the Economy — a developer and promoter of America’s Choice Strategy training, materials and texts.

**SAIT**

California State Department of Education’s School Assistance and Intervention Team. The SAIT process is a state intervention currently charged with bringing the two district schools into compliance with state educational standards.

**Findings**

**A. The Purchase of Educational Materials Influenced by the PVUSD Superintendent of Schools**

1. In early 2003, within months of leaving a position with the for-profit company America’s Choice, the superintendent asked a subordinate to purchase the America’s Choice Million Words Campaign. This request was followed up in 2003, 2004, and 2005 when she encouraged subordinates to purchase a multi-year educational program from America’s Choice — including licenses, texts, materials and training — for three schools. Amounts paid over the three-year initial period (2003-2004, 2004-2005, 2005-2006) amounted to more than \$1,300,000, according to a review of the documentation

**Response: The Pajaro Valley Unified School District (PVUSD) DISAGREES.**

*In 2003, and during Dr. Mary Anne Mays’ employment at National Center on Education and the Economy (NCEE), America’s Choice was a program of a “not for profit” organization.*

*The Million Word Campaign is an idea, not a thing and therefore cannot be purchased. No funds were expended by the district “to purchase the America’s Choice Million Words Campaign.”*

*Information about the America’s Choice comprehensive school design had been presented to a number of PVUSD schools prior to Dr. Mays’ arrival. The district was introduced to the program as early as 2000 when America’s Choice information was obtained at a seminar and shared with Pajaro Valley Unified School District staff.*

*Each school had a team that reviewed different state-approved program options. These teams consisted of parents, teachers and administration, and each decision required a vote by either staff or a subset of staff (Watsonville High School). Three PVUSD schools selected America’s Choice as their partner by using a thorough process of review and site-based decision making involving a team approach.*

*The district did not spend \$1.3 million on America's Choice. The expenditures from 2003 through 2006 were under \$950,000, or approximately \$300,000 per year. It is common for purchase orders to be cancelled or only partially filled prior to payment, which may account in part for the misinformation in the Grand Jury report. All requests for continued involvement came directly from sites.*

2. The superintendent was intimately familiar with the America's Choice program. According to her resume, when she was employed by the National Center for Education and the Economy (NCEE), she "assisted in the development and refinement of the comprehensive school design America's Choice." America's Choice is a subsidiary of NCEE.

**Response: The PVUSD AGREES.**

*This is an accurate statement. The America's Choice Design is based on extensive research. It was one of the comprehensive school reform models specifically identified in the Obey-Porter Comprehensive School Reform Act. Dr. Mays is proud to have been a part of its development.*

3. The superintendent, as a former employee of America's Choice, was reportedly offered a stock purchase option.

**Response: The PVUSD DISAGREES.**

*This is a statement of rumor in complete contradiction of facts. The Grand Jury was provided a letter dated April 26, 2007 from America's Choice indicating that it was not a "for profit" organization at the time of Dr. Mays' employment. The letter states that when it did become "for profit" in October 2004, Dr. Mays was not an employee and was not offered any stock option. The Grand Jury had this letter prior to the release of the report, but chose to disregard this information. It should also be noted that the letter from America's Choice submitted by Dr. Mays to the Grand Jury was among several items not listed as source documents in the Grand Jury's report. Additionally, a letter has been submitted from Jason S. Dougal, General Counsel, The National Center on Education and the Economy, America's Choice, Inc. to The Honorable Judge Paul Mariganda, Presiding Judge of the Superior Court, further clarifying this issue.*

4. The superintendent's did not clearly indicate her connection to America's Choice when she encouraged its purchase by her subordinates.

**Response: The PVUSD DISAGREES.**

*Dr. Mays did not encourage the purchase of America's Choice by her subordinates, therefore the remainder of this statement is inconsequential.*

*As stated in #1 above, the process of choosing a program was in motion prior to Dr. Mays' hiring as superintendent. In any discussion with staff, Dr. Mays was open about her prior affiliation with the education curriculum development, a key qualification for her role as an instructional leader.*

5. The district's ethics policy includes conflict of interest guidelines which may apply in this type of situation, but because this policy is not dated, it is not clear when it went into effect.

**Response: The PVUSD DISAGREES.**

*The district's ethics policy does not apply as there was no conflict of interest or coercion on the part of the superintendent. The superintendent has not had any ownership or other financial interest in America's Choice. School staffs selected the design as part of site-based decision making on the expenditure of categorical funding. It should be noted that any duly diligent inquiry by the Grand Jury would have yielded the fact that the district's ethics policy in effect on the date of Dr. Mays' employment was clearly dated as having been adopted October 8, 1997, with related Board Policy Exhibit 9270 dated September 24, 1997.*

**B. PVUSD Board of Trustees' Fiscal and Management Oversight**

6. Several concerns with the budget review process were investigated.
  - 6.1 The PVUSD's annual budget and amended budgets are often delivered to the board without adequate time for the trustees to study and understand their contents.

**Response: The PVUSD DISAGREES.**

*This statement regarding adequate notice of proposed budgets is one of opinion rather than fact, and depends upon any given trustee's interest in the budget and willingness to meet with district staff outside of a board meeting during the budget preparation period.*

*Trustees have had, and continue to have, the opportunity to meet with either the Associate Superintendent of Business and/or the Director of Finance at any time. Some trustees have taken advantage of this opportunity and others have made the personal choice to not meet with district finance personnel. In addition, as is the case with all California school districts, final budget numbers are contingent upon the State Legislature and the state budget, which often is not approved prior to the district's budget adoption, meaning some of the information is subject to change up to the date of the budget adoption.*

- 6.2 According to some board members (past and present), they are discouraged from asking questions because asking questions makes the meetings last too long.

**Response: The PVUSD DISAGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on the comments of some trustees.*

*It is the responsibility of each trustee to come fully prepared to a board meeting. This may mean a willingness to meet with district personnel prior to a meeting to review questions and concerns a trustee may have. This is especially true in the case of budget adoption, where a trustee is*

*responsible for a budget of over one quarter billion dollars (\$268 million: \$178 million General Fund including unrestricted and restricted funds (categorical); \$90 million of miscellaneous funds such as charters, construction, food services, self insurance and other similar funds.)*

*Each trustee takes the personal responsibility to ask questions and understand the budget so that he or she is well prepared at a board meeting. The Business Department encourages trustees to ask questions prior to a board meeting, as questions raised during a meeting may require research and thus cannot always be adequately answered at the meeting.*

*Each board president runs meetings according to his or her professional standards and expectations, with some adhering to a tighter schedule for trustee questions and comments than others. Trustees are knowledgeable about how each president runs meetings, and it is a trustee's responsibility to prepare appropriately. During her time on the board, from 1994 – 2006, one trustee left each meeting promptly at 11:00 pm, citing the Americans with Disabilities Act. If a budget discussion occurred during that time, the discussion was generally ended at her request so a vote could be taken. The aforementioned trustee was board president twice during the time in question, and meetings ended at or before 11:00 pm under her presidency, which naturally limited discussion on all topics.*

*In PVUSD, a board president's conduct of meetings generally allows for a broad discussion, encouraging trustees to discuss topics and ask questions at length. This has led to many meetings lasting well past midnight.*

- 6.3 Some board members reported that they do not understand the budget and that the budget and amendments are not an area of their individual interest.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on the comments of some trustees.*

*PVUSD cannot control what areas interest a trustee. Trustees have ample opportunities to take advantage of budget trainings, workshops and one-on-one meetings with representatives from the Business Department. Budget workshops are held at least twice per year at either regular or special board meetings, and the Business Department is available to answer questions and help trustees understand the budget on an individual basis.*

*California School Boards Association (CSBA) offers a number of classes and seminars on school district budget for trustees throughout California. School Services of California, a private organization, also runs budget seminars for trustees to attend. PVUSD trustees are encouraged to attend these seminars, some of which are local (within a 30-mile radius) and/or on weekends.*

*Trustees are elected for a variety of reasons and there are no job requirements for this elected position, nor any requirements that once on*



*the school board a trustee learn about budgets. It is a trustee's personal decision if he or she wishes to take advantage of the wealth of training and individual meetings with finance personnel. Some trustees have chosen to take advantage of this opportunity and others have not. It is possible that some trustees are simply not interested in the budget, but rather choose to focus on areas such as student achievement or employee accountability.*

*It is, therefore, the personal choice of an individual trustee to take advantage of the many opportunities to become more comfortable with the budget of a school district.*

7. There are differences of opinion within the board as to what constitutes appropriate fiscal oversight.

- 7.1 A number of trustees (past and present) stated they prefer to trust that the budget is an accurate and efficient document not needing their input or oversight.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on the comments of some trustees.*

*An opinion is not a fact, and PVUSD cannot disagree with opinions. Some trustees, both past and present, could have this opinion.*

*Trustees are not generally elected based on the ability to manage a one quarter billion dollar budget. However, budget oversight is one of the many responsibilities of a trustee. Board Policy 9000(b), revised and adopted July 26, 2006, deals specifically with the role of the board and the budget. This replaces Policy 9000 adopted on May 27, 1998. Trustees are not involved in the day-to-day operations of a district, and therefore, like all boards overseeing large business entities, rely on the expertise of business and financial professionals.*

- 7.2 None of the board members interviewed (past and present) knew the dollar amount or types of purchases that should go to the board for approval.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on the comments of some trustees.*

*This item deals with a trustee's personal knowledge and responsibility for learning and retaining information, something that PVUSD cannot control.*

*It may be true that the past and present trustees interviewed and asked this question have not reviewed the board policies provided to them, or in the case of past trustees, have not retained this information as it is no longer pertinent to him or her.*

*Board Policy 3156, provided to all past and present trustees, states, "The Superintendent shall submit purchase orders that are in excess of \$500 to*

*the Governing Board...” Purchase order reports are available for review prior to each board meeting. Each board agenda states, “The PO’s [purchase orders] will be available in the Superintendent’s Office.” For at least 12 years, from 1994 to 2006, one trustee was informally designated by the board to review warrants, and one community member asks for this information on a regular basis.*

*Thus, to the extent that an individual trustee does not know the dollar amount of types of purchases subject to board approval, this is not due to district policy or practice.*

- 7.3 Some board members and district staff reported that they did not know that there were policies and procedures concerning board oversight.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury’s report on the comments of some (unstated number of) trustees.*

*This item also deals with personal knowledge and responsibility for learning and retaining information, something that the district cannot control.*

*To the extent that the findings imply some deficiency on the part of the district, every trustee is provided with a Board Policy Manual upon joining the board, and is given updated changes as they occur. These policies are also available at the district office for any member of the staff to review. Staff members are represented by bargaining units, and unit leadership is aware of the district’s policies and procedures and is familiar with how to obtain specific information. Board Policies have been regularly updated. In 2005 the Board of Trustees initiated a major policy revision and update. This process is not yet completed, as the work is extensive and policies can only be approved at board meetings along with other district business. It is up to each trustee to read the policy manual regarding the board’s role and to participate in the discussion at the board meeting when the policy is being reviewed.*

8. Difficulties overseeing expenditures were reported.

- 8.1 At regular board meetings, the consent packet includes a listing of some payments and some purchase orders. The listings of disbursements and purchase orders are not all-inclusive and are not reported in a format that allows board members to oversee expenditures effectively.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury’s report on comments of “reported difficulties”.*

*Any trustee can review warrant or purchase information, and all trustees have been informed where this information is located. Additionally, each board meeting agenda states, “The PO’s will be available in the Superintendent’s Office” under the Consent Agenda section. The purchase order reports are cumbersome, include a variety of codes as required by*

*law, and as is the case with most public governing bodies, are set forth in a condensed form in board reports for public meetings. During the 12-year period that warrants were routinely reviewed by a trustee, any noted irregularities would have been immediately corrected.*

*The very nature of governance is that governing bodies cannot micromanage the myriad operations of a public agency and must rely on staff qualified to carry out the daily operations.*

- 8.2 Board members reported they did not review purchases made from categorical or grant funds and some reported they thought of these funds as “free money” that didn’t require oversight.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury’s report on trustee comments.*

*This is a judgment statement. This item deals with personal knowledge and responsibility for learning and retaining information, matters outside the district’s ability to control other than by providing information and training opportunities.*

*Trustees are offered an array of trainings on budgets and finance, including the process of obtaining grants and spending categorical funds, as referenced in Response to 6.3, above. It is the responsibility of each trustee to seek out additional information if he or she does not understand the process following an information/training session.*

- 8.3 Purchases were made from a new vendor (NCEE-America’s Choice) of a multi-year program and materials amounting to over \$1,300,000 without specific board approval. These purchases were paid from various funding sources including categorical funds (state, federal and private funds with specific purposes and requirements).

**Response: The PVUSD PARTIALLY AGREES.**

*The finding is unspecific as to time. Expenditures for materials from this vendor were under \$950,000, as referenced in Response to 1.C above. Purchases were made on the basis of individual school site decisions.*

9. The district has a recent history of being governed by interim superintendents.

**Response: The PVUSD AGREES.**

*While it is the Board of Education that governs the district, the district has been administered by interim superintendents since July 1, 2006. Both individuals who have served in the interim superintendent position are highly qualified.*

- 9.1 The district applied for “interim” superintendent status with an emergency waiver while having another interim superintendent under contract.

**Response: The PVUSD PARTIALLY AGREES.**

*The district did not apply to obtain any outside approval for the hire of an interim superintendent. The district did apply pursuant to Education Code section 24216 to the California State Teachers Retirement System (STRS)*

*to obtain a waiver allowing the hire of Dr. Mary Anne Mays as the new superintendent without adversely affecting her retirement benefits from STRS. While another administrator was serving as interim superintendent at the time of filing, the application was filed with knowledge that the position would soon become vacant. It should be noted that STRS approved the application as having met STRS criteria.*

- 9.2 At the time of the writing of this report, the district is being served by a part-time (60 percent) interim superintendent.

**Response: The PVUSD PARTIALLY AGREES.**

*The current interim superintendent works in the district office three days per week and is being compensated accordingly. Dr. Mays is available the other two days per week by both email and telephone, and often conducts district business during this time. There is no compensation for this additional work.*

*The prior interim superintendent held two full-time interim positions, that of Interim Superintendent and Interim Associate Superintendent of Business, as well as a part-time position as Construction Manager.*

- 9.3 It takes time for a district to set its priorities, establish a search committee and begin the process of filling the position of superintendent. However, to date, the board has not begun the process of filling the position of full-time superintendent. Instead, the board is considering creating the position of deputy superintendent.

**Response: The PVUSD DISAGREES.**

*The PVUSD Board of Trustees has begun the process of hiring a permanent superintendent. The first step in that process was accomplished on the target schedule of August 8<sup>th</sup> with a general discussion of the timeline. The next step, on September 26, 2007, is a board discussion and possible action to approve the superintendent search process.*

*The board determined that the best strategy for developing a strong administrative team was to hire a deputy under the current leadership, as Dr. Mays' strength is in curriculum development. The curriculum plan can then be completed and put into action under Dr. Mays' leadership. This position is in agreement with the recommendations of the Grand Jury that PVUSD should hire a curriculum specialist. The decision to hire a deputy superintendent was independent of, not instead of, the hire of a superintendent.*

*The district now has a deputy superintendent who will focus on curriculum and instruction. The decision to develop the position was made by the board based on a deliberative process and in accordance with board policy.*

- 9.4 A letter signed by approximately 500 teachers was presented to the board requesting a full-time superintendent.

**Response: The PVUSD DISAGREES.**

*A petition was delivered to the Board of Trustees requesting that the “PVUSD School Board begin the process of searching for and hiring a full-time superintendent of schools for the 2007 – 2008 school year”. There is no date on this petition.*

*Some signatures on the petition are by teachers, but the majority of the signatures are not. The majority of signatures on the petition appear to be those of students and parents. Some signatories identify themselves as attending schools outside the PVUSD, including Cabrillo College.*

*As stated above, the board has begun the process for hiring a permanent superintendent.*

**C. Allegations of Brown Act Violations**

10. There is evidence that the Pajaro Valley Unified School District Board of Trustees may have not complied with the state’s open meeting laws referred to as the Ralph M. Brown Act.

**Response: The PVUSD DISAGREES.**

*The district has at all times complied with the Brown Act, California’s public meeting law. (Gov. Code section 54950, et seq.) The district is aware of a complaint from two community members contending that a violation of the Brown Act occurred at a board meeting on January 17, 2007 with respect to the posting of an agenda item regarding the interim superintendent position.*

*The item in question was posted in total compliance with Brown Act provisions that prescribe specific “safe harbor” language for the posting of items to be considered in closed session (see Govt. Code section 54954.5). The Grand Jury report fails to note that this complaint was reviewed by the County of Santa Cruz District Attorney’s Office, which not only found that a criminal violation of the Brown Act had not occurred but advised the complainants that they could choose to pursue relief in the civil courts, an option that was not exercised. The District Attorney’s letter is dated April 3, 2007, well before any investigation by the Grand Jury was finalized.*

- 10.1 The Brown Act requires that in advance of meetings, closed and open session topics be clearly identified with a description of the subject matter to be considered.

**Response: The PVUSD PARTIALLY DISAGREES.**

*While the district generally agrees that agenda items should be clearly identified, the actual language (requirement) of the Brown Act is slightly different. Government Code section 54954.2(a)(1) requires that a local agency public meeting agenda, which must be posted at least 72 hours before a regular meeting, contain, “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.”*

10.2 The following are two examples of agenda items with questionable descriptions:

- In a closed meeting session on January 17, 2007, the board discussed terminating the current interim superintendent and rehiring the former superintendent in the interim role. However, the agenda item simply stated, “2.1a Title of Position, Interim Superintendent.”

The board approved the termination and appointment with a majority vote.

- In open session of the same January 17, 2007 meeting, agenda item 12.5 stated, “Report, discussion and possible action to approve Amended contract for Interim Superintendent.” The backup information for this agenda item stated, “The current contract for the Interim covers the responsibilities for both the Interim Superintendent and the Interim Associate Superintendent.” As reported to the Grand Jury, several of those in attendance assumed this item referred to the responsibilities of the current Interim Superintendent, but, in fact, it referred to the previous closed meeting discussion of two superintendents — the person who was currently filling a dual role as Interim and Associate Superintendent and the former superintendent who was being rehired. At best, this description was vague and confusing. Even if it were legal under the Brown Act, it does not provide the detailed level of transparency required to maintain public confidence.

**Response: The PVUSD DISAGREES.**

*Both of the referenced agenda items were in complete compliance with provisions of the Brown Act. (See discussion at paragraph 10, above.) The Grand Jury has inaccurately quoted the closed session item as posted. The item in fact was posted as follows:*

*2.1 Public Employee Appointment: Certificated, Classified.*

*2.1a Title of Position: Interim Superintendent*

*This posting was fully compliant with “safe harbor” language of the Brown Act that appears at Govt. Code section 54954.5.*

*The agenda item posted for the open session on January 17, 2007 (item 12.5) referenced possible action to approve an amended contract for interim superintendent. In fact, the board approved a contract extension for the sitting interim superintendent consistent with the agenda item, the issue of the hire of a new interim superintendent having been addressed during the closed session that addressed the previously referenced agenda item.*

#### **D. Board's Oversight of Construction Funds**

11. Because of the way it was funded, the public had little opportunity to weigh in on a multi-million dollar school construction project. In 1997, the board approved \$10 million Certificate of Participation (COP) through Paine Webber to cover construction costs of schools. California Financial Services was chosen to administer the fund. Initial costs for the note came out of the COP itself before any money was available to PVUSD. This is a method of obtaining funds without public notice beyond that provided by the normal board agenda. This lack of publicity deprived parents and citizens of a reasonable opportunity to express an opinion.

**Response: The PVUSD PARTIALLY AGREES.**

*The Board of Trustees did approve a \$10 million COP in 1997. California Financial Services (CFS) was chosen as the district's financial consultant in relation to the COP with Paine Webber Incorporated as the underwriter. It is also correct that the initial costs for the COP came out of the COP itself, as is ordinarily the case with this type of financing. Simultaneously, approximately \$9.4 million of funds became available to PVUSD.*

*PVUSD does not, however, agree that there was a lack of opportunity for public input or that a COP is a "method of obtaining funds without public notice." The development and implementation process for PVUSD's 1997 COP involved several publicly noticed board meetings, including meetings on January 15 and March 3, 1997. The district took all actions required by the Brown Act to notify the public. For example, the March 3, 1997, board agenda contained a detailed agenda item for "Final Authorizing Resolution for School Facility Bridge Funding Program." The agenda item expressly indicated that the program would involve certificates of participation.*

*Copies of the district's agendas are broadly distributed to the local press, to all parties who request notice and through posting at the district office. Public comment on the agenda items was allowed at each of the board's meetings. As a result, the public had notice and an opportunity to comment, and PVUSD complied with all applicable legal requirements. Additionally, PVUSD's financing team made several presentations to the board, staff and the general public during the development and implementation phases of the interim funding program.*

12. Individual trustees were not aware of the disadvantages of Certificate of Participation funding.

**Response: The PVUSD DISAGREES.**

*The board was extensively briefed at the board meetings and presentations described above regarding the COP. All trustees had the opportunity to ask questions or raise issues to the district's staff and financing team. The primary forms of the COP financing documents were available for review by the trustees in advance of the March 3, 1997 board meeting at which the COP final implementation resolution was approved. Additionally, there is no significant*

*disadvantage to a COP as long as there is a repayment plan, as there was in PVUSD's case.*

12.1 The financing cost for COPs is higher than for general obligation bonds.

**Response: The PVUSD DISAGREES.**

*The district's COP weekly interest rates were actually considerably lower than the financing cost of a general obligation bond. The average fixed interest rate applicable to a general obligation bond was 5.07 percent. By contrast, the average COP weekly interest rate actually paid by PVUSD was only 1.99 percent.*

12.2 Certificate of Participations require a debt-service reserve fund, typically 10 percent of the principal. Using this method usually increases the principal amount borrowed. In this case, according to CFS Financial reports, \$2.4 million in fees were paid to obtain the Certificate of Participation, leaving only \$7.6 million for school projects.

**Response: The PVUSD PARTIALLY AGREES.**

*COPs do require a debt-service reserve fund, but the nature of the reserve fund is based on a three part test set out in the Federal Tax Code. Under the Code, the reserve may be 10 percent of the principal, but it also may be based on either 125 percent of the average annual debt service, or the maximum annual debt service, whichever of the three methods are lowest. As a result, PVUSD's actual reserve was \$698,610, which was substantially less than 10 percent.*

*Additionally, PVUSD did not pay \$2.4 million in fees. In fact, the total cost of issuance was much lower: \$618,364. Almost \$9.27 million remained to use as interim funding for PVUSD's extensive construction program. These interim funds enabled PVUSD to take the initial steps of facility planning, allowing designs to be completed, and facilitating the acquisition of school sites. These steps, in turn, allowed PVUSD to secure close to \$69 million (\$68,845,000) in state funding. Eight different priority school projects resulted from the 1997 COP, including: acquiring the Franich site, constructing the new Ann Soldo School, Pajaro Valley High School and the new Landmark Elementary School, and the modernizing, improvement and upgrade of 15 of PVUSD's existing schools.*

13. The board faced numerous problems and cost overruns for construction projects.

**Response: The PVUSD DISAGREES.**

*PVUSD has undertaken an extensive and complex facilities program over the past decade to address growth in its population and the need to update and upgrade PVUSD's schools. With any construction program of over \$100 million on approximately two-dozen different facilities, there will inevitably be some delays, construction disputes and cost increases over the preliminary budget estimates.*

*Over the past decade, there has been significant inflation in construction costs that is unrelated to PVUSD's management of its construction program. This has*



*increased the cost of construction. The Office of Public School Construction's construction cost index for schools shows that the cost of constructing wood framed buildings increased approximately 44 percent in the decade from 1997 to the present, and 28 percent in the past five years alone.*

*Most of the district's construction projects have been brought in within budget and without significant problems. Unlike many school construction projects around the state, PVUSD has been involved in relatively little litigation.*

*As a result, it is inaccurate to state that the board has faced "numerous" problems and cost overruns. Further, it is inaccurate to suggest that problems that have occurred are out of the ordinary for the type of extensive facilities program that the district has undertaken.*

- 13.1 The board faced public controversy when the site for the new high school was under review. After architectural plans were drawn for a site that had been secured and approved, many members of the Watsonville community insisted the school be built elsewhere. The board agreed and approved the Harkins Slough Wetlands as the new site. Changing the site cost the district many millions of dollars in the following areas:

**Response: The PVUSD PARTIALLY AGREES.**

*The board did face controversy when it reviewed site options for a new high school. It is fairly typical statewide for new comprehensive high school projects to encounter at least some opposition and controversy because of the significant acreage needed.*

*PVUSD began looking for a building site for a third high school as early as 1986, 21 years ago. As with any large development, particularly in Santa Cruz County, building a school on any undeveloped site would have been controversial, just as a large building supply retailer, retail warehouse, chain bookstore or discount department store all have faced similar controversy. There were a number of site requirement considerations that the district faced, including future access restrictions, road improvement capabilities, future development plans by the City of Watsonville, state acreage guidelines for a public school, setback regulations, environmental concerns, and loss of agricultural lands.*

*The original site selected by the district was the Pinto Lake site. That site, however, had the potential for significant impacts on wildlife, as well as other restrictions. As a result, and when faced with the threat of protracted litigation, the sitting PVUSD board elected not to continue with any plans for the Pinto Lake location. No architectural design plans were ever prepared for the Pinto Lake site. It is therefore not correct that changing the planned school site cost millions of dollars.*

*After the district's decision not to pursue the Pinto Lake site, the current Harkins Slough site was identified in the early 1990's as the preferred location for a new high school by a site selection committee comprised of representatives of the Santa Cruz County Local Agency Formation Commission (LAFCO), the Santa Cruz County Planning Department, City*

*of Watsonville Planning Department, Santa Cruz County Farm Bureau, PVUSD Site and Facility Commission, Watsonville Wetlands Watch, Green Valley Action Committee and the PVUSD Board of Trustees. The site was identified following an exhaustive search of potential sites that lasted several years. This site was supported by The Watsonville City Council, Watsonville Wetlands Watch, the Farm Bureau, the Pajaro Valley Chamber of Commerce, the Migrant Parent Advisory Council, the Santa Cruz County Labor Council, the Latino Strategic Planning Collaborative, the Association of Mexican American Educators, and the majority of the residents of the Pajaro Valley. Over 10,000 signatures were presented to the Coastal Commission urging the approval of the project on the present site.*

- The original architectural plans were not designed for the multilevel terrain of the wetlands. The new school would also be located in the airport flight path turning zone. As a result, the school had to be redesigned. (Estimated loss of \$1.9 million just for the new architectural plans.)

**Response: The PVUSD DISAGREES.**

*Plans drawn for the current site did take into account the specific terrain of the site. Submitting those plans to the Division of State Architect enabled the district to secure hardship funding (funding similar to a grant) for the construction of the new high school from the State.*

*The Harkins Slough site and the architectural plans were approved by the district, the California Department of Education, the Division of State Architect, and, acting as the local Coastal Commission, the City of Watsonville. Thereafter, however, the Santa Cruz County staff of the Coastal Commission raised concerns about the high school project. The Coastal Commission defined environmentally sensitive habitat areas broadly, forcing reconfiguration of the site to allow for setbacks, and thus, requiring the district to redesign the plans for the school buildings to fit within the new footprint. It was for this reason that the plans for the current site were completely revised, at a cost of approximately \$1.9 million, inclusive of all engineering and other design costs. This amount was paid for entirely out of the grant of state funds and did not require expenditure of any additional local bond or other funds.*

*Pajaro Valley High School is not in the flight path turning zone, nor did proximity to the Watsonville Airport required any “redesign” of the high school. The current Watsonville City Manager and airport manager were consulted throughout consideration of the project site, and both concurred that there are no significant safety concerns relating to the distance from the airport.*

*The school facilities are actually outside of the turning zone, as confirmed by the Division of Aeronautics and approved by the*

*California Department of Education. Caltrans' Division of Aeronautics repeatedly found that the high school site was within an acceptable distance from the Watsonville Airport. The California Department of Education's approval of the school site was a prerequisite to PVUSD building the school. Such approval would have been prohibited had the site been within an inappropriate distance from the airport and the turning zone. The fact that the Department of Education approved the site confirms the appropriateness and safety of the site.*

*When the Coastal Commission staff demanded yet a further approval from the Division of Aeronautics, the district undertook a precise survey of the location of the runway and the school site. Based on this survey, and applying the then applicable 1993 Caltrans standards, a very small portion of property located on the northeast corner of the school site was found to be within the inner turning radius from the airport. This impacted only a small area generally planned for parking and did not impact plans for the actual school facilities. Additionally, this small sliver of land to the northeast, as well as an approximately nine-acre expansion site to the north, would both fall outside the turning zone and would become usable when a planned extension to the Watsonville Airport runway occurred.*

*Furthermore, Caltrans' aeronautics regulations were revised in 2003. Under those revisions, the entire high school site, inclusive of the northeastern sliver and the entire nine-acre expansion area, is outside of the established turning zone. The school site is within what the newer regulations establish as a "traffic pattern zone," but the regulations do not prohibit schools in such a zone. (Cal. Code Regs., tit. 21, § 3570(d)(1)&(2).)*

- Extensive environmental studies were required. To get approval to build on the new site, the board had to give up a portion of the land and build the Wetlands Educational Resource Center as required by the Watsonville Municipal Code. (Estimated cost of center: \$690,000.) Because there was less buildable space, the high school on the new site was 41,000 sq. ft. smaller than the one designed for the original site.

**Response: The PVUSD PARTIALLY AGREES.**

*Environmental studies were required for the school site, and a comprehensive environmental impact report was prepared, as it also would have been for any other comprehensive high school site in a populated or environmentally sensitive region. One mitigation measure identified in the environmental impact report was creation and maintenance of a natural sciences study center. (Mitigation Measure B-18, p. 4-38, Draft Supplemental Environmental Impact Report). This requirement was also included as Condition No. 97 of the City's Conditions of Approval for Coastal Development/Special Use Permit for the high school.*

*Approximately 4,000 square feet of land were set aside to comply with the foregoing conditions. No school facilities were planned for that specific area, and no buildings had to be eliminated because of its inclusion. PVUSD still owns the land in question. Ultimately, the Wetlands Educational Resource Center, a building of 2,300 square feet, was built on the 4,000 square foot area, at no cost to PVUSD. The cost of the Center was funded entirely by the state and matching funds from the City of Watsonville and Watsonville Wetlands Watch. While the overall square footage of the high school facilities was reduced as a result of the redesign required by the Coastal Commission staff's broad definition of environmentally sensitive habitat areas, there was no significant loss of needed classrooms, and additional space was later added. Thus, for example, while Coastal Commission staff comments led to deletion of buildings containing four classrooms for shop and three for purposes such as music and drama, the district was able to reconfigure a significantly oversized staff room resulting in the addition of eight classrooms.*

- The change in architectural plans required that an additional 60,000 cubic yards of soil had to be trucked away. (Cost: approximately \$161,000.)

**Response: The PVUSD PARTIALLY AGREES.**

*The Coastal Commission required, as a condition for the project, that the center tier of the campus, where the buildings are located, be lowered by five feet. This was largely intended to reduce visibility from the freeway and to meet the Commission's preferred height restrictions. As a result, soil had to be exported from the site. However, this was not a change in the architectural plans resulting from the change from the Pinto Lake site to the Harkins Slough site.*

- A cafeteria was built which can seat only 328 students, yet the school will have approximately 2200 students. The kitchen facilities are also inadequate. Therefore, the food will have to be prepared in a kitchen that was remodeled at the district offices. This cafeteria was part of the original plan, and when money was not available, district administration made it a separate project paid for through a bond measure.

**Response: The PVUSD PARTIALLY AGREES.**

*The capacity of the school, per the limitations imposed by the Coastal Commission, is 2,200 students. However, the cafeteria at Pajaro Valley High School has a total capacity of 608 students. Signage in the cafeteria verifies this capacity. High school cafeterias are generally not designed to hold the entire student body at one time. The district's other two traditional high school cafeteria capacities are also well less than half of the school capacities (801 (total) at Watsonville High School and 250 (seated) at Aptos High School).*

*The kitchen facility for Pajaro Valley High School is adequate; in fact, it is one of the largest kitchen facilities of any school in the district. It is not correct that the kitchen at the district office will be used for high school meals; the district office kitchen is used for the preparation of certain elementary school meals and other schools when necessary.*

*It is correct that the cafeteria, though part of the original plan, was made a separate project. However, it was paid for by a combination of bond funds and state funding, not with bond funds alone.*

- 13.2 Mold was found in the new school buildings. Cleaning up the mold cost the district \$2.5 million. A lawsuit is still pending and legal fees are still being incurred. To date, they are estimated to be approximately \$2.7 million.

**Response: The PVUSD PARTIALLY AGREES.**

*Mold was discovered in the high school buildings before they were completed. The discovery of the mold at that relatively early time period allowed the district to remedy the mold problem before the buildings were all entirely completed or enclosed. The cost of cleaning the mold was approximately \$700,000, not \$2.5 million.*

*It is correct that the district is currently engaged in litigation with the contractor, architect and insurer for the project to recoup that cost and other damages. The district's legal fees incurred to date in that complex, multi-party litigation has totaled \$947,266.52 as of the end of July 2007, not \$2.7 million. A significant portion of this legal expense has included the costs for experts to examine the buildings and testify on behalf of the district.*

14. When applying for funding, the board acted against the advice of financial counsel.

**Response: The PVUSD DISAGREES.**

*The district did not have any "financial counsel" per se in relation to the funding in question. The district did receive advice from its financing team, including CFS, but generally acted consistent with the financing team's recommendations throughout the financing development and implementation processes. No other consultant or legal counsel retained by PVUSD advised against the funding plan, including the law firm of Orrick Herrington, which served as both the COP and general obligation bond counsel to the district.*

- 14.1 The board asked for an additional Certificate of Participation for \$12.5 million in May 2000 to pay off the previous Certificate of Participation and had \$2.5 million left to use as needed.

**Response: The PVUSD PARTIALLY AGREES.**

*The correct amount of the COP issued in August 2000 was \$13 million. Of this amount, \$9.38 million was reimbursed to PVUSD for prior school project costs. After all closing costs, PVUSD was left with \$2.995 million for the interim funding of additional PVUSD priority school facilities projects. PVUSD then prepaid the 1997 COP's in their entirety.*

*The district was able to obtain these additional funds at a lower interest rate (an average of 1.99 percent), and also obtained a more favorable prepayment term than under the prior COP. In 2002, PVUSD paid off \$11.37 million of the 2000 COPs, leaving only \$1.63 million of principal remaining.*

- 14.2 The district owed \$12.5 million in a Certificate of Participation with almost \$750,000 in fees. Financial counsel advised the board not to take out the loan. The board, however, voted to take out the loan, with one trustee opposing.

**Response: The PVUSD PARTIALLY AGREES.**

*It is accurate that the board voted for the COP, however there were no trustees who voted against the 2000 COP. Additionally, the total amount of the COP was \$13 million, and the combined closing expenses were actually \$625,000.*

*As discussed above, the district did not have “financial counsel” outside of its assembled financing team members. The district’s financial team developed and recommended the COP plan in order to meet its priority school facilities needs, and no other legal or financial advisor to the district advised against the COP.*

15. The district continued to make poor management decisions related to construction projects and other financial issues.

**Response: The PVUSD DISAGREES.**

*PVUSD did not make poor management decisions related to construction projects or other financial issues, evidenced in part by the more than \$100 million in state funding that PVUSD has received, the \$11.37 million of its interim COPs that were replaced with permanent funding, the construction of three new schools, and the modernization and expansion of 19 existing school campuses, all of which resulted from PVUSD’s extensive financing and facilities planning efforts. Those efforts were driven by the district’s goal to provide adequate, safe and clean facilities for all of our children, and remove all schools from the year-round schedule. The effects of providing adequate facilities has been huge upon school morale and ultimately, academic achievement.*

- 15.1 The board approved an air pressurized fabric structure as a temporary gym for Aptos High School without respect to state regulations for that type of structure which require that it meet permanent rather than temporary use standards. The district lost over \$130,000 in costs incurred in the purchase, move and set up of a structure that was not approved by the state.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD did place a temporary gym facility at Aptos High School, though this was not done without respect to state regulations. Additionally, the structure had been previously purchased and used at a district middle*

*school, and was made of fabric over an aluminum frame (not air pressurized).*

*In 1999 there was a fire at E.A. Hall Middle School that damaged the gymnasium. PVUSD worked with its insurer to repair the gymnasium, but when the process began to take too long PVUSD negotiated with the insurer to fund a temporary gymnasium structure. The district consulted with the Watsonville Fire Marshall, who approved the selected structure for fire safety. Ultimately PVUSD purchased the structure rather than leasing it, as a cost saving measure.*

*When repairs to the E.A. Hall gymnasium were complete in 2001, PVUSD elected to move the temporary facility to Aptos High School, due to a shortfall of space for athletic facilities. There was never an intent to keep the temporary facility in use on a long term basis, and the space shortfall is now being addressed through the district's bond program, which provides for a new gymnasium and wrestling room. The Aptos Fire Marshall asked that a pathway and a doorway be added to the temporary structure, both of which PVUSD promptly accomplished. However, the Fire Marshall then expressed concerns that had to do not with fire safety, but rather with structural issues. The Aptos Fire Marshall requested that PVUSD ask the Division of State Architect (DSA) for review. Despite the fact that structural safety is outside of the jurisdiction of the Fire Marshall, PVUSD nevertheless sought DSA review in an attempt to be cooperative.*

*DSA then suggested that PVUSD add additional tie downs to the structure, which the district promptly did. Thereafter, however, DSA indicated that it wanted additional testing, as well as other measures. Faced with relatively high costs and significant delay associated with such testing and with complying with ongoing DSA suggestions, PVUSD elected to take down the temporary facility. The approximately \$130,000 total cost to PVUSD included the cost of the move from E.A. Hall to Aptos High School and installation at Aptos High; however a significant portion of that cost came from the attempts to comply with the suggestions of the Fire Marshall and then DSA. When those costs began to increase, PVUSD acted prudently to cease further expenditures on the temporary structure.*

- 15.2 The district had the opportunity to receive federal funds for needed high-speed internet access for the entire district. However, the administration filed the application late and the Federal Communications Commission denied the funds, resulting in a loss to the district of \$900,000.

**Response: The PVUSD PARTIALLY AGREES.**

*While PVUSD did miss the deadline for funding in the first year of the program in question, it corrected the error and ultimately received its requested funding.*

*In the first year of the E-rate program, under which federal funds were available for the district's technology program, the district intended to*

*apply for funding. The district's Director of Technology was diagnosed with a life-threatening illness and the application for funding was submitted after the deadline.*

*However, PVUSD timely applied for funding in the second and third years of the E-rate program. The district's application for these later years included funding for the first year as well. The district's application was approved, and PVUSD received full funding for all three years. As a result, the district did not lose \$900,000, nor any other amount of money.*

16. As of the writing of this report, the California Department of State Architects has not given final approval to the Pajaro Valley High School construction project.

**Response: The PVUSD AGREES.**

*The Inspector of Record certified the Pajaro Valley High School buildings for occupancy.*

*PVUSD is currently in litigation with its architect of record for the project relating to design defects, including those that may have contributed to the occurrence of mold. The architect has not completed paperwork necessary to achieve project close out with DSA.*

*Final DSA close out cannot be achieved without the filing of certain paperwork by the architect of record. The district's legal counsel has made written demands on the architect to take all final steps necessary to assist PVUSD in closing out the project, and the district is taking as many steps as it can without the architect to achieve close out. Despite this delay, PVUSD built the school per DSA-approved plans, and no problems with close out are expected once the architect completes all necessary paperwork.*

**E. Teaching Standards and Expenditures**

17. Schools in the district are not meeting teaching standards.

**Response: The PVUSD PARTIALLY AGREES.**

*The implementation of standards-based teaching strategies at PVUSD is an ongoing activity. This is true in any district, not exclusive to Pajaro Valley Unified School District. Each year there are modifications in both the content standards curriculum materials and the teaching strategies as the needs arise. The district has been in partnership with the Pajaro Valley Federation of Teachers (PVFT) to build Professional Learning Communities around the American Federation of Teachers reform strategies, called Restructuring School to Raise Achievement (RSRA). The four components of the RSRA are Data Analysis, Team Building, Communication and Professional Development. We now have a district team of trainers referred to as "TOTS", (Trainer of TrainerS.) The district is also in a partnership with the New Teacher Project based at UC Santa Cruz, which mentors new teachers as they take their own education into a classroom of students.*



- 17.1 The California State Department of Education's School Assistance and Intervention Team (SAIT) took over Pajaro Middle School and H.A. Hyde Elementary School. The SAIT process is a state intervention currently charged with bringing the two persistently lowest achieving district schools into compliance with standards that will improve their achievement scores. The SAIT team has set benchmarks and goals for these schools to teach state-approved consistent strategies and texts.

**Response: The PVUSD PARTIALLY AGREES.**

*Pajaro Middle School and H.A. Hyde Elementary have not been "taken over" by the California State Department of Education. The State Assistance and Intervention teams (SAIT) at Pajaro Middle School and Hyde Elementary School are support teams to help the schools. SAIT teams visit on a regular schedule but do not run the school. The school staff, which includes the principal, is still responsible for the overall operation of the school, and the PVUSD Board of Trustees is still the overseeing body.*

*Many schools throughout California with similar demographics are working with SAIT teams. The SAIT recommendations and benchmarks are consistent with the overall direction of program improvement strategies being implemented through district efforts at the other program improvement schools. The SAIT teams have provided insights into additional strategies and interventions that are being incorporated into other schools in the district.*

- 17.2 SAIT required re-training of teachers and principals in implementing consistent instructional methods that teach to state standards and use state compliant texts.

**Response: The PVUSD PARTIALLY AGREES.**

*SAIT accelerated the timeline for state intervention and added emphasis to the professional development that was ongoing in the district. Prior to SAIT involvement in the schools, teachers were using state standards as the basis for instruction and state approved texts were in use. At Pajaro Middle School there were materials being used within a comprehensive school reform model (America's Choice) that were a segment of the approved state model. SAIT recommended that the school discontinue with the comprehensive model and materials and the school chose to comply immediately. (See Response to Finding 1, above.)*

- 17.3 In 2006, a District Alternative Governance (DAG) committee was formed and charged with investigating reasons for failure at seven of the lowest performing schools. The seven schools selected were Freedom, Hall District, Mintie White, Ohlone, Starlight, E.A. Hall, and Rolling Hills. In those seven schools, the DAG committee found instructional methods, texts and materials being used that were inconsistent and did not meet state standards. (See SAIT findings above.) Actions were implemented to institute the Nine Essential Program Components required by the state to remedy the inconsistencies and failure to meet state standards in those

seven schools. In 2006, the SAIT team established a timeline for implementation and made assignments for accomplishment beginning in early 2007.

**Response: The PVUSD PARTIALLY DISAGREES.**

*The charge of the DAG committee is to establish a review system that would simulate what would happen if the state were to intervene, with the idea that the district would support each school to make any necessary changes to support improvement in academic achievement. The findings at each of the seven schools in Year 5 of Program Improvement were specific to the site. Many strengths were noted for each site, although the DAG committee found that implementation of state standards and approved instructional materials was inconsistent both within and across schools. The DAG committee's recommendations for the schools were based on the same Nine Essential Program Components that SAIT utilized in its visitations to the two "SAIT schools."*

18. Some of the training efforts prescribed by the DAG have met with difficulty. Some of the teachers and principals report they have been unable to go to trainings because there are not enough substitutes to teach their classes. Those who have not been trained cannot use the state-compliant strategies and texts in their classrooms.

**Response: The PVUSD AGREES.**

*Lack of available substitutes is a problem that plagues many public school districts, including PVUSD. The district has recently hired a teacher to work at the district office to support the implementation of professional development that includes seeking solutions to the issue of sufficient substitutes. The district has been refining its approach to professional development for the last four years and continues to do so as problems arise, as in done with any good management practice.*

*The most successful professional development is usually found to be a blend of instruction with coached application. Through the use of effective modeling and coaching, teachers who have not been able to attend in-seat training can and do learn new strategies. PVUSD will continue to address this concern with innovative programs to assist teachers with training and strategies.*

19. In all the low achieving schools, there is a large population of students for whom English is a second language. According to an extensive review of the district's bilingual programs called the Gold Study, adequate quality instruction and consistent goals and implementation of a language learning system were not in place as of February 2007.

**Response: The PVUSD AGREES.**

*The district commissioned the Gold Study in order to review all programs for English Language Learners, (ELL) not just bilingual programs. The reason the study was commissioned was precisely because the ELL students were not progressing as rapidly as district staff believed they could. The district has commissioned Dr. Norm Gold and a colleague, Chris Lopez-Chatfield, to*

*support PVUSD in the creation of an English Learner Master Plan. This work was initiated in April 2006 and is currently in the process of being finalized.*

20. Expensive educational materials from America's Choice are not being used or have been deemed inappropriate. There are boxes of expensive texts — some not even opened — in school storerooms, which the teachers choose not to use in their classrooms.

**Response: The PVUSD PARTIALLY AGREES.**

*There have been unused America's Choice materials stored at one school, Watsonville High School, as the program was abandoned after the second year. The storage room has since been moved, and most of the materials have been either donated or passed out to teachers who have expressed an interest in keeping the material.*

**F. The Zone System**

21. The Pajaro Valley Unified School District is divided into three geographical zones, each of which is managed by a Zone Assistant Superintendent. A lack of support and communication between district personnel and zone management has been reported.

**Response: The PVUSD PARTIALLY AGREES.**

*The Pajaro Valley Unified School District is divided into three zones with an assistant superintendent overseeing each zone. Traditional schools in these zones are divided geographically as well as for K-12 articulation. However, additional schools are overseen by zones and distributed between administrators without regard to geography, but with common goals, as in the case of charter schools.*

**Current Zone Configurations:**

*South Zone:*

*Elementary:*

*Ann Soldo, Hall District, Mintie White, MacQuiddy, Ohlone, Radcliff*

*Secondary:*

*E.A. Hall Middle, Pajaro Middle, Watsonville High School*

*Additional Programs:*

*AVCI, Children's Center, Migrant Head Start*

*Central Zone:*

*Elementary:*

*Amesti, Calabasas, Freedom, H.A. Hyde, Landmark, Starlight*

*Secondary:*

*Cesar E. Chavez Middle, Lakeview Middle, Rolling Hills Middle, Pajaro Valley High School*

*Additional Programs:*

*New School*

*North Zone:*

*Elementary:*

*Bradley, Mar Vista, Rio del Mar, Valencia*

*Secondary:*

*Aptos Jr. High, Aptos High School, Renaissance High*

*Additional Programs:*

*Alianza Charter, Linscott, Pacific Coast Charter, Solano Summit Academy, Watsonville Charter School of the Arts*

*Contrary to what has been “reported” to the Grand Jury, there has been very positive articulation between district and zone administrators. The zone system has been a positive way for feeder schools and the high school they feed into to work together. This benefits students, teachers and administrators as common school community concerns can be addressed, goals set and a sense of pride developed within each zone. In instances where a portion of a school may feed into two different zones, communication occurs at principal meetings or through a school representative attending each zone meeting.*

*It is the opinion of the district and Board of Trustees that this system has been a key factor in streamlining K-12 articulation, improving student achievement and improving parent participation.*

*If the zone system were dismantled as some have suggested, the 35 schools and programs would still need to be supervised by three administrators, as an administrator cannot effectively oversee more than 10-12 schools. When the zone system was initially approved by the board, PVUSD had eleven fewer schools than it has today. Therefore, dismantling the zones would result in no change of administration and would only serve to weaken communication and articulation between schools.*

*The three zone assistant superintendents, along with the Assistant Superintendent of Human Resources, meet weekly to share information, align programs, plan weekly principal meetings and work through staff issues. Additionally, the zone assistant superintendents meet with the Superintendent’s Cabinet on a weekly basis.*

*The role of the cabinet is to: bring issues forward from the weekly principals meeting; seek resolutions to outstanding issues and concerns; disseminate feedback from all meetings held the prior week; align decisions for consistency across the district; develop timelines, guidelines, processes and level of decision-making; and establish and maintain positive interdependence.*

*The cabinet serves as a communication link between the superintendent, assistant superintendents and district level directors, called the expanded cabinet. The expanded cabinet meets on a bi-weekly basis.*

*The role of the expanded cabinet is to: share information from across the district and across departments so each department is knowledgeable about the work being done throughout the district; solve problems that arise over the*

*course of the week; identify potential problems and discuss possible solutions and support of colleagues during difficult projects and stressful situations.*

- 21.1 Teachers, principals and support staff expressed a lack of support from their Zone Assistant Superintendent. However, the North Zone interviewees expressed less concern than the South and Central Zone interviewees.

**Response: The PVUSD DISAGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on comments made by those interviewed. PVUSD has no information on how many teachers, principals or support staff from the three zones were part of the 45 interviewees for the Grand Jury's wide-ranging report.*

*A zone assistant superintendent's responsibilities include supporting schools by observing the instructional program and school operation through regular visits. Weekly meetings are held with principals, as well as additional regular meetings with administration, certificated and classified staff. In addition, zone assistant superintendents attend back to school nights, plays, special school events, fundraising events, sporting events, open houses, science fairs, spelling bees, and a variety of other meetings and activities during the school year.*

*Zone assistant superintendents work with district level departments to facilitate and coordinate information and services for school sites. They work with sites to resolve problems and manage situations with administration, parents, staff and students when help and assistance is requested or required.*

- 21.2 Interviewees from all three zones indicated they had never received a clear explanation of the functions of the Zone Assistant Superintendent.

**Response: The PVUSD DISAGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on comments made by those interviewed.*

*A formal job description is available through the district office for zone assistant superintendents. As with all job descriptions, it would not be shared with all staff but is available upon request through the Human Resources Department. When asked about his or her role and job duties by any personnel, zone assistant superintendents have given clear and direct answers.*

*More important than whether anecdotal information suggests that interviewees have not received explanations as to functions of zone assistant superintendents is whether the efforts of zone assistant superintendents have been successful. Results suggest that those efforts have been, and continue to be, successful.*

- 21.3 Teacher and support staff interviewees reported they have spoken with their Zone Assistant Superintendent primarily when dignitaries or evaluators from outside the district were visiting the school.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no information or belief as to the accuracy of the Grand Jury's report on comments made by those interviewed.*

*The district has over 3,000 employees and PVUSD has no way of knowing what criteria were used to determine who was interviewed by the Grand Jury.*

*Zone assistant superintendents visit schools on a regular basis but they do not necessarily speak with each staff member at visits. Staff and leadership meetings, administrative meetings, parent meetings and special events are all part of regular school visitation by zone assistant superintendents. As a practical matter, visits by dignitaries and evaluators are special occasions when staff at various levels may interact more than usual and be more aware of the presence of the assistant superintendents at the site.*

- 21.4 Interviewees said that the lack of communication and support from the district contributed to low morale and an opinion that the district did not know and had little concern for the challenges in the classrooms.

**Response: The PVUSD PARTIALLY AGREES.**

*This is a judgment statement on the part of interviewees. Again, PVUSD has no knowledge of how those being interviewed were chosen by the Grand Jury. Low morale in PVUSD is a subjective matter.*

*While morale is always an important issue in the workplace, empirical data suggests that any issues of morale in PVUSD are less than those affecting other school districts. Over the past three years PVUSD was under the state average of 11 percent teacher turnover:*

*2004 – 2005: 79 resignations out of 1,275 teachers or approximately 6.2%*

*2005 – 2006: 93 resignations out of 1,331 teachers or approximately 6.9%*

*2006 – 2007: 94 resignations out of 1,415 teachers or approximately 6.6%*

*PVUSD also hired only one principal for the 2007 – 2008 school year, far below the normal turnover rate for a school district of close to 20,000 students and 35 schools.*

*Each certificated member of the cabinet can directly relate to the classroom as each has been in the classroom as a teacher, including the superintendent. Certificated directors also came through either PVUSD or another district by starting as a teacher. This practice is generally consistent throughout the public school practices.*

*During site visits, district administrators interact with students and teachers. During the 2006 – 2007 school year, the DAG committee participated in over 200 classroom visits. (There are 181 school days in*

*the year.) Zone assistant superintendents are members of the DAG committee and attend many of the classroom visits.*

*Teachers and administrators are provided with professional development training, materials and opportunities for support in the classroom. In addition to zone administrators, district personnel work with site administrators on various trainings related to various programs and grants.*

- 21.5 The Gold Study and the 2004 Management Audit Study found that the Zone Assistant Superintendents make their own decisions with little or no board oversight. In effect, the zones act as small school districts without a board of trustees.

**Response: The PVUSD DISAGREES.**

*The Grand Jury appears to be inaccurately representing information in the reports. The zone assistant superintendents work at the direction of the superintendent, who in turn works at the direction of the Board of Trustees. Communication with the superintendent is at a very minimum twice per week, however, most often communication with the superintendent is on a daily basis, either in person or on the telephone.*

*Trustees do not oversee assistant superintendents; that is the role of the superintendent as chief administrator, therefore direct oversight by trustees would be inappropriate. Communication with individual trustees varies depending upon needs and issues, and occurs in written form each Friday through weekly updates. Communication also occurs at board and zone meetings as well as through regular, less formal interactions. As stated previously, the majority of trustees regularly attend zone meetings. In emergency or crisis situations such as a walkout, fire or death/injury of a student, trustees are informed immediately either through fax, email, phone call or in person, as appropriate.*

- 21.6 Zone meetings are poorly publicized, resulting in parts of the community not knowing or being able to express concerns affecting their schools. No minutes or agendas are kept or published of these meetings.

**Response: The PVUSD DISAGREES.**

*Zone meetings are generally publicized following the requirements of the Brown Act (Govt. Code § 54950, et seq.) in the following ways: annual and monthly notices are sent to two major Santa Cruz County newspapers and are posted at the location of the meeting 72 hours prior to the meeting. At the beginning of each school year, the schedule for the entire year is posted in each zone section on the district website.*

*Principals, trustees, site council representatives, staff and other zone representatives receive mailed notices. Notices are also sent to school sites. Notices are sent in Spanish when applicable.*

*Reminder phone calls are used as needed. Minutes are taken at each zone meeting. There are minutes and agendas of zone meetings at the district office and are supplied to anyone upon request. The minutes and agendas*

*are translated into Spanish when necessary. Minutes are placed on the agenda at the subsequent zone meeting for formal approval by membership.*

- 21.7 Although school board members occasionally attend zone meetings, they are not required to, nor do the Zone Assistant Superintendents who preside over the meetings thoroughly report back to the board the concerns raised or the issues discussed in the meetings.

**Response: The PVUSD PARTIALLY AGREES.**

*PVUSD has no legal authority to require any trustee to attend a zone meeting; therefore the statement that trustees are not required to attend zone meetings is correct.*

*Trustees in PVUSD are elected by Trustee Areas, not “at large” as in other Santa Cruz County school districts. There is some crossover of trustee areas in most zones, although in all but one zone the crossover is very small. Trustees are therefore traditionally associated with one zone with the exception of Trustee Area 2, which is almost equally divided between South and Central Zones.*

*The claim that trustees “occasionally” attend zone meetings is false. There are currently seven meetings in each zone per year and two all-zone meetings. All meetings but a handful over the past seven years have had a minimum of one trustee in attendance, with the majority having two or three trustees in attendance. Most trustees on the board during the seven year period since zones were established, including DeHart, DeRose, Hankemeier, Keegan, Osmundson, Turley, Volpa, Wilson and Yahiro, have attended nearly every zone meeting in their trustee area during their tenure on the board. These trustees have regularly attended zone meetings to interact with parents, teachers and principals in their zone.*

*Zones are advisory bodies and have no authority. Zone assistant superintendents discuss the zone meetings during their weekly cabinet meeting with the superintendent. If necessary, the superintendent or assistant superintendent will discuss the concerns with the board either at the board meeting, through "Friday Updates" or individually with trustees. Since trustees are very active participants in zone meetings, those trustees in attendance are well informed. The zone minutes are available and distributed to trustees for the zone(s) covering his or her trustee area, and for other zones if requested. Some trustees have requested to be provided with minutes from all zones. The minutes serve as a formal report from the zone.*

- 21.8 The Zone Assistant Superintendents may have discussed zone meetings with the superintendent. However, no record is kept of these discussions. Therefore, there is no way to determine if issues are being adequately addressed or resolved, and no way for the board to participate or provide oversight.



**Response: The PVUSD PARTIALLY DISAGREES.**

*Some trustees choose to be involved at the zone level, and others do not; however, as stated above, there has been at least one trustee in attendance at all but a few zone meetings since zones were established. Trustees who are involved at the zone level by attending meetings routinely follow up with either the zone assistant superintendent or the superintendent on issues brought up at a zone meeting. Zone assistant superintendents are part of the weekly cabinet meetings, where zone meeting discussions occur monthly. Information is therefore shared not only with the superintendent but with the other assistant superintendents.*

*Records are not kept during cabinet meetings, although notes are taken for the purpose of follow-up. Items that require immediate attention are addressed. As in all organizations, communication and decision-making processes are always being reviewed to determine ways to improve, keeping in mind the strict budgetary and confidentiality restraints a school district faces. Trustees provide oversight through meetings and communications with the superintendent. Trustees do not supervise nor manage assistant superintendents, and do not participate in the daily operations of a school district.*

22. Several demographic differences exist between and within zones.

**Response: The PVUSD AGREES.**

*The demographic makeup of the district reflects the nature of the communities served. The district has no control over where its residents live. The district is composed of neighborhood schools (except for charter and alternative schools) and therefore the composition of the zones reflects the natural composition of our communities.*

*The demographics for the South and Central Zones are similar, with a high percentage of Latino students. About half of the students attending schools in these zones are English Learners. The North Zone is composed of mostly native English speakers, although the percentage of ELL students has increased due to boundary changes.*

22.1 The current North Zone system has significantly different socio-economic demographics than the other two zones. Under-achieving students have become the norm in the schools of the South and Central Zones. They have been achieving scores averaging at least two years below grade level for all of the years examined. However, the grade level and achievement scores of most of the schools in the North Zone have been significantly higher and appear to be climbing every year.

**Response: The PVUSD PARTIALLY AGREES.**

*The PVUSD attendance boundaries determine where a student will attend school. These boundaries have been adjusted as enrollment changes and new schools are built. The demographics of the City of Watsonville are different from other areas of Santa Cruz County, including Aptos, which more closely matches the overall demographics of the county.*

*The South and Central Zones have the highest percentage of ELL students in Santa Cruz County. Nationwide, discussions are occurring regarding the rationale for testing students in English who are just learning the language and holding schools and districts accountable. This concern was recently discussed with U.S. Rep. Sam Farr at a well-attended community meeting related to the No Child Left Behind legislation, which is due to be renewed.*

*The district expects all students from all zones to perform at or above the same state educational standards. Schools across the district are working hard to meet or exceed yearly goals set by both the state and federal governments. Rates for transitioning students from Spanish to fluent English is increasing each year. State adopted curriculum is being used consistently throughout all schools in PVUSD.*

- 22.2 There is a significant difference in the available per-student categorical funds and enhancement money available to South and Central zones to the exclusion of the North Zone. Because of the disparity of categorical funds to North Zone schools, those students who need English learner assistance in the North Zone — a small population of students — get far less assistance than students of the same language acquisition status who live in South or Central Zones.

**Response: The PVUSD PARTIALLY AGREES.**

*As is the case with a number of its assertions, the Grand Jury's "finding" is inconsistent with the facts. All categorical funding district-wide is based on a per-student formula. Schools in the North Zone do not qualify for Title I federal funding. There is no difference in the available per-student categorical funding for ELL students. Categorical funding for English Learners is based on a per student allocation. Schools in the North Zone naturally receive less funding due to a lower ELL population. Students and staff at these schools receive additional support from centralized district services. For the 2007 – 2008 school year, the district established a district-wide formula for English Learner Specialists to better support the ELL population at all sites.*

- 22.3 According to the audit study, the North Zone “does its own thing,” and the stakeholders interviewed believe that the district has agreed not to interfere.

**Response: The PVUSD DISAGREES.**

*To the extent that the district is able to ascertain the meaning of this finding, the district disagrees that the North Zone “does its own thing.”*

*The same academic and staff performance standards exist across all three zones. Implementation may differ or may be adapted or modified in order to meet the needs of the students served. Adapting curriculum to best meet the needs of students in order to achieve success and meet standards should in no way be mistaken for lack of management or district oversight.*

*There are instances where staff from the North Zone may not participate in training provided to South and Central Zone staff, due to the fact that no North Zone schools are in Program Improvement status. Additionally, certain restrictions are in place with some categorical grants due to the specialized criteria or assurances that exist, and the North Zone schools may not fall within the required guidelines for training.*

- 22.4 Those interviewed from the North Zone were aware of the fact that South and Central Zones receive substantially more money per student due to state and federal funding for the impoverished and under-performing schools.

**Response: The PVUSD PARTIALLY AGREES.**

*Those who were interviewed from the North Zone must be referring to federal funding under Title I of the Elementary and Secondary Education Act. As stated earlier, schools receive the same funding per student from the district's General Fund. Eligible schools also receive per pupil state and federal funding for categorical programs. North Zone schools are not typically eligible for these funds.*

- 22.5 According to the management audit, zone meetings are evaluated by the parents as more important than board-level meetings because the board does not know the concerns from any one particular zone.

**Response: The PVUSD DISAGREES.**

*No official evaluation of parent views regarding zone or board meetings has been done. Each year parents are surveyed as to their views and opinions regarding the effectiveness of zone and school level issues and concerns. This information is shared with the trustees and the superintendent.*

*Parents may find zones to be more relevant to their particular needs because of the familiarity of the schools in the zones. The elementary schools feed into the middle schools/junior high, which then feed into the high school. Parents know each other from participating at the site level on various projects, meetings and special events, back to school nights and open houses. Just as a school site council or home and school club meeting is more pertinent to a parent than a zone meeting, it is understandable that a zone meeting would be considered more relevant than a board meeting, where all 35 PVUSD schools are represented and issues may be discussed that are of no interest to a particular parent.*

*Trustees share concerns from zones with other trustees at board meetings or other less formal discussions, and are also kept informed by the superintendent and assistant superintendents regarding issues concerning a zone. Two all-zone meetings are held each year, and trustees attend these meetings as well.*

## **Conclusions**

### **A. The Appearance of a Conflict of Interest on the Part of the Superintendent**

1. The superintendent's actions in the purchase of America's Choice materials appear to have violated the district's ethics policy concerning conflict of interest. However, since the district's ethics policy is undated, it cannot be determined if it was in place at the time these actions were undertaken.

**Response (not required): The PVUSD DISAGREES.**

*As stated previously, the superintendent did not participate in the decision making process to purchase America's Choice. The process involved site-based decisions of school community stakeholders, therefore there was no violation of the ethics policy. As also state previously, the ethics policy in place when Dr. Mays was hired was clearly dated.*

### **B. The Board's Fiscal and Management Oversight Responsibilities**

2. The board failed to perform proper oversight of the district budget.

**Response (not required): The PVUSD DISAGREES.**

*The board has not failed to perform proper budget oversight. PVUSD has had a positively certified budget approved by the county superintendent pursuant to Education Code section 42127 since its struggles in the early 1990's. Board Policy 9000 clearly defines the board's role in the budget, and the board has acted in accordance to this policy. The policy was obtained through CSBA.*

- 2.1 Various board members did not know or understand the budgets and amendments well enough to make informed opinions of their accuracy or justifications.

**Response from the PVUSD (not required):**

*The conclusion may be accurate since it is a generic statement without reference to specific names or numbers of board members. Certain trustees may not have the interest nor expertise to fully understand or know a budget totaling over \$230 million. That is, in part, the reason why qualified staff are hired to handle the specifics of budget development. Opportunities are provided to each trustee to take advantage of the many trainings and workshops that are provided through the district, CSBA, School Services of California, Inc. and the County Office of Education. In addition, any trustee can take advantage of the open-door policy of the Business Department. The district cannot mandate that a trustee become conversant on the budget; it can only provide the opportunities to learn.*

- 2.2 The board's lack of oversight in reviewing the budgets and amendments may have resulted in unnecessary expenditures of large sums of money.

**Response (not required): The PVUSD DISAGREES.**

*The board has the opportunity to review and question any and all expenditures prior to approval. There certainly can be differences of*

*opinion about budget priorities, but there have not been “unnecessary expenditures”.*

3. The board failed to perform proper oversight of district expenditures. The packet information the board receives is too loosely organized to assure the board they are reviewing all of the purchases or disbursements for a given period.

**Response (not required): The PVUSD DISAGREES.**

*The board has the opportunity to review and question any and all expenditures prior to approval. Please refer to the responses to Findings 6, 7 and 8.*

4. The board’s inadequate oversight may have resulted in undiscovered inappropriate or imprudent spending over the past five years.

**Response from the PVUSD (not required):**

*PVUSD disagrees with the conclusion of inadequate oversight. Further, it is impossible to agree or disagree with abstract and/or subjective characterizations such as undiscovered inappropriate or imprudent spending. Refer to the response to Conclusion 2.2.*

5. A reasonable explanation has not been offered for why the process of hiring a full-time superintendent has been slow.

**Response (not required): The PVUSD DISAGREES.**

*The board has clearly explained the timeline for hiring a permanent superintendent, and publicly discussed the factors affecting the timeline. PVUSD is adhering to that timeline.*

**C. Allegation of Brown Act Violations**

6. The actions of the board on January 17, 2007 in closed and open sessions did not comply with the spirit — if not the letter — of the Brown Act because the two intended actions were not clearly described on the agenda.

**Response (not required): The PVUSD DISAGREES.**

*The January 17, 2007 board meeting and its related posted agenda were fully compliant with the Brown Act. The criticism that, “the two intended actions were not clearly described on the agenda,” belies the very purpose of the Brown Act, that agenda items reflect subject matter but not “intended actions” since the respective “intentions” of elected officials are supposed to be discussed at a public meeting. As previously mentioned, a complaint was reviewed by the District Attorney and letter sent in early April to the complaining parties indicating there was no Brown Act violation.*

**D. The Board’s Oversight of School Construction Projects**

7. The PVUSD Board did not provide sufficient oversight of construction expenses.

**Response (not required): The PVUSD DISAGREES.**

*The district has numerous systems in place to ensure sufficient oversight of construction expenses and those systems are consistent with accepted standards in public sector construction. This has included use of a professional construction management firm and auditing through various channels, from PVUSD's own annual independent process, to citizen's bond oversight committee audits, to audits of state funded programs by the Office of Public School Construction.*

- 7.1 The PVUSD Board signed off on two Certificates of Participation (COP) totaling \$12.5 million at the cost of several million dollars over six years. Using Certificates of Participation is not cost effective. Other districts in California have gotten into trouble using COPs because they could not pay them back.

**Response from the PVUSD (not required):**

*The district agrees in part with the conclusion. As discussed above, beginning at Finding 11, PVUSD did authorize two COPs. The first, in 1997, was for \$10 million. The second, in 2000, was for \$13 million.*

*PVUSD denies, however, that using COPs is not cost effective. When properly developed, COPs offer school districts the opportunity to obtain interim financing in order to leverage their future long-term permanent funding sources. As explained in a leading publication, COPs are "simply a mechanism for capitalizing a portion of revenues expected over the future term of the lease to create a lump sum that may be used for projects today." (Greg Harrington, et al., *The XYZs of California School District Debt Financing* (3rd Ed. 2005), p. 46 (see discussion at pages 42-46).)*

*The 1997 and 2000 COPs served as an interim financing vehicle to enable PVUSD to proceed with its priority school projects in advance of the future availability of long term financing in the form of developer fee revenue, state funding for modernization and new construction grants, and local general obligation bond proceeds. The COPs enabled the district to have architectural plans and engineering prepared and to pursue site acquisition, which in turn resulted in PVUSD receiving \$68,845,000 (close to \$69 million) in state funding from 1997 to 2000 for numerous different school projects. While total state funding to PVUSD for these projects now exceeds over \$100 million, the initial almost \$69 million received could only have been achieved through the interim funds provided by the COPs. COPs are the only available form of advance funding available to school districts to allow such leveraging, and their use is therefore fairly common across the state.*

*Furthermore, the COPs were obtained at a much lower average weekly interest rate than was available for general obligation bonds, as described earlier.*

*As for other school districts that have had problems repaying COPs, the vast majority of school districts that take out COPs have effective repayment plans, and therefore have had no problems. PVUSD had a*

*comprehensive, multi-layered repayment plan for its COPs, comprised of expected developer fee revenue, state funding for modernization and new construction grants and local general obligation bond proceeds.*

*These multiple layers provided additional protection to PVUSD in its ability to ensure repayment of the COPs. In 2002, a major step in PVUSD's plans was realized when the community approved a \$58 million general obligation bond. PVUSD then paid off over \$11.3 million of its remaining \$13 million in COPs, leaving a principal of only \$1.6 million. The resulting \$112,000 average payment per year is a relatively low investment compared to the almost \$69 million in state funding that was initially secured as a result of the interim COPs. Furthermore, this average payment is relatively small compared to the district's approximately \$178 million General Fund budget, equaling only a small fraction of one percent of the annual budget.*

- 7.2 The board should have consulted with the City of Watsonville and conducted an in-depth feasibility study on the impact to the community of building the high school in the current location. The new site not only incurred cost over runs due to unanticipated problems, but it does not provide adequate sports and cafeteria facilities for the students. Nor is there room for a facility that was planned for the safe storage of materials for chemistry classes.

**Response (not required): The PVUSD DISAGREES.**

*The district consulted extensively with the City of Watsonville and numerous other organizations before choosing to build Pajaro Valley High School in its current location. As noted earlier, the project site was identified in the 1990's as the preferred site for a new high school by a site selection committee that included the City of Watsonville. The site was identified following an exhaustive search of potential sites that lasted several years.*

*The City of Watsonville supported the selection of the present site as a benefit to the community. PVUSD's in-depth study included both the site selection process and the extensive environmental review. The environmental impact reports for the site expressly considered the impact on the community from building on the Harkins Slough site.*

*City of Watsonville representatives attended numerous coordinated meetings with staff of the California Coastal Commission along with district staff in order to complete the required approval process for the project on the site, and was required to and did approve a Local Coastal Plan amendment in order to permit a high school to be built on the site. (The site was previously zoned for various commercial and residential uses as well as for a private school, but not for a public school.) The Project site also required and received approval from the California Department of Education.*

*Furthermore, the project at this site was supported by numerous other groups, such as Watsonville Wetlands Watch, the Farm Bureau, the*

*Pajaro Valley Chamber of Commerce, the Migrant Parent Advisory Council, the Santa Cruz County Labor Council, the Latino Strategic Planning Collaborative, the Association of Mexican American Educators and the majority of the residents of the Pajaro Valley. As noted previously, 10,000 signatures were presented to the Coastal Commission urging the approval of the project on the present site.*

*Regarding cost overruns due to unanticipated problems at the site, it is correct that both the planning for the school and the actual construction of the high school encountered unforeseen circumstances that increased costs. PVUSD did not anticipate the local staff of the Coastal Commission requiring extensive changes to the school plans. This was in part because PVUSD had consulted with a member of the local staff during the site selection process who had supported selection of the site. The occurrence of mold was also an occurrence that the district could not have anticipated; there is no evidence that the site location itself contributed to the problem. PVUSD seeks to recover those cost overruns in its current litigation.*

*Concerning adequacy of the high school facilities, the sport facilities at the high school comply with all Education Code and state requirements, and are in fact adequate. While it would be preferable to have additional sport facilities, high schools across the state vary widely in what facilities they offer, depending on site constraints and other conditions. The high school's facilities in fact exceed many others in California, and the district plans to add additional track and field facilities on the PVUSD-owned nine acre expansion area immediately to the north of the school site. The cafeteria facilities are also adequate, as discussed earlier. The cafeteria is similar or larger in capacity to other PVUSD high school facilities.*

*While it is correct that PVUSD did not build the facilities originally planned for safe storage of chemicals for chemistry classes, that was not because of a lack of room. Such materials must be stored in locked closets that have ventilation. PVUSD's original plans were to place the materials in vented cabinets outside of the classrooms. When teachers indicated that they did not want to go that far for the chemicals when needed, the district elected for the convenience of staff and added a ventilated closet in the staff room, which had ample room available for the closet. The resulting storage area meets all safety requirements.*

8. The cost of the architect is probably justified because the plans were changed so many times. The architectural firm, however, may have some responsibility for the mold situation if their design did not provide adequate ventilation for a building so close to the wetlands.

**Response from the PVUSD (not required):**

*PVUSD agrees in part with the conclusion. The cost of the plans was directly attributable to the need to redesign the school in order to meet the Coastal Commission staff's demands. The district agrees that its architect of record may have responsibility for the mold that occurred on the not-yet-completed high*



*school due to design flaws, including but not limited to the lack of adequate ventilation. Because of the architect's apparent design errors, the district has included the architect as a defendant in its currently pending lawsuit regarding the mold and construction issues.*

## **E. The District's Management of Instructional Programs**

9. The Pajaro Valley Unified School District superintendent and assistant superintendents have failed to provide leadership, rigorous standards, and management of instructional programs.

**Response (not required): The PVUSD DISAGREES.**

*Standards implementation has been the thrust and focus of instructional planning in the district for the past five years. The standards movement began in the mid 1990's. Dr. John Casey, superintendent prior to Dr. Mays, began using the Pulliam program and began standards implementation during his tenure. This focus was expanded by Dr. Mays, as superintendent and subsequently as interim superintendent, to include school scans and increased management of instructional programs. The assistant superintendents lead the effort to establish consistent use of standards-based instruction in the classrooms.*

- 9.1 The intervention of the state's School Assistance and Intervention Team (SAIT) at H.A. Hyde Elementary and Pajaro Middle schools reflects on the district's mismanagement of these schools.

**Response (not required): The PVUSD DISAGREES.**

*This conclusion reflects the Grand Jury's misunderstanding of the role of SAITs under the Public Schools Accountability Act of 1999 (California Education Code §52050, et seq.) which provides a variety of resources for California public schools that do not meet student testing growth targets. A variety of factors affect student test results and there is no more reason to conclude that such results are a reflection on district management as there would be to conclude results are a reflection on parenting skills, environment or any other factors.*

*Hyde accepted High Priority Schools Grant (HPSG) program funds and thus accelerated the intervention timeline. The initial result of SAIT interventions and subsequent implementations at Hyde was a drop in scores.*

*By comparison, Pajaro Middle School had long been focused on students and student work, which led it to adopt America's Choice. Pajaro Middle School also chose to accept interventions on an accelerated timeline and focused on SAIT findings and the nine essential elements. Student scores jumped. Arguably, three years of a foundation built with America's Choice allowed the jump in scores from the implementation of SAIT findings at Pajaro Middle School.*

*In either case it is unreasonable to assume that there is a relationship between any district mismanagement and SAIT program at individual school sites.*

- 9.2 The texts previously used in the classrooms, before the SAIT intervention, were inappropriate, and the money was misspent. Those texts were found to be inconsistent with quality instructional delivery.

**Response from the PVUSD (not required):**

*Teachers were using state standards and state approved texts prior to SAIT involvement. America's Choice design, and thus materials, were state-approved. The DAG Committee did find inconsistencies of implementation and material use at a number of schools, but that finding was not specific to only SAIT schools.*

- 9.3 The District Alternative Governance committee has had to assume district management's role of managing the seven schools in jeopardy of needing state intervention.

**Response (not required): The PVUSD DISAGREES.**

*The concept of DAG was brought to the district by Ylda Noguera, Assistant Superintendent of the South Zone. Under the leadership of Dr. Mays as superintendent, the cabinet discussed at length and agreed to move forward with the concept. Dr. Mays began the design and formation of the DAG Committee while superintendent with the assistance of an outside provider, Chatfield and Associates (SAIT providers). It was determined that Dr. Mays would be co-chair with Chris Lopez-Chatfield. She has continued in the role as co-chair since the DAG Committee was established. Two assistant superintendents, Ylda Noguera and Catherine Hatch, are also members of the DAG Committee.*

*It is impossible for the DAG Committee to assume district management's role of managing the seven schools because DAG is district management.*

- 9.4 There are approximately 10 other schools in the district with many of the same inconsistencies and non-compliance problems as those addressed by the District Alternative Governance committee and SAIT.

**Response from the PVUSD (not required):**

*The district agrees that there have been inconsistencies and non-compliance problems, and these continue to be addressed. At the same time, state mandates continue to increase, making the task more cumbersome. School districts across the state are facing the same dilemmas as PVUSD. It takes three to five years to fully implement program change, and the district has been working hard to comply.*

- 9.5 Every day that quality English language learner instruction is not being delivered in PVUSD classrooms means these students are falling further behind. The Gold Study of 2007 clearly indicates the failed management of this vital area of instruction for PVUSD students.

**Response (not required): The PVUSD PARTIALLY AGREES.**

*While not an issue of failed management, and while some progress has occurred, the district's own reports covering at least the past ten years have shown lack of consistent progress among the ELL population. The definition of a quality ELL program has been a heated debate among educators for decades.*

*Dr. Mays and the cabinet brought Dr. Norm Gold, a language development specialist, to the district to help identify specific areas that could be addressed. Dr. Gold and Chris Lopez-Chatfield, an outside provider, are now leading a PVUSD taskforce to develop a comprehensive plan for ELL. This is not failed management.*

- 9.6 The current district leadership has demonstrated poor management of the schools in the following areas:
- Lack of consistent and effective teaching strategies.
  - Lack of achievement benchmarks and failure to rigorously pursue attainment of those benchmarks.
  - Failure to empower and support good teachers and provide quality, state-approved texts.

**Response (not required): The PVUSD DISAGREES.**

*To the knowledge of administration, the Grand Jury did not visit classrooms, and may have limited information regarding the district's teaching strategies. The district has initiated the following programs or purchases over the last four years: I Can Do Standards; standards-based classroom materials; training in teaching strategies; partnership with the PVFT in Restructuring Schools to Raise Achievement; school scans; creation of the DAG Committee; and establishing the school plan review process. Each school plan has specific educational benchmarks. The district has also reconvened its curriculum council and has established pacing guides for classroom teachers.*

- 9.7 The results of poor school management are reflected in the fact that students are failing to achieve grade level goals.

**Response (not required): The PVUSD DISAGREES.**

*Numerous districts across California face similar challenges as PVUSD, with a high number of students living in poverty, large migrant population and many ELL students. Each district is working to address student achievement that is below grade level. If there were a quick and easy answer, such as finding "better management" it would be headline news and rapidly implemented across all districts.*

*Academic Performance Index (API) scores in most of PVUSD schools continue to climb, as witnessed by the latest release of test scores from the California Department of Education. The number of high school graduates meeting University of California "A-G" subject area requirements and/or CSU requirements also continue to be on the rise.*

*The 2005 – 2006 School Accountability Report Card (SARC) for Aptos High School indicates that 85 percent of the students had passed all of the courses required for admission to the UC or CSU systems. At Watsonville High School that number is 77 percent. (Pajaro Valley High School did not yet have ample data as it was a new school.) These percentages, compared to the county average of 55 percent and the state average of 38 percent indicate that PVUSD students are showing tremendous academic improvement.*

*The district has many students who are at or above grade level. Advance courses at all three high schools are growing. Elementary schools are differentiating instruction so students can achieve both success as well as move ahead to work on more challenging coursework. These students have the same district management team as students who are below grade level, therefore the district disagrees that failure to achieve grade level goals is caused by poor school management.*

#### **F. The Effectiveness of the Zone System**

10. The Zone System is failing as an effective management organizational structure.

**Response from the PVUSD (not required):**

*PVUSD disagrees with the conclusion for the reasons set forth below, and as mentioned previously in the district's response to Grand Jury recommendation 22.5.*

- 10.1 The current zone system promotes de facto cultural and racial segregation. If it is desirable to keep the Zone System, efforts must be made to encourage cross zone collaboration of students.

**Response (not required): The PVUSD DISAGREES.**

*The district encompasses several geographically separated areas. With or without zones, every PVUSD school would have the same cultural and racial population, as schools have boundaries and zones generally follow those boundaries. The district has determined that it will have neighborhood schools so families can easily participate in school-related activities. It is widely recognized that parents who have easy access to their children's schools are more likely to become involved in their children's education and in school functions. This builds a school community.*

- 10.2 The practice of not documenting zone meetings results in a lack of communication to the entire board about issues the community raises in zone meetings and a lack of total community awareness of problems and solutions that all zones are encountering.

**Response (not required): The PVUSD DISAGREES.**

*Zone meetings are documented, advertised and communicated to the board. If a trustee is unable to attend a zone meeting, he or she can easily consult the meeting minutes or ask another trustee or administrator what*

*transpired. Zones have no authority to create policy and are simply administrative/advisory bodies.*

- 10.3 The two-level governing process (district and zone) contributes to inconsistencies in practices, poor communication, a lack of accountability, and a lack of awareness of the total district by the board. Board failure to provide oversight is the result.

**Response (not required): The PVUSD DISAGREES.**

*The PVUSD chose the zone system in order to provide K-12 articulation throughout the district, as well as due to geographic difficulties for an administrator to drive from one end of the district to the other to manage schools. The board has not failed to provide oversight.*

## **Recommendations**

1. Since it is unknown when the district's ethics policy was enacted, the board must determine if the superintendent's actions concerning the purchase of materials from a former employer were in violation of policy. Addressing this issue will contribute to the credibility of the board and engender confidence from the community.

**Response from the PVUSD:**

*The PVUSD Board of Trustees will take no action to implement the recommendation, as the Grand Jury's original findings (and innuendo) on this issue are unsupported by facts, and no wrongdoing was found. (See response to Findings 1-5.)*

2. The board needs to develop a comprehensive fiscal oversight policy.

**Response from the PVUSD:**

*The board is already in the process of adopting new policies based on the California School Boards Association's recommended policy on fiscal oversight. This item will be discussed by the agenda committee, which includes three trustees, within the next three months to determine if an action item needs to be placed on the agenda.*

- 2.1 The board should develop reasonable criteria for maintaining fiscal oversight responsibilities and perform oversight by diligently reviewing purchase orders and disbursements that meet designated dollar totals and/or determine other criteria for oversight.

**Response from the PVUSD:**

*The board is in the process of adopting new policies based on CSBA's recommended policy on fiscal oversight. This item will be discussed by the agenda committee, which includes three trustees, within the next three months to determine if an action item needs to be placed on the agenda. It should be noted that review of purchase orders and disbursements already occurs and is performed by district staff. As previously mentioned, one former trustee and one community member also routinely review this information.*

- 2.2 The board must be sure it is reviewing disbursements from all funds for which it is responsible; this review must include — but is not limited to — disbursements from categorical and grant funds.

**Response from the PVUSD:**

*This recommendation represents the district standard practice and therefore is already implemented. No further action will be taken.*

- 2.3 Any consultant fees from any fund should be reported to the board in the same timely manner as other disbursements.

**Response from the PVUSD:**

*This recommendation represents the district standard practice and therefore is already implemented. No further action will be taken.*

- 2.4 The annual independent audit should verify that the board has been made aware of all consultants' fees.

**Response from the PVUSD:**

*This recommendation is already implemented. No further action will be taken. These fees are paid through warrants, which are accessible to the board. District annual independent audits are performed consistent with state mandated requirements.*

- 2.5 The board should place in the Independent Audit Scope a provision that the Independent Auditor will ascertain that all expenditures and purchases requiring board oversight were, in fact, presented to the board in a clearly defined format and were timely, complete and accurate.

**Response from the PVUSD:**

*The recommendation requires further analysis. This item will be discussed by the agenda committee, which includes three trustees, within the next three months to determine if an action item needs to be placed on the agenda.*

- 2.6 A Fiscal Crisis and Management Assistance Team (FCMAT) study for the period 2002-2007 should be contracted to determine if all operational and instructional expenditures and disbursements were appropriate and prudent. The board should take any actions necessary to resolve problems uncovered by the study.

**Response from the PVUSD:**

*This recommendation will not be implemented. The district has no information to suggest that any expenditures during the referenced five year period were other than appropriate or prudent, and, thus, cannot justify the expense of a FCMAT review. FCMAT did a thorough review in 2002. There has been no indication of a need for another review.*

- 2.7 The board should examine the educational and financial value when approving large or multiple-year contracts for licenses or services, regardless of which taxpayer funds are allocated to pay for them.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation, as the Board of Trustees already reviews the value of programs through agenda setting and through review of purchases and warrants.*

- 2.8 One of the highest priorities of the board should be safeguarding the taxpayer monies.

**Response from the PVUSD:**

*No action needs to be taken to implement the recommendation, as the Board of Trustees already understands that safeguarding taxpayer monies is one of the highest priorities and duties of the board.*

2.9 The board must be vigilant in the following areas:

- assuring the delivery of quality education to all the students, including knowing what educational strategies are being delivered.
- overseeing the superintendent and requiring adherence to goals and benchmarks needed to achieve district responsibilities.
- maintaining open communication with students, community and parents.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation, as the current Board of Trustees understands the need to adhere to its own policies and/or contracts regarding superintendent evaluation and will continue to do so.*

3. The PVUSD Board should take appropriate steps to ensure better oversight of construction projects.

**Response from the PVUSD:**

*The recommendation requires further analysis. PVUSD consistently strives to ensure oversight of its construction projects, and continues to seek ways to improve on its already strong oversight. This topic will be discussed by the agenda committee, which includes three trustees, within the next three months to determine if an action item needs to be placed on the agenda.*

3.1 The district's list of vendors involved in the construction projects should be reviewed and their performance audited. This information about vendors should be made public.

**Response from the PVUSD:**

*No additional action will be taken to implement the recommendation. District vendors on construction projects are identified to the board and public at the time that construction contracts are awarded. Pursuant to Public Contract Code 20111, PVUSD must publicly bid its construction projects that are over \$15,000. Similarly, PVUSD is generally legally required to award bids to the lowest responsible bidder. The district is not ordinarily entitled to reject a particular low bidding contractor or subcontractor. Thus, while it may be of interest to some to review or audit the performance of contractors, the outcome would not alter the terms of the competitive bidding laws.*

3.2 A Certificate of Participation should only be used in dire financial situations. The board should first consider other methods of financing.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation, as it encroaches on the discretion of elected members of the Board of Trustees to consider the use of COPs consistent with law.*



- 3.3 In future construction, the location should be secured before the district invests in a design project.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation. While it reflects a preferred sequence of events, the recommendation does not take into account unforeseen contingencies.*

- 3.4 Since the Grand Jury determined that no effective oversight of construction project spending has been done, a Fiscal Crisis and Management Assistance Team study for the period 2002-2007 should be contracted to determine if all construction expenditures were appropriate and prudent. This study would provide a clean slate for the board to institute more prudent oversight of future construction projects.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation. The recommendation is unwarranted, as the district's construction projects are already subject to significant spending oversight under multiple layers of public, local and state auditing and review.*

*The bulk of PVUSD's locally available construction funds come from the general obligation bond passed by PVUSD voters in 2002. This was a "Proposition 39" bond measure. As a prerequisite the approval of the bonds for the authorized projects by a 55 percent vote, Proposition 39 requires that the district "conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed." (Cal. Const., art. XIII A, § (1)(b)(3)(C).) In addition, the district must "conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects." (Cal. Const., art. XIII A, § (1)(b)(3)(D).)*

*The Government Auditing Standards (GAS) published by the Comptroller General of the United States provides guidance regarding each type of Proposition 39 audit. A performance audit may include, among various other items, a review of the extent of project performance in relation to the expenditure of the bond proceeds. A financial audit is similar to the annual financial audits required by schools districts pursuant to Education Code sections 14503 and 41020, which require audits to be performed in accordance with General Accounting Office standards for financial and compliance audits.*

*The largest portion of district expenditures on facilities has come not locally, but rather from state grant funds. The district must undergo a state audit for its expenditure of state construction funds, such as the hardship funding on the Pajaro Valley High School project. The state funding program requires various forms of accountability. This includes auditing of progress towards completion of a state funded project and an audit of expenditures. (Ed. Code § 17076.10; Cal. Code Regs., tit. 2, §§ 1859.105, et seq.)*

*The only other significant source of funding available to PVUSD for facilities expenditure is developer fees. As with other available funds, such fees are subject to explicit accounting and reporting requirements. (Govt. Code §§ 660001 & 66006.)*

*Finally, the district's oversight and auditing procedures for construction projects was already the subject of study by FCMAT in a report prepared for the district, dated October 25, 2002 (2002 FCMAT Report). This report pointed to areas for improvement, many of which had to do with the recognition that the district had too few employees doing too much work.*

*Significantly, the report also acknowledged what the district's business department was doing well. The district's site facilities manual -- which included identification of future facilities site maintenance needs, projected enrollments, reporting on the status of new school construction projects, and additional information -- was "an excellent presentation of information of the Pajaro district facilities, which could serve as a model for use by other California school districts." (2002 FCMAT Report, p. 15.) The report also noted that the district's use of outside consultants in relation to its construction projects "seems to be working well." (*Id.*, p. 16.)*

*Regarding the district's internal controls, the report "commended" the district "for developing improved standards and procedures," and concluded that "the business department is operating within a reasonable level of internal controls considering the extreme pressure that the employees are under to keep up with the overwhelming workload." (*Id.*, p. 20.) As stated in the report, "the overall internal controls at the Pajaro district are functioning well." (*Id.*, p. 22.)*

4. The superintendent needs to effectively manage instruction and implement a consistent plan throughout the district.

**Response from the PVUSD:**

*No action will be taken to implement the recommendation. Effective management and planning in the district is already taking place.*

- 4.1 The School Assistance and Intervention Team (SAIT) changes, the District Alternative Governance (DAG) committee recommendations, and those of the Gold Study should be implemented as soon as possible in all the under-achieving schools in the district in order to garner consistency and measurability of the learning benchmarks.

**Response from the PVUSD:**

*This recommendation is already in the process of implementation, therefore no action is required. The superintendent and cabinet initiated the Gold Study and report, and are implementing the report's recommendations. The DAG committee is in fact made up almost entirely of the cabinet and other district staff; therefore, the implementation of recommendations was simultaneous with the DAG committee's*

*development of same. The SAIT changes were already being incorporated into district actions as the Grand Jury investigation was being conducted.*

- 4.2 The Nine Essential Program Components as set by the California Department of Education and used by the DAG team should be instituted in all regular elementary, middle and high schools in the District. A grid plan similar to the one developed by the DAG team should be worked out for each school using the format and benchmarks set by the DAG report and setting early attainment dates. The assistant superintendents and the superintendent should be the primary persons responsible for performing this task, and the principals and the school staffs should collaborate with one another until all of those benchmarks are set and met.

**Response from the PVUSD:**

*PVUSD will not take the specific actions recommended by the Grand Jury, as they appear to be based on a misunderstanding of the nature of the DAG committee. The superintendent and assistant superintendents along with one outside consultant and several directors make up the DAG committee. The grid mentioned was developed by the DAG committee, which is an entity of the district. Therefore the district is using the grid that it developed. The assistant superintendents are currently working with other sites to set the benchmarks.*

- 4.3 Those barriers to good education that are management-related — as spelled out in four management studies, the DAG, the SAIT, the Gold Study and the Management Audit Study — should be remedied immediately with assertive, scheduled and measured action by those persons in charge – the superintendent and whatever deputies the superintendent designates. This is a primary responsibility and must not be avoided or delayed by studies and the formation of committees. All of these actions and benchmarks should be in place for the next school year to remove any inconsistencies and failures to teach to approved strategies and goals.

**Response from the PVUSD:**

*No further action needs to be taken to implement the recommendation. This process is already under way and benchmarks are being established to ensure regular, ongoing implementation.*

- 4.4 District staff should give a monthly status report of the benchmarks accomplished and the status of those in process with scheduled dates of completion.
- Those benchmarks not accomplished within the scheduled dates should be discussed and remedied and new firm dates set for accomplishment.
  - Those benchmarks achieved and verified should be met with much fanfare. This will contribute to credibility of the board and confidence from the community.

**Response from the PVUSD:**

*This recommendation requires further analysis. The deputy superintendent will review and report back to the board his recommendations within four months. Based on that report, the Board of Trustees will then determine a course of action.*

- 4.5 In concurrence with the Gold Study, the Management Audit Report and the recommendations of many of the stakeholders, an expert curriculum specialist should be hired immediately and given the responsibility and authority to review the integrity and consistency of the district-wide curricula, texts, standards and teaching strategies.

**Response from the PVUSD:**

*No further action needs to be taken to implement this recommendation, as the Board of Trustees has recently hired a deputy superintendent who is a curriculum and instruction specialist. This was done despite protests from various groups and individuals who felt this position was not needed. (Also see the above response to the Conclusion 4, regarding the district's efforts to manage and implement a consistent instructional plan.)*

5. The purpose and attendance requirements of zone meetings should be clearly defined. The meetings should be well publicized and accessible to all. Agendas and minutes should be readily available.

**Response from the PVUSD:**

*No action on the recommendation will be taken. The purpose of zones is already sufficiently defined. Meetings are already publicized and are accessible to all, being held at public school sites. Agendas and minutes are and have been available upon request, as explained in the district's response to Finding 21.6, above.*

6. Zone management should establish a uniform method of communicating their deliberations and actions to the board.

**Response from the PVUSD:**

*The recommendation requires further analysis. The newly hired deputy superintendent will review and determine if any change in practice regarding communication between the Board of Trustees and zone management are warranted, and will advise the board within six months if he believes action by the board needs to be taken.*

**Responses Required**

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond Within</b>
Pajaro Valley Unified School District Board of Trustees	1, 2, 4, 5, 6-9, 10-22	1-6	90 Days October 1, 2007

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- 4-21-07 P.V. students enjoy incentives before critical testing,  
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Date unknown	Judge faults P.V. school district in student's expulsion, <i>Santa Cruz Sentinel</i>
5-25-07	P.V. District in discord over new post, <i>Santa Cruz Sentinel</i> [Regarding the hiring of a deputy superintendent.]
Date unknown	Pajaro Valley Unified School District Board of Trustees Bylaw 9270 'Conflict of Interest'
Date unknown	Government Code 89503, Government Code 81013, The Political Reform Act of 1974; Article 2, Chapter 7
Multiple dates	Warrants, Invoices, Purchase Orders 2003-2006 to NCEE: school years 2003-2004, 2004-2005, 2002-5-2006 Watsonville HS, Pajaro MS, Calabasas ES. Doesn't include travel, personal expenses for training etc.; not audited.

### **Web Sites:**

Center for Public Integrity

<http://www.publicintegrity.org/default.aspx>

Senate Governmental Affairs Committee

<http://www.senate.gov~govt-aff/>

SEC – Securities and Exchange Commission

<http://www.sec.gov/>

COP Information

<http://www.scgi/2001/certpart.htm>

Mays' stormy return to PVUSD

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The Education Innovator, October 25, 2004

[www.ed.gov/print/news/newsletters/Innovator/2004/1025.html](http://www.ed.gov/print/news/newsletters/Innovator/2004/1025.html)



# **Santa Cruz County**

## **Grand Jury**

**Final Report with Responses**  
(no responses required for this section)

Section 6  
Special Districts Committee Report



## **A Question of Ethics**

### **Are local agencies complying with new ethics law?**

#### **Synopsis**

The Santa Cruz Grand Jury investigated whether county, city and special district government agencies are complying with a new ethics law, Assembly Bill (AB) 1234. Each agency was asked if staff had taken the required ethics training, if they could provide any written ethics policy, and if they had any comments on the new law. The Grand Jury found complete compliance by all 26 agencies in the county.

#### **Background**

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*"...all power is a trust; ... we are accountable for its exercise."*

— British Prime Minister Benjamin Disraeli

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According to more than a decade of research by the Institute for Global Ethics, most people around the world — regardless of nationality, culture or religion — agree that acting ethically, or doing what is considered good and/or right, is of primary importance. And although they express the concepts in different ways, most people believe that to act ethically means to be compassionate, fair, honest, respectful, and responsible.<sup>1</sup> As elected officials are expected to act in the best interests of the public, office holders should be held to a high standard of ethical behavior. Citizens need to know that government officials not only understand but follow the ethical standards that are required of them. On October 7, 2005, the governor signed Assembly Bill No. 1234<sup>2</sup> into law. Effective January 1, 2006, AB 1234 requires (among other things) that local officials who receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles by December 31, 2006. The requirement applies not only to the governing body of a local agency but also to commissions, committees, boards, or other local agency bodies, whether permanent or temporary, decision-making or advisory. Training must be renewed every two years.

Information and resources have been established by the Office of the Attorney General.<sup>3</sup> On-line training is supplied by the attorney general<sup>4</sup> and the Fair Political Practices Commission (FPPC)<sup>5</sup>. The California Special Districts Association offers a DVD of

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<sup>1</sup> Institute for Global Ethics, <http://www.globalethics.org/about/faq.htm>

<sup>2</sup> California State Senate website, information about AB 1234, [http://info.sen.ca.gov/pub/05-06/bill/asm/ab\\_1201-1250/ab\\_1234\\_bill\\_20051007\\_chaptered.html](http://info.sen.ca.gov/pub/05-06/bill/asm/ab_1201-1250/ab_1234_bill_20051007_chaptered.html)

<sup>3</sup> Office of the Attorney General, Ethics Training Courses for State Officers; hereafter cited as OAG, <http://caag.state.ca.us/ethics/>

<sup>4</sup> OAG. <http://caag.state.ca.us/ethics/>

<sup>5</sup> Online AB 1234 Ethics Training; hereafter cited as Online Training, <http://localethics.fppc.ca.gov/ab1234/>

ethics training.<sup>6</sup> The Institute for Local Government also provides AB 1234 Compliance Resources.<sup>7</sup>

Online training is free and available to all citizens at <http://localethics.fppc.ca.gov>. The state recommends that a copy of Proof of Participation of Ethic Training is retained in personal records by agencies that fall under this law for at least five years.<sup>8</sup>

As explained in the online course provided by the FPPC,<sup>9</sup> ethics law falls into four categories, each of which relate to certain ethical principles:

- Personal financial gain.
- Personal advantages and perks.
- Governmental transparency.
- Fair processes.

The objectives of the FPPC course are:

- To familiarize you with laws that governs your service.
- To help you recognize when to ask questions of your agency counsel.
- To encourage you to think beyond legal restrictions and provide tools for doing so.
- To help you comply with the state mandatory ethics education requirements.

Among the best practices recommended by the FPPC are:

- Make all decisions with only the public's interests in mind.
- Before you make a decision, carefully consider whether you have a benefit or personal interest in the matter under consideration.
- Consider very carefully whether receiving a particular benefit is worth the risk that someone will try to correlate it with your actions as a decision-maker.
- Assume all information is public or will become public.
- Don't discuss agency business with fellow board members outside meetings.
- Be aware of the kinds of economic interests that can trigger a need to step aside from being involved in a decision.
- Talk with your agency counsel early on to enable him or her to perform the complex analysis required to help you determine whether you will need to step aside from participating in a decision.
- Avoid the temptation to look at public service as an opportunity for financial gain.

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<sup>6</sup> California Special Districts Association website, <http://www.csda.net/>

<sup>7</sup> Institute for Local Government website, <http://www.ca-ilg.org/trust>

<sup>8</sup> League of California Cities, Ethics Law: Reference for Local Officials, [http://www.cacities.org/resource\\_files/25287.ELR2007.pdf](http://www.cacities.org/resource_files/25287.ELR2007.pdf)

<sup>9</sup> Online Training, <http://localethics.fppc.ca.gov/ab1234/>

- Look at every decision and ask yourself whether it involves a financial interest for you.
- Comply with legal reporting requirements on your Statement of Economic Interests (threshold: anything \$50 or more from a single source over a calendar year).
- Avoid exceeding the annual gift limit of \$360.
- Know when you need to disqualify yourself in matters involving a person who has given you \$360 in gifts over the preceding 12 months.
- Know what kinds of gifts are prohibited, not just limited.
- Ask the value of all gifts so you can track and properly report them.
- Avoid perks and the temptation to rationalize about them.
- Be guided by principles of fairness and merit-based decision-making in contracting decisions.

## **Scope**

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*“Even the most rational approach to ethics is defenseless if there isn't the will to do what is right.”*  
— Alexander Solzhenitsyn

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The scope of this investigation was to determine if government agencies in Santa Cruz County were following the requirements of AB 1234 by taking the online course or the classroom training. In November 2006, the Special Districts Committee of the Grand Jury mailed questionnaires to local government agencies that fall under the requirement to comply with AB 1234.

This questionnaire consisted of the following questions:

- Has your organization met the ethics training requirements of AB 1234?
- If yes, how and when did you accomplish this task?
- If no, what is your plan to obtain training? Note that this must be accomplished by December 31, 2006.
- How did your organization find out about AB 1234?
- If you have a written ethics policy, please submit it with this survey.
- Do you have any additional comments about AB 1234?

## **Findings**

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*“Relativity applies to physics, not ethics.”*

— Albert Einstein

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1. The Grand Jury received verification of compliance of AB 1234 from these agencies:
  - Santa Cruz County:  
Davenport Sanitation District, Freedom Sanitation District, Graham Hill Rd. County Service Area, Pajaro Storm Drain Maintenance District, County Flood Control & Water Conservation District, County Sanitation District, Solid Waste Disposal District, County Service Area Manager
  - Cities:  
Santa Cruz, Scott Valley, Capitola, Watsonville
  - Water Districts:  
Scotts Valley, Soquel Creek, San Lorenzo Valley, Pajaro Valley
  - Fire Protection Districts:  
Central, Pajaro Valley, Zayante, Aptos/La Selva, Ben Lomond, Scotts Valley, Boulder Creek, Felton
  - Salsipuedes Sanitary District
  - Pajaro Valley Cemetery District
2. The County Administrative Office reported to the County Board of Supervisors outlining requirements of AB 1234, who then directed all county department heads to comply.
3. All county employees are subject to the provisions of Government Code Section 1126, et seq., Santa Cruz County Code Section 3.40 and Section 173 of the County Personnel Rules and Regulations regarding incompatible activities.
4. The County Board of Supervisors directed the Personnel Department to maintain records of training completed by officials.
5. Special district agencies learned of ethics training requirements from counsel, district associations and financial auditors.
6. Seven agencies provided their written ethics policies.
7. Most county officials opted to take the ethics course online.
8. At least four special district agencies had staff who took an online ethics course.
9. Three agencies staff received training from their independent auditors.
10. Five identified legal counsel as providing training.
11. District Association meetings provided training classes to at least eight agencies.

12. Two agencies reported the training was helpful and informative.
13. One agency commented that state officials would benefit from this training.

### **Conclusion**

The agencies in Santa Cruz County are complying with AB 1234 by participating in ethics training and developing policies to comply.

### **Commendation**

The Santa Cruz County Grand Jury thanks all county agencies for responding to our survey and complying with AB 1234.

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*“The government is merely a servant — merely a temporary servant; it cannot be its prerogative to determine what is right and what is wrong, and decide who is a patriot and who isn't. Its function is to obey orders, not originate them.”*

— Mark Twain

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### **Sources**

- Responses to Grand Jury questionnaire by 26 county agencies
- Web sites:
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<http://www.globalethics.org/about/faq.htm>
  - California State Senate  
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  - Office of the Attorney General  
<http://caag.state.ca.us/ethics/>
  - OnLine AB 1234 Ethics Training  
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