

Santa Cruz County Grand Jury



**2010-2011
Final Report**

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County of Santa Cruz

Grand Jury

701 Ocean Street, Room 318-I
Santa Cruz, CA 95060
(831) 454-2099

June 29, 2011

To the Citizens of Santa Cruz County:

The Grand Jury encourages all citizens to become involved with local government. Without the people's voice and scrutiny, government lacks the accountability that makes it responsive to the needs of the citizens. This is the great gift we have been granted in our country, state, and local governments – "...government of the people, by the people, and for the people..." If we don't get involved, we deserve what we get.

The 2010-2011 Santa Cruz County Grand Jury Report addresses concerns of government process and transparency. During the past year, the Santa Cruz County Grand Jury has spent thousands of hours investigating:

- The process and transparency within the Watsonville City Government
- Integrative planning between the Regional Transportation Commission and local planning departments
- Record keeping, transparency, and processes for cancellation of county property tax penalties
- Vendor selection process for medical, dental, and vision consulting services by Pajaro Valley Unified School District
- Optimal use of County jail facilities

The Grand Jury report requires a response to the findings and recommendations from the indicated officials and departments. Based on a review of the responses, the next Grand Jury may elect to reopen or renew the investigations.

I have been privileged to work with a group of community-minded, intelligent, creative, and energetic people who dedicated their personal time to challenge our local government to be responsive to the needs and expectations of its citizens. This report is the culmination of their collaboration, which has included interviews, site visits, attendance at public meetings, data research and analysis.

The Grand Jury thanks all the people throughout the County who cooperated with our investigations and provided valuable information for this report. The Grand Jury also wishes to thank our statutory advisors: Presiding Judge Paul Burdick, County Counsel Rahn Garcia, and District Attorney Bob Lee. Their guidance and timely responses to our inquiries were instrumental to our investigations.

On behalf of all the members of the 2010-2011 Santa Cruz County Grand Jury, I present the Final Report for 2010-2011.

Gayle M. Larson
Foreperson

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Introduction

Each year, nineteen jurors are selected through a combination of random processes and personal interviews to serve for one year, from July 1 through June 30, on the Santa Cruz County Grand Jury. These jurors are your neighbors, serving as independent watchdogs over local government on your behalf.

The grand jury concept dates back to the Norman conquest of England in the eleventh century. In the United States, the Massachusetts Bay Colony impaneled the first grand jury in about 1635 to consider instances of murder, robbery, and wife beating. Both the U. S. Constitution's Fifth Amendment and the California Constitution call for grand juries, and they were established throughout California during the early years of statehood. Now each of the 58 counties in this state impanels a grand jury.

Although most people think a grand jury only considers whether a crime has been committed and whether a certain person should be charged with that crime and required to stand trial, the grand jury in Santa Cruz County is an investigative body with three primary functions:

- Examination of all aspects of county government, city government, and special districts to ensure that those who govern are honest and efficient and that local government funds are being spent appropriately
- Investigation of complaints filed by citizens
- Inspection or investigation of the management and condition of all public prisons within the county

The grand jury submits a final report of its findings and recommendations before the end of its term to the Presiding Judge of the Superior Court. Government officials and agencies to which the recommendations are directed are required to respond to the details in the report within 60 or 90 days. The report and the responses are available to the public at the grand jury website and in the local libraries. However, while the reports are public, all investigations and interviews are kept secret, and the jury's records may not be inspected or subpoenaed.

Citizens may submit complaints directly to the grand jury requesting it to investigate what they perceive as mistreatment by officials or suspicions of governmental misconduct or inefficiencies. The jury is not a consumer complaint agency but uses complaints to identify policies and procedures that might need improvement. While the grand jury cannot investigate every complaint, each one is considered carefully and treated confidentially. The ultimate goal of the grand jury is to improve government in the county and to make public officials responsive to the people.

Additional information about the grand jury, and complaint forms, are available at the address and website below:

Santa Cruz County Grand Jury
701 Ocean Street, Room 318-I
Santa Cruz, CA 95060

Telephone: 831-454-2099 Fax: 831-454-3387

e-mail: grandjury@co.santa-cruz.ca.us

website: <http://www.co.santa-cruz.ca.us/grandjury>



2010-2011 Grand Jurors

- Front row, left to right:
- Janice Hewitt
 - Kris Desmond
 - Marc Los Huertos
 - Doug Horton
- Second row, left to right:
- Alex Clancy
 - Jay Leite
 - Carl Galewski
 - Greg Fyvie
 - Jim Kerr
- Back row, left to right:
- Rich Simms
 - Cheri Hrapoff
 - Steve Johnson
 - Patricia Goslin
 - Erik Zinn
- Not pictured:
- Bob Blanchfield
 - William Gutzwiller
 - Gayle Larson
 - Dolores McCabe
 - Amber McMeans

Photograph of jurors courtesy of Marc Los Huertos

Instructions for Respondents

California law PC § 933.05 requires that those responding to the Grand Jury report must provide a response for each individual finding and recommendation within a report, not a generalized response to the entire report. Explanations for disagreements and timeframes for future implementation or analysis must be provided. Please follow the format below when preparing your response.

Response Format

1. Find the Responses Required table that appears near the end of the report. Look for the row with the name of the entity you represent and then respond to the Findings and/or Recommendations listed in that row using the custom form provided to you.
2. For Findings, indicate one of the following responses and provide the required additional information:
 - AGREE with the Finding,
 - PARTIALLY AGREE or PARTIALLY DISAGREE with the Finding and specify the portion of the Finding that is disputed and include an explanation of the reasons therefore, or
 - DISAGREE with the Finding and provide an explanation of the reasons therefore.
3. For Recommendations select one of the following actions and provide the required additional information:
 - HAS BEEN IMPLEMENTED, with a summary regarding the implemented action,
 - HAS NOT YET BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE, with a timeframe or expected date for implementation,
 - REQUIRES FURTHER ANALYSIS, with an explanation and the scope and parameters of an analysis or study, and a timeframe for that analysis or study; this timeframe shall not exceed six months from the date of publication of the grand jury report,
 - WILL NOT BE IMPLEMENTED because it is not warranted or is not reasonable, with an explanation therefore.

If you have questions about the response report, please contact the Grand Jury by calling 831-454-2099 or by sending an e-mail to grandjury@co.santa-cruz.ca.us.

How and Where to Respond

1. Please use the electronic Adobe PDF Response Form provided to you for your responses. There is one form page provided for each Finding and Recommendation. Be sure to save any changes you make to the form.
2. Print and send a hard copy of the finished Adobe PDF Response Form to:
The Honorable Judge Timothy Volkmann
Santa Cruz Superior Court
701 Ocean Street
Santa Cruz, CA 95060
3. Send the electronic version of the Adobe PDF Response Form via e-mail to the Grand Jury at grandjury@co.santa-cruz.ca.us.

Due Dates

Elected officials or administrators are required to respond within 60 days of the Grand Jury report's publication. Responses by the governing body of any public entity are required within 90 days.

Penal Code § 933.05

1. For purposes of subdivision (b) of § 933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - a. the respondent agrees with the finding,
 - b. the respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
2. For purposes of subdivision (b) of § 933, as to each Grand Jury recommendation, the responding person shall report one of the following actions:
 - a. the recommendation has been implemented, with a summary regarding the implemented action,
 - b. the recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation,
 - c. the recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the Grand Jury report, or
 - d. the recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
3. However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County department headed by an elected officer, both the department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.
4. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
5. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.
6. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

City of Watsonville: Fastest Growing City Looking for Leadership and a Fire Truck

Summary

The effectiveness of all local governments (cities and counties) depends on internal rules, charters, ordinances, and applicable state and federal laws, all of which lay out policies and procedures that guide government officials for the collective good of the citizens. Perhaps the most important of these legal requirements are those that promote transparency and public accountability.

Santa Cruz County has four cities: Scotts Valley, Santa Cruz, Capitola, and Watsonville. Of these four municipalities, Watsonville has experienced the largest population growth. As of 2010 Watsonville had reached a population of 51,199 which represents a growth rate of nearly 6 times that of the rest of the county.^[1]

The Santa Cruz County Grand Jury has found that the City of Watsonville has not been conducting its business in a professional way; one that is transparent in all its dealings, and one that gives all relevant information needed by elected officials to be able to make informed decisions. After looking at concerns brought to its attention, the Grand Jury decided to focus on five issues that are illustrative of a laxity of process and controls in the Watsonville City Government:

- Issuance of a check for \$225,000, in April 2008, for the purchase of a fire truck, which has yet to be delivered to the City of Watsonville.
- Issues concerning the granting of permits at known hazardous materials sites.
- Continuing costs of litigation over future land use planning issues concerning the airport.
- Inability to determine how the City of Watsonville has spent its Redevelopment dollars with respect to eliminating blight and creating jobs.
- Approval of the Manabe-Ow project based on misleading information.

The debate over these issues is ongoing. In some cases the debate has lasted more than a decade. The resolution of these controversial and divisive issues is vital to the future of the City. The Grand Jury believes the Watsonville City Manager should implement processes to ensure transparency, completeness, and accuracy of the information provided to the City Council, City Commissions and the public.

Definitions

- **Aerial Ladder Truck:** (also Truck, Ladder Truck, Tiller Ladder Truck, Tractor Drawn Aerial, TDA). A specialized firefighting vehicle with a large telescoping ladder, used to provide access to upper stories of buildings.
- **Airport:** Watsonville Municipal Airport.
- **Arsenic:** A naturally occurring metallic element, which is also a byproduct of the coal gasification process. Arsenic is toxic if ingested or inhaled in sufficient quantity.

- **Best Practices:** Commercial or professional procedures that are accepted or prescribed as being correct or most effective.
- **California Environmental Protection Agency: (CEPA).** A State cabinet-level agency within the government of California responsible for environmental research, regulating and administering the state's environmental protection programs, and fulfilling hazardous waste cleanup.
- **Carcinogen:** Any substance or agent that produces cancer or increases the risk of developing cancer in humans or animals.
- **CDBG:** Community Development Block Grant. Entitlement grant from the U.S. Department of Housing and Urban Development to fund City projects, particularly those without other available funding.
- **City Council:** Refers to Watsonville City Council. The seven elected City Council Members of the City of Watsonville, acting as the elected governing body, which meets twice monthly.
- **City Government:** Refers to Watsonville City Government. The Watsonville City Council and Watsonville City Staff, operating under the city charter, which specifies the City Manager form of government.
- **City Manager:** Refers to the Watsonville City Manager. The City Manager, appointed by the City Council, supervises all heads of City departments, all activities and operations of the City, and makes recommendations to the City Council.
- **City Staff:** Refers to Watsonville City Staff. All employees of the City of Watsonville.
- **Coal Gasification:** Manufactured gas historically produced in urbanized areas. The gas was made by roasting organic matter to drive off volatiles in the form of useful gases. Gas production also resulted in harmful waste byproducts such as toxic tar residue. Most of these tar residuals are highly resistant to natural degradation in the environment and as such may exist centuries to thousands of years.
- **Community Development Department:** The City of Watsonville department responsible for the review of development and building activity to ensure compliance with zoning and building codes, General Plan policies, the California Environmental Quality Act (CEQA) and community values.
- **Covenant:** A legal agreement between parties to engage in or refrain from a specified action.
- **CUPA:** Certified Unified Program Agency. An agency certified by the California Department of Toxic Substances Control to conduct the Unified Program, which consists of hazardous waste generator and onsite treatment programs; aboveground and underground storage tank programs; Hazardous Materials Management, and Business Plans and Inventory Statements; and the Risk Management and Prevention Program.
- **DOT:** California Department of Transportation.
- **DTSC:** The California Department of Toxic Substances Control. DTSC programs include dealing with the aftermath of improper hazardous waste management by overseeing site cleanups; preventing the releases of hazardous waste, by ensuring that those who generate, handle, transport, store and dispose of wastes do so properly; and taking enforcement actions against those who fail to manage hazardous wastes appropriately.

- **EHS:** Santa Cruz County Environmental Health Services.
- **EnviroStor:** The California Department of Toxic Substances Control's (DTSC's) online database search and Geographic Information System (GIS) tool for identifying sites where extensive investigation and/or cleanup actions are planned or have been completed at permitted facilities and cleanup sites. It also identifies facilities that are authorized to treat, store, dispose of or transfer hazardous waste. Users can conduct searches using various criteria, including facility/site name, address, city, and county. Results can be displayed in a list format or on an interactive map. The EnviroStor database can also be downloaded.
- **Fortis:** A comprehensive software suite for document management used by some departments of the County of Santa Cruz, including Environmental Health Services.
- **General Plan:** A document containing a statement of development policies, including a diagram and text setting forth the objectives of the plan. The general plan must include certain state mandated elements related to land use, circulation, housing, conservation, open-space, noise and safety.
- **Geotracker:** The California State Water Resources Control Board's online database system, developed primarily to give users the ability to assess potential threats to drinking water sources. This system consists of a relational database, online compliance reporting features, a GIS interface and other features, used by the State Board, regional boards, local agencies, regulated industry and the public, to track and archive compliance data from authorized or unauthorized discharges of waste to land, or unauthorized releases of hazardous substances from underground storage tanks.
- **Hexavalent Chromium:** A toxic, carcinogenic form of the element chromium. It is also a byproduct of the coal gasification process.
- **Institute for Local Government:** The research and education affiliate of the California State Association of Counties and the League of California Cities. Their mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities.
- **MOSP:** Manabe-Ow Specific Plan. A policy statement and implementation tool that will be used to guide development of the Manabe-Ow Business Park. The MOSP contains concrete standards and development criteria that supplement those of the general plan.
- **NFPA:** National Fire Protection Association. An authoritative source on public safety. NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks.
- **Petroleum Hydrocarbons:** Petroleum hydrocarbons are the primary constituents in oil, gasoline, diesel, and a variety of solvents and penetrating oils. As such, petroleum hydrocarbons are a primary focus of many contaminated site assessments.
- **Plaintiff:** The party or persons who initiate a lawsuit.
- **Polynuclear Aromatic Hydrocarbons:** Toxic petroleum substances that accumulate in the food chain. They are often found at former manufactured gas plants that use coal.
- **RDA:** Refers to Watsonville Redevelopment Agency.
- **Senior Staff:** Refers to Watsonville City Senior Staff. Watsonville City employees who report directly to the City Manager.

- **Staff Report:** A report presented to the City Council or City Commissions by a member of the City Staff which presents the details concerning an item on the City Council or Commissions' agendas. This is typically in the form of a memorandum to the City Manager with attachments as appropriate. The City Manager's approval typically appears on the copy of the memorandum given to the City Council Members.
- **TAC:** Refers to Manabe-Ow Technical Advisory Committee.
- **UL:** Underwriters Laboratory. A non-profit safety testing and certification organization.
- **Watsonville 2005 General Plan:** The general plan adopted by the City in May 1994.
- **Watsonville VISTA 2030:** The general plan adopted by the City in June 2006, sections of which have been invalidated by action of the California Superior Court.
- **Writ of Mandate:** A court order to a government agency, including another court, to follow the law by correcting its prior actions or ceasing illegal acts.
- **WRDA, or RDA:** Watsonville Redevelopment Agency, whose goal is the elimination of structural and economic blight in the central commercial and industrial area through the Redevelopment Agency powers and funding.

Background

This investigation stems from a July 2010 op-ed article in the Santa Cruz Sentinel, titled "Watsonville 'sweetheart' loan puzzling."^[2] The article highlighted a questionable RDA loan, permits at a hazardous materials site, and preferential treatment of some business owners over others in the City of Watsonville. A cursory records check by the Grand Jury revealed that the Watsonville City Planning Commission and the Watsonville City Council, through systemic failure, permitted the use of an outdoor patio at a restaurant, over an identified and unmitigated hazardous materials site.^{[27][30][31][36]}

Scope

The Grand Jury investigated the practices, policies and procedures of the City of Watsonville with a focus upon the accuracy and completeness of Staff reports. We initially investigated decisions by the Planning Commission, but soon expanded to multiple areas of City Government, focusing on issues that were brought before the City Council.

The factual basis for the investigation was established through research of public records and multiple interviews of elected officials, City Staff, appointed officials, concerned citizens, business leaders, and journalists. The investigation was conducted to determine the transparency, completeness, and accuracy of information provided by City Staff to the City Council, City Commissions, and the public.

The investigation revealed many cases of inaccurate or incomplete information in staff reports. Multiple explanations were given for these lapses. They will be described in each of the following investigative sections.

Fire Truck Investigation

In April 2008, The City of Watsonville issued a check for \$225,000 for the purchase of a Pierce Lance aerial ladder truck from a broker. The funding for the truck came from a Federal Community Development Block Grant.^[3] The City was already aware of a KME truck owned by the City of Pasadena, which was a better fit for Watsonville but unfortunately was not for sale at that time. A complicated series of events has occurred over the past three years and now the City is pursuing the KME, which is now available, instead of the Pierce; however, as of the date of submission of this report, the City has paid in full, and has no truck.

This fire truck has been the subject of numerous newspaper articles and inquiries at City Council meetings. It appears that the vehicle will be a good value and is well suited to the needs of the City when it is delivered and placed into service. The aerial ladder truck would certainly have been beneficial in fighting the recent major fire at the Apple Growers Warehouse. The Grand Jury does not question the decision made by the Fire Chief or Staff in selecting the vehicle. However, the Grand Jury's investigation surrounding the purchase demonstrates a lack of transparency, completeness, and accuracy in the information provided to the City Council and the public. These procedural irregularities undermine public confidence in the City's financial practices.

The Grand Jury reviewed documents provided by the Fire Chief, the City Clerk, City Staff, and the City of Pasadena. They are frequently confusing and contradictory. Specific concerns include:

1. Two different trucks are referenced throughout the documents.
 - 1992 Pierce Lance 105' Tractor Drawn Aerial
 - 1999 KME Tractor 100' Aerialcat Tractor Drawn Aerial

2. Three different invoices were provided.
 - Fire Trucks Plus, Inc. Invoice No. 42208, dated April 22, 2008^[4]
 - 1992 Pierce Lance 105' Tractor Drawn Aerial
 - Unit Price \$100,000
 - Refurbish aerial \$117,000
 - 8% Sales Tax \$8,000
 - Total \$225,000
 - Fire Trucks Plus, Inc. Invoice No. 42208, dated April 29, 2008^[5]
 - 1992 Pierce Lance 105' Tractor Drawn Aerial
 - Unit Price \$85,000
 - Training, delivery, pump test, UL test, lettering, inspection trip \$15,987.50
 - Refurbish aerial \$117,000
 - 8.25% Sales Tax \$7012.50
 - Total \$225,000
 - Fire Trucks Plus, Inc. Invoice No. 9372010, dated December 8, 2010^[6]
 - KME Tractor 100' Aerialcat Tractor Drawn Aerial
 - Unit Price \$85,000
 - Training, delivery, lettering, 2nd inspection trip \$15,987.50

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- Refurbish aerial \$117,000
 - Sales Tax \$7012.50
 - Total \$225,000
3. Fire Trucks Plus, Inc. Statement, dated December 8, 2010^[7]
 - KME 100' Aerialcat Tractor Drawn Aerial
 - Unit Price \$225,000
 - Marked "Paid in Full Check No. 157619"
 4. City of Watsonville Purchase Requisition, dated April 29, 2008^[8]
 - 1992 Pierce Lance 105' Tractor Drawn Aerial
 - Approved by Council Resolution #61-08 (CM), attached to requisition
 - Memorandum from the Fire Chief to the City Manager, included as a staff report to the City Council for approval of the purchase, dated April 22, 2008, and "Attachment 1: Aerial Ladder Truck Specifications," referring to the KME,^[10] attached to the requisition
 - Fire Trucks Plus, Inc. Invoice No. 42208, dated April 22, 2008, attached to requisition
 - Marked "Material or Services Received, Invoice Attached for Payment" (The truck was not received)
 5. City of Watsonville Check No. 157619, dated April 29, 2008, for \$225,000^[9]
 - 1992 Pierce Lance 105' Tractor Drawn Aerial Ladder truck
 - Invoice No. 42208
 6. Two different sets of specifications for the vehicle were provided to the Grand Jury as attachments to a memorandum from the Fire Chief to the City Manager, included as a staff report to the City Council for approval of the purchase, dated April 22, 2008.^{[10][11][12]}
 - The memorandum describes the truck to be purchased as a "sister unit to our existing truck" (which is a 2001 KME Tractor Drawn Aerial).
 - "Attachment 1: Aerial Ladder Truck Specifications" consists of three pages referring to the KME and includes the statement, "Vehicle is in excellent condition."^[10]
 - "Attachment 1: Aerial Ladder Truck Specifications (Revised)" consists of three pages, two referring to the Pierce Lance and one referring to the KME, and includes the statements, "Aerial is in excellent condition" and "Vehicle is in excellent condition."^[11]
 7. There was no written contractual agreement between the parties; therefore, the \$225,000 is at risk.
 8. There are no detailed written contractual specifications for the \$117,000 refurbishment.
 9. There are no written contractual documents describing the change from the Pierce to the KME.
 10. Different condition reports and value assessments are reported for the KME.

- From a City of Pasadena Agenda Report to the Mayor and City Council, dated December 14, 2009, to authorize a contract with Fire Trucks Plus, Inc. to exchange a 1999 KME for a 1992 Seagrave Ladder Truck (a three-way trade to make the KME available to Watsonville), referring to the KME.^[13]

In the last five years, maintenance and repairs have resulted in the vehicle being out of service 37% of the time. In comparison, over the same period, the City's other ladder trucks have been out of service only 15% of the time, even though they are older vehicles. This has forced the City to place the KME in reserve status and use the reserve ladder truck for front line duty. Due to safety issues, reliability, out of service time, unit size, and the issue of major component failure, the KME has not met the needs of the Pasadena Fire Department.

*The KME cannot be resold at auction for reuse by a municipal Fire Department because it does not meet current NFPA standards. **It is estimated that it will only bring approximately \$20,000** (bold and underlined for emphasis) at a public bid. Parties interested in obtaining the KME through a sealed bid sale are limited and would likely result in a low ball offer due to the work and cost needed to upgrade and repair the unit for resale.*

- The staff reports described in Item 6 (above) from the Watsonville Fire Chief to the City Manager state the “vehicle is in excellent condition.”^{[10][11]}
- The Watsonville Fire Chief, in an April 2010 newspaper article, states the appraised value of the vehicle is \$265,000 to \$379,000.^[15]

11. Conflicting documents were provided showing transfer of ownership by Fire Trucks Plus, Inc. to the City of Watsonville before the release of ownership by the City of Pasadena.

- Transfer **from Fire Trucks Plus, Inc.** to City of Watsonville on **December 8, 2010**^{[17][18]}
- Transfer from City Of Pasadena **to Fire Trucks Plus, Inc.** on **December 16, 2010**,^{[14][16]} (approved by Pasadena City Council on December 14, 2009)

12. It is unknown if the procurement process followed by the City is in compliance with Federal requirements for the use of Community Development Block Grants.

13. No firm delivery date has ever been provided by Fire Trucks Plus, Inc.

14. Two E-mails from the Fire Chief to Council Member Martinez with differing information regarding delivery.^{[22][23]}

In summary:

- The City paid \$225,000, without a contract, in April 2008 for a truck they preferred not to buy.
- The truck they hoped to buy was not in the possession of the broker who accepted payment.

- The truck they hoped to buy was not available for purchase until December 2010, more than two and one-half years after they paid the \$225,000.
- The City did not take title to the truck they hoped to buy until December 2010, more than two and one-half years after they paid the \$225,000.
- The City has not taken delivery of the truck more than three years after they paid the \$225,000.

It appears the City does not follow a “best practices” purchasing procedure. The documents described above do not demonstrate that the City processes conform to the “Purchasing and Contracting Practices” section of “Financial Management for Elected Officials: Questions to Ask,” published by the Institute for Local Government,^[26] and resource documents at the California Society of Municipal Finance Officers website.^[25]

The Grand Jury believes the procedure followed by the City fails to demonstrate responsible use of public funds. None of the nine present or former City Council member interviewees had any knowledge of the current delivery status of the truck. Several said they asked Staff for updates at City Council meetings, but have not received adequate information.

Finally, on February 8, 2011, the Fire Chief wrote a memorandum to the City Manager that gave his account of the complete transaction.^[24] The Grand Jury does not understand why this information was not fully disclosed at the start of the transaction, or why there were three years of smoke and mirrors.

Findings

- F1.** The purchasing procedure used by the City to buy the fire truck appears ad hoc and incomplete. It bypasses commonly used financial controls that would protect the buyer and provide accountability of public officials.
- F2.** The fire truck transaction appears suspect due to contradictory documents.
- F3.** The City Manager has not provided the City Council with regular updates that reflect changes in the fire truck transaction in the three years since the issuance of the payment.

Recommendations

In order to ensure transparency, completeness and accuracy in the information provided to the City Council, City Commissions and the public, the Grand Jury recommends:

- R1.** The City Manager should make regular reports to the City Council, in open session, regarding the performance of significant contracts, i.e., \$50,000 or greater.
- R2.** The City should adopt a “best practices” government procurement policy. The California Society of Municipal Finance Officers is a particularly useful resource for the development of such a policy.^[25]
- R3.** City Staff with purchasing authority and responsibility should receive adequate training to successfully execute contracts and process transactions.

Environmental Health Investigation

The Grand Jury discovered that the City of Watsonville has no policies or procedures in place to check for environmental hazards for any given development site prior to the issuance of land use or building permits.

Most of the pertinent documents related to this investigation may be reviewed in various locations throughout the EnviroStor web page for “PG&E, WATSONVILLE #1 MGP (44490007).”^[36]

The site investigated is located at 618 Main Street in Watsonville. Extensive past environmental investigations have identified hazardous residues in the soil resulting from historical operations at the site. The contaminants identified in the reports are known to cause cancer or birth defects and include polynuclear aromatic hydrocarbons, petroleum hydrocarbons, arsenic, and hexavalent chromium. It was also determined that, as a result of the contamination, the “groundwater presents an unacceptable threat to human health and safety.”^{[27][36]}

The site is located within the historic footprint of the Watsonville-1 Manufactured Gas Plant, which operated from 1871 until 1906. The plant used coal and oil to produce gas for lighting, heating and cooking. Some of the hazardous byproducts from the manufacturing process remain at the site. Pacific Gas and Electric Company (PG&E) eventually took over ownership of the site and used it as a customer service facility until 1989, when it was leased to its present owner and converted into a restaurant (Jalisco).^[36]

The site was purchased by its present owner from PG&E on February 27, 2001, subject to a recorded “Covenant to Restrict Use Of Property, Environmental Restriction,” which was found to be “reasonably necessary to protect present or future human health or safety or protect the environment as a result of the presence on the land of hazardous materials as defined in Health & Safety Code section 25260.” The ongoing environmental investigation at the site is under the supervision and authority of the California Department of Toxic Substances Control (DTSC) (Department).^{[27][28][36]}

The restrictions described in the Covenant include prohibited uses (residence, hospital, school or day care), prohibited activities (raising of food or extraction of groundwater for consumption) and requirements for soil management:

4.02 (a) “No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the property without a Soil Management Plan and a Health and Safety Plan approved by the Department.”

4.02 (b) “Any contaminated soils brought to the surface by grading, excavation, trenching or back-filling shall be managed in accordance with all applicable provisions of state and federal law.”

The Covenant further mandates an interim remedial measure to prevent the release of hazardous substances from the contaminated soil. This includes maintaining the current asphalt parking lot, commercial building and other structures on the property, which are referred to as the “Cap.”

4.04 (a) "Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department."

Furthermore, sections 3.01 and 3.02 of the Covenant stipulate that the restrictions "run with the land," and are "binding upon owners/occupants." All owners and future owners of the property are required to adhere to the provisions of the Covenant.^{[27][36]}

The Grand Jury found that on two specific occasions, the Watsonville City Government failed to discover or provide information highlighting the fact that there are hazardous materials present on the site.

On June 18, 2007, the City of Watsonville issued a "Correction Notice," due to the start of construction, without a permit, of a courtyard seating area at the site.^{[29][36]} After the city issued the correction notice, all required applications and plans were submitted, permits were obtained, and building inspections were performed.^[30] **However, NO assessment of the land use restriction or presence of hazardous materials was considered.**

On March 4, 2008, the Watsonville Planning Commission approved a Special Use Permit allowing liquor sales and special events on an outdoor patio at the site. The staff report included the finding that "Jalisco's Restaurant has operated in its present location for 19 years. An 800 square foot patio was added to the restaurant for food service in the summer of 2007." The staff report failed to provide any information concerning the environmental hazards and risks on the site.^[31]

In 1996 the California Environmental Protection Agency designated Santa Cruz County Environmental Health Services (EHS) as the "Certified Unified Program Agency" (CUPA) within the geographic boundaries of the County (including all four Cities). As the CUPA, EHS is responsible for enforcing State and Federal statutes and regulations as well as any applicable local ordinance.^[32] However, since the City of Watsonville failed to discover the hazard or the land use restriction, EHS was not notified, and was unable to act in its capacity as the CUPA. EHS staff who were interviewed also stated that Watsonville City staff rarely contact them for advice or assistance.

There are various databases available to the public online, that identify sites with known or suspected hazardous materials contamination. The Grand Jury easily found the site located at 618 Main Street listed on "EnviroStor,"^[36] and "GeoTracker."^[38] EHS maintains a website with a link to known contaminated county sites, titled "Santa Cruz County 'Site' List."^[37] Nearly 700 county sites are identified on the list, including approximately 100 in the City of Watsonville alone. The site at 618 Main Street appears on the list and was also found in the "Fortis" document file maintained at EHS.

The Watsonville Community Development Department staff first became aware the site was contaminated when they were interviewed by the Grand Jury. They were unaware of the land use restriction and the presence of hazardous materials on the site. They do not routinely make inquiries regarding these issues when processing permits.

There was disagreement amongst the interviewees from different departments, commissions and the City Council as to whether the permit process needed to be revised to include a routine check of soil and groundwater contamination databases prior to issuance of a permit.

It appears that the site construction activities permitted by the City of Watsonville caused an unauthorized release of hazardous materials. The Grand Jury notified EHS of a potential release; EHS subsequently referred the notification to the DTSC, the lead cleanup oversight agency.^{[33][34][36]} The DTSC replied, “the disturbance of the soil...did not likely have any impacts on the public, workers who performed the construction, or the environment,” and that it would take no enforcement action at this time. However, it did direct that any future activities on the site that cause soil disturbance must be performed in accordance with the requirements of the Covenant.^{[35][36]}

Nevertheless, the Grand Jury maintains that the City of Watsonville permit procedures fail to recognize existing documented soil and groundwater contamination hazards that pose potential risks to public health and safety.

Findings

- F4.** The City of Watsonville Community Development Department issues land use and building permits without consideration of the presence of hazardous materials or recorded land use restrictions.
- F5.** No permit application review procedure exists at the Community Development Department to identify known documented hazardous materials sites.

Recommendations

- R4.** In collaboration with EHS, the City of Watsonville Community Development Department should develop a procedure to alert staff to the presence of hazardous materials on a site prior to the issuance of land use or building permits.

Airport Investigation

The Watsonville Municipal Airport is a lightning rod issue and is very divisive in the Watsonville community. Many Watsonville residents, including several members of the City Council, see no value in the Airport and would like it converted to affordable housing. On the other side are business leaders, the Watsonville Pilots Association, the Farm Bureau, and others, who support retaining the full capabilities of the Airport.

The divisiveness of this issue is even underscored internally within the City. In direct contrast to the City Council majority opinion, the Airport’s benefits to the community, including economic, are touted and well documented on the City’s Economic Development Website “Watsonville Municipal Airport.”^[39]

Over the past five years, costly litigation over land use issues in areas surrounding the Airport has exceeded \$1.2 million of limited City funds. The City is now embarking on a project to re-adopt its 2030 General Plan^[40] to address deficiencies found by the California Superior Court.^[41]

With the City facing a pending budget deficit of \$1.9 million, the Grand Jury believes the City Council should have a full public discussion of the airport issues and potential costs, solutions, and compromises, before proceeding down the path of another round of costly litigation.

The Grand Jury has found that on matters concerning the Airport, the City Government has failed to act in a manner that is transparent, and failed to make decisions based on complete and accurate information.

A chronology of events relating to the Airport over the past six years is as follows:

1. A 2005-2006 Santa Cruz County Grand Jury Investigation was prompted by the City Council's adoption of Resolution 74-05^[42] on April 12, 2005, which amended the City's Airport Master Plan 2001-2020, in anticipation of the adoption of the Watsonville VISTA 2030 General Plan^[40]

The Grand Jury report titled, "Watsonville Municipal Airport: Headed for a Crash,"^[43] is informative and mostly still pertinent today. The following paragraphs are from this report (bolds and underlines added for emphasis):

*Watsonville Municipal Airport is a valuable asset to the City of Watsonville and to the entire County of Santa Cruz. While land-use planning around most airports is monitored by regional commissions specializing in airport issues, a unique loophole in California State law permits the Watsonville City Council to serve in this capacity for the airport. **The airport's existence is now threatened because the city is meeting its mandated housing goals by planning housing developments in airport safety zones, which could lead to increased noise complaints and untold liability in the event of an accident.***

*The airport is economically valuable to the city, providing steady employment, business opportunities, a substantial tax base, and drawing business and recreational visitors. Strategically, the Airport is a key asset in low frequency but high impact disaster relief efforts, as was demonstrated following the Loma Prieta earthquake. **Before any irrevocable decisions are made, the benefits of the airport to the entire region must be carefully evaluated through the formation of an independent Airport Land Use Commission. Such a commission will provide an opportunity for community input and to make impartial land use decisions more frequently to protect this critical regional resource.***

The Watsonville Municipal Airport was constructed by the Navy during World War II on land purchased by, and incorporated into, the City of Watsonville. In 1947 the airport was transferred back to the city for \$1 provided the land would be used as an airport in perpetuity. Initial construction consisted of two runways, both built to military specifications that make them suitable for use by heavy aircraft such as C-130s and business jets. Two runways are needed to accommodate weather variations. The primary runway, Runway 2-20, is the longest and can be

*used ninety-four percent of the time. The shorter runway, **Runway 8-26, can be used ninety-eight percent of the time and is necessary not only for wind variations, but particularly in summer fog conditions.***

2. During the Santa Cruz County Grand Jury's 2005-2006 term, several additional airport actions occurred, which were not included in the report.
 - An April 21, 2006, letter to the City of Watsonville from the California Department of Transportation (DOT),^[44] included the following statements: "**It is our position that Resolution 74-05 should be invalidated.**" (bold and underlined for emphasis) and "If the City of Watsonville does not intend to implement the State's request in complying with the State Aeronautics Act, please consider the subject letter as a request for an administrative appeal." **The City took no action on this letter.**
 - On May 23, 2006, the City Council adopted Resolution 114-06 (CM),^[45] certifying the final Environmental Impact Report (EIR) for the Watsonville VISTA 2030 General Plan, and Resolution 115-06 (CM),^[46] adopting the Watsonville VISTA 2030 General Plan and Findings. These resolutions incorporated the disputed Resolution 74-05^[42] into the General Plan, despite the DOT's position.

3. Since the Grand Jury Report was issued in June of 2006, additional activities concerning the airport have taken place.
 - Two cases were filed and litigated: "Santa Cruz County Superior Court CV 154571, Watsonville Pilots Association et al., v. City of Watsonville, et al.,"^[47] and "Santa Cruz County Superior Court CV 154572, Friends of Buena Vista, et al., v. the City of Watsonville et al.,"^[48]
 - On March 21, 2008, the Court "issued a statement of decision," signed by Superior Court Judge Paul P. Burdick, in favor of the plaintiffs in both cases.
 - On May 2, 2008, the Santa Cruz County Superior Court "entered judgment" for the plaintiffs, and issued a Peremptory Writ of Mandate,^[49] "YOU ARE HEREBY COMMANDED...to set aside the certification of the Environmental Impact Report...and all your decisions, approvals and findings for the Watsonville Vista 2030 General Plan." A key provision of the Writ is,

3. You are prohibited from implementing the Watsonville Vista 2030 General Plan or Resolution 74-05 (bold and underlined for emphasis) *or basing any action on or engaging in any activity pursuant to the Watsonville Vista 2030 General Plan or Resolution 74-05, unless and until the environmental review and the Watsonville Vista 2030 General Plan and Resolution 74-05 are revised to comply with the Court's Statement of Decision, and California law, including but not limited to its statutes and regulations known as the California Aeronautics Act, the California Environmental Quality Act ("CEQA") and the CEQA Guidelines and the Court is satisfied that you have complied with this peremptory writ of mandamus by way of a return to the writ.*^[49]
 - The City of Watsonville appealed the ruling to the Court of Appeal of the State of California Sixth Appellate District on June 26, 2008.

- On March 15, 2010, the Court of Appeal of the State of California Sixth Appellate District denied the City's appeal,^[50] required it to follow the trial court's Peremptory Writ of Mandate, and further required the City to develop a Compliant Airport Land Use Compatibility Plan (ALUCP) consistent with the California Airport Land Use Planning Handbook.
 - From interviews and documents provided by the City,^[51] the Grand Jury discovered the City was required by the Court to pay \$691,837.84 to the plaintiffs for their legal fees. The City also paid \$442,346.10 to its own attorneys for the defense of the suit, for a total expenditure of \$1,134,183.94.
4. While these legal actions were underway, the Planning Commission received an application for a permit for a commercial building to be located next to the airport. On August 4, 2008, the Planning Commission approved a special use permit for a 43,389 square foot light industrial building on Jennings Drive. The project became known as "Lawton." The approval followed discussion and review of the information in the form of a Memorandum provided by City Staff.

However, the City Staff failed to provide the following information to the Planning Commission:

- The Memorandum to the Planning Commission^[52] makes no mention of the Writ of Mandate^[49] affecting the property, which states, "**You are prohibited from implementing the Watsonville Vista 2030 General Plan or Resolution 74-05.**" (bold and underlined for emphasis)
- The Memorandum mentions "A Mitigated Negative Declaration," but does not include the original negative declaration letter from the DOT,^[53] which cites the Superior Court decision, and includes the statement, "Portions of the project site appear to be within the Safety Zones 1, 2, 3, and 6 for the Watsonville Municipal Airport."
- A City letter attempted to mitigate the negative declaration,^[54] but their letter had not been accepted by the DOT by the date of the meeting. This fact was not communicated to the Planning Commission by the City staff. Subsequent to this meeting, the DOT issued a letter^[55] which includes the statement, "We further request that the Negative Declaration not be approved."
- The Minutes of the Planning Commission meeting^[56] include the statements, "Commissioner Martinez..." (Planning Commissioner at that time) "...noted the close proximity of the Airport to the project," and "Principal Planner Boyle stated the proposed use is allowable in Zone 6 and is consistent in both General Plans." Planner Boyle's statements fail to inform the Commission of the DOT claims that the project is in Zones 1, 2, 3 and 6, or of the Writ of Mandate which prohibits the implementation of the Watsonville VISTA 2030 General Plan.

It is not possible to know how the Planning Commission would have acted if they had received full information. They may have elected to approve the permit, they may have denied it, or they may have continued the matter and requested further information.

The Watsonville Pilots Association and others subsequently filed suit^[57] to stop the project, since it was in direct violation of the Peremptory Writ of Mandate issued on May 2, 2008. The Lawton

Project was eventually dropped by the applicant due to the suit, and the City of Watsonville and the Watsonville Pilots Association negotiated a settlement to the suit. From interviews and documents provided by the City,^[51] the Grand Jury discovered the City paid \$48,000 to the plaintiffs for their legal fees. The City also paid \$12,048.78 to its own attorneys for the defense of the suit for a total expenditure of \$60,048.78.

To summarize,

- In the first lawsuit, the city ended up paying \$1.134 million in legal fees
- In the second lawsuit, the City settled and ended up paying another \$60 thousand in legal fees.

Findings

- F6.** The full costs of litigation to justify future development surrounding the airport have not been disclosed to the public.
- F7.** The City has spent over \$1 million in scarce funds on litigation resulting from attempts to increase development around the airport.
- F8.** City Staff has repeatedly failed to provide complete and accurate information to the City Council, Planning Commission, and the public.

Recommendations

- R5.** The City Council should have a public discussion regarding future development surrounding the airport, including full disclosure by City Staff of all issues and potential costs, solutions, and compromises, to avoid another round of costly litigation. This public discussion should be held prior to development of the revised City General Plan 2030.

Redevelopment Agency Investigation

The City Manager, the recently retired Director of Redevelopment and Housing, and other senior city executives, both elected and staff, have made many public statements^{[58][59][60]} concerning the importance of redevelopment funds to the City of Watsonville. Their statements emphasize how damaging the elimination of the Watsonville Redevelopment Agency (WRDA) would be to the city. There has been much discussion of Redevelopment Agencies (RDAs) since California Governor Brown's recent proposal to eliminate them.

The Grand Jury attempted to investigate the history of the WRDA to find quantifiable measures to evaluate its effectiveness, such as a list of projects undertaken; project costs and status; WRDA annual revenues and expenses; and bond obligations. The Grand Jury was never able to find this information.

As of the start of our investigation, there was no publicly available information on the effectiveness of the WRDA. The Grand Jury reviewed the Watsonville "Redevelopment Housing Economic Development" website^[61] and found none of the information we were attempting to obtain. Additional City websites were investigated for information concerning the WRDA.

Several reports were found that contain partial information.^{[61][62][63][64][65]} City Staff interviewees informed the Grand Jury there was no simple way to obtain this information. Interviewees were able to name only five or six WRDA completed projects over the nearly thirty-year life of the agency. We were also told that it would take an effort by staff to look through “paper files” to provide us with a list of WRDA projects over the past five years. In addition, some City Staff members were dismissive and contemptuous of the Grand Jury’s attempt to obtain such information.

We investigated neighboring county and city governments’ RDA websites to see if the type of information we had requested of the City was available online. We found that the websites of the County of Santa Cruz,^[66] the City of Santa Cruz^[67] and the City of Morgan Hill^[68] all contain excellent and easy-to-understand information that helps the public to understand the effectiveness of their RDAs.

Findings

- F9.** It was not possible to evaluate the effectiveness of the WRDA because adequate information is not provided to the public.
- F10.** The City of Watsonville does not provide a publicly available summary of WRDA activities, revenues, or expenses.

Recommendations

- R6.** The City of Watsonville should publish on its website, a current record of activities of the WRDA, including projects proposed, approved, in progress, and completed, along with related revenue, bond obligations and expense information.

Manabe-Ow Investigation

On October 26, 2010, the City Council passed resolution 174-10^[69] approving the Manabe-Ow Specific Plan (MOSP)^[70] amid a sea of sign-waving young citizens chanting, “We Need Jobs.”^[71] The City considers the Manabe-Ow Project key to its strategy for employment, because it projects over 2,000 new jobs over the next twenty years. The project consists of the development of a 95-acre industrial area in the southern part of the City. “The MOSP represents the culmination of the City’s extensive efforts to create a new job base for the community. The City of Watsonville has been actively pursuing a new industrial area to provide new jobs for the residents of the City for the past 15 years.”^[72]

The Grand Jury supports the City and citizens of Watsonville in their political processes, and does not have an opinion concerning the appropriateness of the Manabe-Ow Business Park project. The Grand Jury is concerned with the completeness and accuracy of background information regarding project financing that was provided by City Staff to the public, the Planning Commission and the City Council, prior to the passage of Resolution 174-10.

At the October 26, 2010, City Council Meeting,^[71] the Interim Community Development Director presented the Manabe-Ow Staff report.^[72] Financing was not discussed at the

meeting;^[69] however, the report included several references to financing and financing alternatives:

*The buildout of the Specific Plan for the site is anticipated over a 20 to 25 year time frame, **with initial phases not occurring until the economic conditions improve**^[72] (bold and underline added for emphasis)*

***The City desires to obtain infrastructure grant funding** in order to pursue the first phasing option in the Plan^[72] (bold and underline added for emphasis)*

***The Plan identifies options for financial vehicles** for public and private partnerships necessary to help move the project forward^[72] (bold and underline added for emphasis)*

A Development Agreement is also under review but will take additional time to determine potential financial impacts that can only be determined as more detailed tentative map plans are prepared for the project if the Specific Plan is approved, and grant funding options become more clear.^[72]

*There is an unknown financial impact of adopting this Plan at this time. **The City will be pursuing grant funding** to help with the implementation of infrastructure identified in the Plan.^[72] (bold and underline added for emphasis)*

At the December 14, 2010, City Council Meeting,^[73] the Redevelopment and Housing Department Director presented a staff report^[74] which painted a significantly different picture from the October 26 report, concerning Manabe-Ow financing. This report and the City Council discussion were dedicated entirely to project financing. The report contained the following highlights on financing:

Construction of the business park requires significant infrastructure investment^[74]

Infrastructure costs alone are expected to be approximately \$31 million.^[74]

As a result of the need for major up-front investment in infrastructure, the Property is too expensive for a private party to develop on its own, and a public-private partnership is necessary.^[74]

Redevelopment assistance is essential to bring this project to fruition.^[74]

Under current redevelopment law, the Property does not meet the strict definition of blight, despite its presence in the flood plain, as it is undeveloped agricultural land. As the condition of the Property does not fall within the definition of blight, a legislative amendment is presently the City's only option for including the property in the Redevelopment Project Area.^[74]

It is unlikely that the Manabe-Ow Business Park will be built without assistance from the Redevelopment Agency.^[74]

The potential cost of not pursuing a legislative amendment in terms of lost economic opportunity is substantially greater than the cost of making the effort.^[74]

The above staff report^[74] suggests City Staff had long known and planned to use the WRDA as the primary and preferred financing mechanism for the Manabe-Ow project, ignoring the other seven alternatives described in the MOSP. This information was not specifically provided to the City Council at the October 26, 2010, meeting. It is not possible to know how the City Council would have acted if they had received full information.

When the Grand Jury asked some City and Staff interviewees about the omission of financing options and the need for legislative action, their response was contemptuous and dismissive. The Grand Jury was told that the need for redevelopment funds, combined with the need for special legislative action, was well known by **all stakeholders** and had been fully vetted in public documents and hearings.

The Grand Jury attempted to verify the veracity of the statement by City and Staff by interviewing seven of the listed Council Members and five of the listed Planning Commission Members, who were listed as stakeholders in the MOSP.^[70] When directly asked, **none of these participants** interviewed were aware of the needs discussed in the staff report on financing.^[74]

The Grand Jury also reviewed available public documents^{[70][75][76][77][78][79]} regarding this project. None of the documents describes the need for Redevelopment Funds, combined with the need for special legislative action, as specified in the staff report on financing,^[74] and as asserted by City Staff.

As of the date of submission of this report, the financing of the Manabe-Ow project is still in flux due to the uncertainty of the availability of RDA funding.

Findings

- F11.** The City Council failed to fully consider project costs prior to Manabe-Ow project approval.
- F12.** The City Staff misrepresented the plans to finance the Manabe-Ow project prior to the City Council's approval in 2010.
- F13.** The City Staff favored securing WRDA funding to finance the project but withheld this information from the City Council and the public prior to project approval.
- F14.** City Staff withheld information regarding the requirement for legislative action to include the Manabe-Ow property in the WRDA prior to project approval.

Recommendations

- R7.** The City Manager should implement a process to ensure transparency, completeness and accuracy in the information provided to the City Council, City Commissions and the Public.

- R8.** The City Council should exercise due diligence and demand that it receives adequate information to make informed decisions. “Financial Management for Elected Officials: Questions to Ask,” published by the Institute for Local Governments is a useful resource.^[26]
- R9.** The City Council should have a public discussion of the Manabe-Ow project with full disclosure of all funding options.

Commendations

With a population nearly equal to that of the City of Santa Cruz (51,000 versus 58,000), the City of Watsonville has an annual budget of only \$39 million, compared to \$100 million for the City of Santa Cruz. The City of Watsonville justifiably prides itself for the level of services they provide on a very low budget. City employees have accepted salary reductions, reductions in hours, and furloughs, and many have assumed additional duties without additional compensation.

Responses Required

Respondent	Findings	Recommendations	Respond Within/ Respond By
City of Watsonville City Manager	F1-F8, F10, F12- F14	R1-R7	60 Days September 1, 2011
City of Watsonville Redevelopment Agency Executive Director	F9, F10	R6	60 Days September 1, 2011
City of Watsonville City Council	F4-F6, F10-F11	R2-R6, R8, R9	90 Days October 1, 2011
City of Watsonville Redevelopment Agency Board of Directors	F9, F10	R6	90 Days October 1, 2011

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Site Visits

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City of Watsonville City Administrative Offices
City of Watsonville City Council Meetings
City of Watsonville Fire Department Administrative Office
County of Santa Cruz Environmental Health Services
County of Santa Cruz Planning Department

Back to the Future: Regional Gridlock and Local Planning Paralysis

Summary

The lack of integrative planning between the Regional Transportation Commission and the planning departments of the county and cities has resulted in deplorable traffic congestion along the Highway 1 corridor on a daily basis. The Regional Transportation Commission has noted that one of the fundamental reasons for the congestion is a lack of consensus among the political stakeholders. The County, which is responsible for the unincorporated areas, and the cities have chosen *not* to integrate their transportation plans with those provided by the Regional Transportation Commission. Therefore, the Grand Jury recommends the transportation sections of all general plans for the county and cities should be written by the Regional Transportation Commission.

Definitions

- **AB 32:** Assembly Bill 32, the Global Warming Solutions Act of 2006.
- **AMBAG:** The Association of Monterey Bay Area Governments. A 24-member board of directors comprised of elected officials from each city and county within the region from Monterey, San Benito and Santa Cruz counties. AMBAG serves as a federally designated Metropolitan Planning Organization and Council of Governments, and is responsible for regional collaboration and problem solving. Membership and participation is voluntary.
- **Caltrans:** California Department of Transportation.
- **RTP:** Regional Transportation Plan.
- **SCCRTC (RTC):** Santa Cruz County Regional Transportation Commission. The commission is made up of the five county supervisors, one member from each of the four incorporated cities in the County and three members appointed by the Santa Cruz Metropolitan Transit District Board of Directors. Caltrans serves as a non-voting member of the commission. The RTC responsibilities include ensuring improved mobility, access and air quality; allocating funding for the transportation system; setting priorities for transportation infrastructure; and conducting programs to encourage the use of alternative transportation. The RTC develops comprehensive transportation plans for Santa Cruz County.
- **SB 375:** Senate Bill 375, passed in 2008, enhancing the ability to reach the goals promoted by AB 32.

Background

The Grand Jury initially investigated the fiscal impacts of the proposed acquisition of the rail line through Santa Cruz County by the RTC. During the course of the investigation, we found evidence that very little coordination existed between the local jurisdictions and the RTC in the development of the transportation and housing elements of general plans. Development of the general plans by local jurisdictions has ostensibly ignored the detailed Regional Transportation Plan (RTP) developed by the RTC.^[1]

The population of Santa Cruz County has grown significantly in the past four decades, from 123,790 in 1970^[2] to 262,382^[3] in 2010. Improvements to the primary transportation corridor of Highway 1 have not kept up with the population growth, resulting in congested traffic conditions between the cities of Santa Cruz and Watsonville. Although alternative means of addressing this quagmire have been discussed, no coordinated plan has been implemented by any of the local jurisdictions.

The local jurisdictions are not accepting the transporting planning leadership provided by the RTC. The RTC has produced the most robust and comprehensive regional transportation plan to date,^[1] but the other jurisdictions, such as the County of Santa Cruz^[4] and cities of Santa Cruz,^[5] Capitola,^[6] Watsonville,^[7] and Scotts Valley^[8] appear to be operating in a vacuum, without regard to how well their plans integrate with the RTP.^[1] This lack of integration across transportation plans has obstructed the implementation of the improvements to the transportation corridors that will alleviate current conditions.

Scope

The Grand Jury interviewed personnel of various planning departments, agencies, and local organizations. Although the interviews were unscripted, we did ask three key questions listed below at each interview:

- What, in your opinion, should be done with the railroad acquisition in the long-term?
- How will this affect our long-term population distribution, business location and traffic patterns?
- Which agency, in your opinion, should be developing and EXECUTING long-term development plans in order to take advantage of the railroad acquisition?

The Grand Jury observed that there was a broader issue regarding coordination of transportation planning between the local jurisdictions and the RTC. Our focus was subsequently redirected to an investigation of this lack of coordination.

Investigation

There is little disagreement that the current major transportation arteries of Santa Cruz County are congested during specific windows of time during the day. This condition will worsen in the future as the aggregate population of the county continues to grow. From the 2010 RTP:^[1]

Many drivers complain about regularly being stuck in traffic. In a September 2007 RTC poll of likely Santa Cruz County voters “traffic and transportation” tied with “affordable housing/low income housing/cost of living” as the most important problem in the region. Area residents pay for traffic congestion in a number of ways including wasted time, increased air pollution, higher stress levels, fewer visitor dollars, and the apparent trend toward more aggressive driving habits. As we plan our transportation system for the next 25 years, addressing the seemingly intractable problem of traffic congestion is one of our key challenges.

The overarching causes of this problem are straightforward - an increasing number of drivers, a relative decrease in the rate at which transportation projects are being funded and constructed,

and an ongoing lack of consensus for how to deal with congestion issues. Again, from the 2010 RTP:^[1]

There are three fundamental reasons why traffic congestion is a major issue in the county, as well as elsewhere in the state and nation. First, more people are driving more miles than ever before and per person vehicle registrations are at an all time high. Second, decreases in the amount of transportation funding available for local projects has meant that our investment in transportation facilities and services has not kept pace with growing demands for road space and transportation alternatives. Third, there has been a lack of consensus on how to invest in our transportation system. To effectively improve mobility for all Santa Cruz County residents, it is useful to understand each of these factors.

We gathered background information in an attempt to understand the possible long-term implications of the railroad purchase in the initial stages of the investigation. While looking into the environmental and fiscal impacts of different modes of transportation in the county, we also reviewed the procedural differences of transportation planning among the different jurisdictional agencies, including the Santa Cruz County Regional Transportation Commission,^[1] County of Santa Cruz Planning Department,^[4] City of Santa Cruz Planning Department,^[5] City of Capitola Community Development Department,^[6] City of Watsonville Community Development Department,^[7] and the City of Scotts Valley Planning Department.^[8]

Many of our initial interviews highlighted the importance of Assembly Bill 32^[9] and Senate Bill 375,^[10] both of which make a distinct link between the integrated planning for housing and transportation. Many of those interviewed felt that the first passed bill, AB 32 (Global Warming Solutions Act of 2006),^[9] was too weak with respect to punitive consequences for jurisdictions that did not comply with the objectives of the bill.

SB 375^[10] was passed in 2008, enhancing the ability to reach the goals promoted by AB 32,^[9] which included long range development planning that endeavored to create more sustainable communities. The bill sets timeline targets for both 2020 and 2035 for the reduction of greenhouse gas emissions from passenger vehicles. AMBAG is currently working on producing a regional planning blueprint that incorporates the goals of SB 375 and AB 32 (Envisioning the Monterey Bay Area: A Blueprint for Sustainable Growth and Smart Infrastructure)^[11]. Some interviewees stated local county and city agencies have delayed updating their transportation plans in anticipation of the production of a guiding regional planning blueprint by AMBAG. The RTC is the only county agency that has completed a comprehensive regional transportation plan^[1] that already incorporates most of the goals of both bills, ahead of final production of the AMBAG “Blueprint.”

In reviewing general plans for both the county^[4] and the four incorporated cities^{[5][6][7][8]} within the county, as well as the 2010 RTP,^[1] we observed no evidence of integrated planning between appropriate entities. For example, none of the existing general plans have substantively incorporated transportation elements outlined in the RTP.^[1] It appears conflicting, narrowly defined policy objectives are the reason for this lack of integrated planning. As stated in the 2010 RTP:^[1]

Given the reality of limited funds & the delicate balance between benefits and impacts of major and minor projects, strong disagreements about priorities have continued to divide the community. At times, public opinion is stronger in opposition of transportation options than for them, causing a community paralysis that can inhibit compromise. This lack of agreement can make it difficult for decision makers to move forward with projects acceptable to their diverse constituencies.

A critical component for the creation and implementation of transportation plans is a reliable source of funding. When the 2010 RTP^[1] was created, the RTC assumed that a half-cent sales tax would be approved by 2012.^[1] Their reasoning was that 84% of the population in California live in areas which have approved local funding measures to address their transportation needs. Sales taxes require voter approval, which makes this source of funding unreliable. In addition, fluctuating economic cycles can adversely affect future revenues. The RTC has little long-term funding for future planning without this assumed funding source.

To summarize, the citizens of Santa Cruz County are burdened with bad traffic congestion along the Highway 1 corridor on a daily basis, primarily due to the fact that the number of drivers is growing, while transportation infrastructure improvements have not kept pace. This problem is driven by a lack of integrative planning and policy consensus between the RTC and the county and city legislative bodies. The RTC is clearly providing detailed and substantive long-range transportation planning guidance to the local jurisdictions. However, absent a mandate to incorporate RTC plans, local jurisdictions do not include comprehensive, up-to-date regional transportation planning within their general plans.

Findings

- F1.** Traffic congestion on Highway 1 corridor is problematic.
- F2.** Local jurisdictions do not implement the regional transportation plan created by the RTC.
- F3.** Lack of consensus between the local jurisdictions and the RTC staff obstructs the coordination of the local transportation plans with the Regional Transportation Plan.
- F4.** Each agency's General Plan is an integrated document that includes housing and transportation as elements. There is no mandated link between the local agency's General Plans and the Regional Transportation Plan.
- F5.** No consistent long-term funding source is currently available for RTC planning.

Recommendations

- R1.** Transportation sections of all county and city general plans should be written by Regional Transportation Commission staff.
- R2.** The local jurisdictions should review the transportation sections developed by RTC staff for adequacy every two years and RTC staff should be required to revise when necessary.

R3. The RTC should develop cost estimates and pursue stable funding sources to implement recommendations one and two.

Commendations

The Grand Jury would like to acknowledge the exceptional work the RTC has accomplished in creating, and periodically updating, comprehensive regional transportation plans. Their plans provide a framework for jurisdictions to integrate their local transportation plans with others in the county.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Board of Supervisors	F1-F4	R1-R3	90 days October 1, 2011
Santa Cruz County Regional Transportation Commission	F1-F5	R1-R3	90 Days October 1, 2011
County of Santa Cruz Planning Department	F2-F4	R1-R2	60 days September 1, 2011
City of Santa Cruz City Council	F1-F4	R1-R2	90 days October 1, 2011
City of Santa Cruz Planning Department	F2-F4	R1-R2	60 days September 1, 2011
City of Watsonville City Council	F1-F4	R1-R2	90 days October 1, 2011
Watsonville Community Development Department	F2-F4	R1-R2	60 days September 1, 2011
City of Capitola City Council	F1-F4	R1-R2	90 days October 1, 2011

Capitola Community Development Department	F2-F4	R1-R2	60 days September 1, 2011
City of Scotts Valley City Council	F1-F4	R1-R2	90 days October 1, 2011
Scotts Valley Planning Department	F2-F4	R1-R2	60 days September 1, 2011

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Delinquent Property Tax Penalty Cancellations: “A Day Late and a Dollar Short”

Summary

Who knew?

Have you ever paid a late property tax installment that included an additional 10% penalty? Did you know there is a County process that allows for the cancellation of the automatic State penalty?

Where is such information found and for what reasons may these penalties be cancelled?

Due to citizen concern for fairness, transparency, and lack of record keeping of the County’s waiver system, the Grand Jury sought accountability from the Tax Collector’s office for the granting or denying of penalty cancellations for delinquent tax payments.

The Grand Jury interviewed employees of various County offices to determine the consistency of their response to individual requests for relief by late-paying taxpayers, since it appears to vary with individual circumstances. Are the taxpayers being informed of the different waiver options available to them?

The Grand Jury found that the Tax Collector’s record keeping appeared inadequate and the present waiver system inconsistent, with missing documentation and/or waiver forms. To avoid the appearance of inconsistent application of tax penalty cancellations for delinquent taxpayers, the Grand Jury recommends that the Tax Collector implement the following improvements:

- Publish the process for the cancellation of penalties.
- Establish a transparent record keeping process to track delinquent tax penalties granted and denied for each fiscal year.
- With the Auditor-Controller Office, direct ISD to enable the new IT system to track tax penalty cancellation transactions (granted and denied).
- Be more transparent in applying the State Code.

Definitions

- **APN:** Assessor’s Parcel Number
- **Code:** State of California Tax and Revenue Code
- **ISD:** Santa Cruz County Information Systems Department
- **Secured Property:** Property in Santa Cruz County secured by real assets such as land, buildings, etc.
- **Tax Collector:** Santa Cruz County Tax Collector
- **Tax Delinquency Penalty:** Property Taxes not timely paid are subject to a delinquency penalty equal to 10% of the amount of the property tax due plus costs.

- **Tax Delinquency Penalty Cancellation:** The Cancellation of a Tax Delinquency Penalty under California Tax and Revenue Code Sections 4952(a, b, c).
- **Waiver Form:** A form filled out by the Tax Collector, which contains the details concerning a request for Tax Delinquency Penalty Cancellation.
- **Waived Penalty:** A Tax Delinquency Penalty Cancellation granted by the Santa Cruz County Tax Collector under California Tax and Revenue Code Section 4952(a). Definitions vary within the County due to the various reasons to cancel tax penalties, thus we have avoided using it because of its ambiguity.

Background

Each year, the Santa Cruz County Tax Collector's office prepares approximately 90,000 property tax bills for a total billing of \$398.8 million. Bills for the regular secured property assessment roll must be mailed by November 1 and are due in two equal installments. The first installment is due November 1 and becomes delinquent at the close of business or 5:00 p.m. on December 10. The second installment is due February 1 and becomes delinquent at the close of business or 5 p.m. on April 10. Every year in early April and early December, Santa Cruz County taxpayers pay their tax installments before the delinquent dates. The vast majority make their payment on time by rushing to the County Building or by obtaining the critical US Postal Service postmark. Some taxpayers miss the deadline and their taxes become delinquent. State law requires a 10% penalty be assessed for these delinquent taxes.

State law provides that under certain circumstances tax penalties can be cancelled (all references to a particular "Section" shall mean the Revenue and Taxation Code of the State of California^[1]). Section 4985.2^[2] states that any penalty, costs or other charges resulting from tax delinquency may be cancelled by the auditor or tax collector upon one of the following:

- Failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made no later than June 30 of the fourth fiscal year following the fiscal year in which the tax became delinquent. Subdivision (a) of Section 4985.2.
- There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector. Subdivision (b) of Section 4985.2.
- The cancellation was ordered by a local, state, or federal court. Subdivision (c) of Section 4985.2.

Section 2512^[3] also provides for penalty relief for payments mailed on time, but delivered after the deadline, stating, "the remittance shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope."

The Code^[2] provides the Auditor or Tax Collector^[2] the ability to cancel a tax delinquency penalty upon a finding that supports subsections 4985.2(a), 4985.2(b), or 4985.2(c) as described above.

Scope

Because of the discretion granted the Tax Collector, the Grand Jury was concerned about the possibility of preferential treatment given to selected taxpayers. After a review of the issue, the Grand Jury became interested in the tax delinquency penalty cancellation process and carried out an investigation to answer the following questions:

1. How many tax delinquency penalties were cancelled in Santa Cruz County over the past five years and were there any trends?
2. What was the total dollar value of these cancelled penalties?
3. Are controls in place to prevent the growth of tax delinquency penalties cancelled?
4. Is there a documented process, in the Tax Collector's Office, for the processing and granting of cancellations?
5. Are all taxpayers treated equally and without the perception of favoritism?

The scope of this report is limited to the question concerning the cancellation of tax delinquency penalties and the associated processes. We have not considered other functions of the Tax Collector's Office; thus, the report should not be used to evaluate all the activities of the Tax Collector.

Investigation

To start the investigation we contacted the Tax Collector's Office and the Auditor-Controller's Office and requested reports which detailed tax penalty cancellations over the past five years. The Grand Jury was informed by both departments that no such reports were available. The Auditor-Controller's office provided two reports, but they did not meet the investigation's needs. The inability to produce the requested reports was blamed on the antiquated tax system software currently in use.

Tax penalty cancellation information is only filed with the original tax payment documents and this is filed in batches based on the processing date. The Tax Collector Office does not maintain a separate reporting system for tax waivers. Any inquiries regarding waivers require a manual search through the paper files containing all 90,000 tax bills for any given year.

The Grand Jury requested all tax penalty cancellation records for 2010 on January 13, 2011. The Tax Collector admitted the records were difficult to access with his limited staff. During a site visit to the Tax Collector's Office, the Grand Jury observed the filing system and the difficulty of finding penalty cancellation information. The Grand Jury was informed the records would not be available until at least April 1, but received them in seven weeks, on March 4, 2011. The Tax Collector reported that all instructions to office staff regarding tax penalty cancellations were only given orally; there are no written procedures.

The Grand Jury was unable to find information on the County web page^[4] or at any other easily accessible location concerning the delinquent tax penalty cancellation. In contrast to Santa Cruz County, other counties, such as Riverside^[5] and Contra Costa,^[6] have forms available online which taxpayers fill out to request cancellations of penalties.

The Grand Jury learned from interviews that some County taxpayers who request penalty cancellations are denied without being told that the Code allows for cancellations with qualifying reasons. In other cases, taxpayers who demand appointments with the Tax Collector may get their penalties cancelled without completing the full process, without adequate documentation, or having a waiver form attached.

To evaluate the waivers the Grand Jury requested to see all the waivers for fiscal years 2008-09 and 2009-10. For these tax years, of the 1,156 tax penalty cancellations granted, approximately 289 cases were granted by the Tax Collector. The remaining 75% of the cancellations were granted by the office staff.

Based on the Grand Jury's request, the Tax Collector provided sixty-eight Assessor's Parcel Numbers (APNs) to the Grand Jury that were granted penalty cancellations. The records provided only covered the dates of August 8, 2009, through July 30, 2010. These included a list of four APNs which were noted by a letter from the Tax Collector at a later time. Of these sixty-eight, one was for an over-payment and refund and one was for unsecured property. This left our sample size at sixty-six.

The sixty-six APNs reviewed by the Grand Jury were accompanied by a broad range of supporting documentation. During interviews, the Grand Jury was told that for every tax penalty cancellation granted, the Waiver Form and the supporting documentation were filed with the tax payment record.

- Ten cancellations were given to taxpayers because they submitted checks for the incorrect amounts and were handled by office staff, thus Section 4985.2(a)^[2] does not apply.
- Twelve were cancelled due to taxpayer illness thus potentially qualifying for Section 4985.2(a).^[2] One had no documentation and one other had no Waiver Form.
- Twelve were due to banking difficulties such as insufficient funds in checking account. All included documentation, but four were without Waiver Forms and Section 4985.2(a)^[2] may potentially apply.
- Fourteen were cancelled due to claims of postal service errors, one without documentation and two without Waiver Forms.
- Nine were due to confusion, for example, first time homebuyers and supplemental tax misunderstandings. Three were without documentation and five were without Waiver Forms.
- One was directed by the Auditors-Controller's Office not the Tax Collector's Office due to a county addressing error, thus Section 4985.2(a)^[2] does not apply.
- Four were due to unforeseen circumstances including financial difficulties. One was without documentation and three were without Waiver Forms.
- Four additional cancellations were reported to the Grand Jury in a separate letter from the Tax Collector. The Grand Jury was given the APNs without any other documentation.

For each APN, we expected to be given a Waiver Form completed and signed by the Tax Collector accompanied by supporting documentation, for verification of health issues, mail, bank

and other special circumstances that may apply. As described above, the amount of documentation varied greatly.

The Grand Jury attempted to tally the cancellations handled solely by the Tax Collector. Of the sixty-six APNs reviewed, eleven were not considered because they were handled either by office staff or the Auditor-Controller. The remaining fifty-five APNs appeared to have been directly acted on by the Tax Collector. Based on the Tax Collector's policy, we expected each to have attached waiver forms and documentation. However, ten (18%) had no documentation and nineteen (34%) were without waiver forms. Without sufficient documentation, it was not possible to assess the appropriateness of the waivers granted.

The Code^[2] provides for a considerable amount of interpretation in tax penalty cancellations. The Santa Cruz County Tax Collector gives taxpayers the benefit of doubt. The tax penalty cancellation records given to the Grand Jury cited reasons by taxpayers of illness, death, confusion, postal issues, banking errors, and financial difficulties.

In other counties, penalty cancellations appear more likely to be denied, based on information obtained from their websites.^{[5][6][7][12][13][14]} For example, the Shasta County website^[7] had the following statement:

I placed my payment in the mailbox at the post office on the day my payment was due. Why was a late charge assessed?

Answer: *Placing the envelope in the post office box does not guarantee that the mail will be processed the same day/evening. State law requires that a payment be treated as if it had been received on the date shown by the post office cancellation mark on the envelope. Only U.S. Federal Government postmarks will be accepted. To avoid penalties, ask to have the envelope hand canceled by the post office. Metered mail is not accepted as a valid cancellation.*

The Grand Jury also asked to view the tax penalty cancellation requests that were denied. The Grand Jury was informed by the Tax Collector that no records of denied tax penalty cancellation requests are kept. This makes it impossible to determine if all applicants were treated consistently and fairly.

A report was requested from County Information Services Department (ISD) of all tax penalty cancellations granted and recorded in the Tax Collector's database. This report proved very useful but it also demonstrated further inconsistencies in the current system. For example, a custom report^[8] the Grand Jury received covered the dates July 1, 2009 through June 30, 2010 that included the time period of the waivers we received from the Tax Collector. The report listed 675 APNs with cancelled penalties for a total of \$177,389.57 including many not pertaining to Section 4985.2(a).^[2] Similar financial totals for other years were not available. However, thirteen of the parcels included in the records provided by the Tax Collector were missing from the report prepared by ISD. This demonstrates inaccuracies of the current property tax system.

The Santa Cruz County Grand Jury 2008-2009 issued a report on the ISD. The prior report included the following statement: “The new property tax system, used by the Auditor, Assessor and Tax Collector, is the third and final phase of the project plan and will be moved into production by 2011.”^[9] We interviewed representatives of ISD to determine the capabilities of the new system. It was found that the new system can be easily configured to track and report tax penalty cancellation. To date, no such requests have been made by the Tax Collector’s or Auditor-Controller’s offices.

The investigation discovered two special internal audit reports from the Auditor-Controller’s Office concerning tax penalty cancellations, one from 2005 and another from 2009. Besides the two special internal audits, there are no regular audits of the Tax Collector’s penalty cancellation process. Each audit contained several recommendations for improvements in the tax cancellation penalty process, of which only some have been implemented and some have not.

The key recommendation of the 2005 auditor report^[10] that has not been implemented is:

We recommend Treasurer-Tax Collector management work with programming staff to create a summary report by tax year that lists all fee waivers by type and reason code/source code. Current system reason/source codes could be expanded to allow for easier identification of types of penalty cancellations. This will allow the Treasurer-Tax collector to review the amounts and types of penalty fee waivers at a summary level.

The key recommendations of the 2009 audit report^[11] that have not been implemented are:

- 1. The Treasurer-Tax Collector should consider preparing a list of specific documents that taxpayers should be required to submit before penalties can be waived. For example, hospitalization will require an invoice from the hospital or insurance company, or a letter from the doctor. Such a list will ensure that sufficient documentation is provided and that penalties are consistently waived.*
- 2. The Treasurer-Tax Collector should consider modifying its current penalty waiver request form to those used by other counties, such as Contra Costa and Kern. These counties provide the forms to the taxpayers to complete. The form can include a list of documents as referenced in recommendation one. This, in conjunction with recommendation one, transfers the responsibility for meeting, and the scrutiny for allegedly not meeting, RTC 4985.2(a)^[2] from the Treasurer-Tax Collector to the taxpayer. This form could be made available on the Office's website for ease of access by the taxpayer. Samples of these two counties forms are attached as Exhibit A and B.*
- 3. The Treasurer-Tax Collector should regularly, perhaps quarterly, review a report of all penalty cancellations. This will ensure that the Treasurer-Tax Collector is aware of the total number and dollar value of penalties being cancelled.*

Findings

- F1.** The Tax Collector’s use of discretion in evaluating the reason to grant tax delinquency penalty cancellations appears inconsistent.

- F2.** The filing system used in the Tax Collector's Office does not allow tax penalty cancellation documents to be easily located.
- F3.** No records are retained of denied requests for tax penalty cancellations.
- F4.** The Tax Collector's Office does not appear to be consistently following the audit recommendations made by the Auditor-Controller Office.
- F5.** The Tax Collector's Office staff has no written procedure to follow for the processing of penalty cancellations.
- F6.** Information regarding delinquent tax penalty cancellation processes is not adequately publicized within the County.
- F7.** The new computer system has the capability to track details regarding tax penalty cancellations if requested by the Tax Collector or Auditor-Controller.

Recommendations

To avoid the appearance of inconsistent application of tax penalty cancellations for delinquent taxpayers, the Grand Jury makes the following recommendations:

- R1.** The Tax Collector should create a form for taxpayers requesting the cancellation of tax penalties that includes the recommendations of the internal audit reports, an explanation of the Tax Code,^{[1][2][3]} and the Tax Collector's response (i.e. granted or denied and reason).
- R2.** It should be compulsory for taxpayers to complete the new Waiver Form with supporting documentation when requesting a tax penalty cancellation.
- R3.** The Tax Collector should maintain a separate file containing copies of records of all tax penalty cancellation applications, with associated documentation, whether denied or approved.
- R4.** The Tax Collector should broadly publicize the delinquent tax penalty cancellation process.
- R5.** The County Auditor-Controller should add a review of tax penalty cancellations to the regular audit of the Tax Collector's Office.
- R6.** The Tax Collector should publish a semi-annual report documenting the number of requests and the dollar value of the cancelled tax penalties. The report should include a summary of reasons why tax penalties cancellations were approved and denied.
- R7.** The Tax Collector and the Auditor-Controller Office should direct ISD to enable the new IT system to track tax penalty cancellation transactions, both granted and denied.
- R8.** The Tax Collector should act in a more transparent manner when applying the State Code.

Commendations

ISD has kept the antiquated electronic tax filing system operating for many years past its useful life.

The Tax Collector's Office handles the County tax systems efficiently in spite of staff reductions.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
County Treasurer- Tax Collector	F1- F7	R1-R4, R6-R8	60 Days September 1, 2011
County Auditor- Controller	F4	R5, R7	60 Days September 1, 2011
County Information Services Director	F7	R7	60 Days September 1, 2011

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Interviews

Administrators and Personnel:

County Auditor-Controller's Office
County Tax Collector's Office

Site Visits

County Tax Collector's Office

Pajaro Valley Unified School District

Insurance Vendor Selection:

Are There Options?

Summary

The Santa Cruz County Grand Jury investigated the Pajaro Valley Unified School District (PVUSD) processes for vendor selection. The investigation was prompted by public concern and a newspaper article regarding potential conflicts of interest related to health insurance consulting and vendor selection. The investigation found PVUSD selection processes to be transparent and followed state-mandated procedures. However, the current contract for Medical, Dental and Vision Consulting Services considered only one vendor bid. It appears that PVUSD relies heavily on that one contractor, Keenan & Associates, to provide insurance services across a wide range of roles, including consultant, broker, and administrator of insurance pools, each of which is separately compensated. The Grand Jury recommends process improvements to increase the choice of competing vendors, provide more thorough contract review, and ensure a more comprehensive accounting of total costs.

Definitions

- **AD&D Insurance:** Accidental Death & Dismemberment insurance.
- **BeLiEF JPA:** Benefits Liability Excess Fund Joint Powers Authority. A group of self-funded public school districts and community colleges, including PVUSD, that have joined together for Stop-Loss insurance coverage.
- **COE:** Santa Cruz County Office of Education.
- **JPA:** Joint Powers Authority. JPAs can be formed by public entities that wish to join together and leverage their purchasing power. For example, school districts can join with each other, under a JPA, to collectively fund or purchase insurance coverage in a specific area.
- **KPPC:** Keenan Pharmacy Purchasing Coalition used by PVUSD to provide employee prescription benefits.
- **Nor Cal ReLiEF JPA:** Northern California Regional Liability Excess Fund Joint Powers Authority. A large group of member school districts, including PVUSD, that have joined together for leverage in obtaining property and liability insurance coverage.
- **PEPM:** Per employee per month.
- **PMPM:** Per member per month.
- **PO:** Purchase Order. An accounting document prepared and approved for all purchases.
- **PVUSD:** Pajaro Valley Unified School District.
- **SACS:** Standardized Account Code. The California Department of Education implemented a uniform way for school districts to report their revenues and expenditures. Since the 2003-2004 school year, all districts use SACS in their financial reporting.
- **SAFER JPA:** Schools Association For Excess Risk JPA. Provides excess property and liability insurance. The Nor Cal ReLiEF JPA is a member of the SAFER JPA.

- **SAWCX II JPA:** School Alliance for Workers' Compensation Excess II. SAWCX II is a JPA that provides excess workers' compensation protection.
- **Self-Insurance Fund:** A dedicated fund used by self-insured employers to pay claims directly.
- **Stop-Loss Insurance:** An insurance policy sometimes used by self-insured employers to protect themselves against unexpectedly high claims.
- **Warrant:** The standard accounting term for payments.

Background

Questions were raised by an earlier Grand Jury concerning the budget review process, conflicts of interest regarding vendor selection, and dollar amounts and types of purchases which should be submitted for PVUSD Board of Trustees approval. These issues were addressed in PVUSD's response to the Santa Cruz County 2006-2007 Grand Jury Final Report with Responses.^[1]

More recently, there have been persistent, yet unsubstantiated, rumors regarding a potential conflict of interest with the selection of health insurance vendors. A 2009 newspaper article reported that a PVUSD trustee was concerned about a perceived conflict of interest with the PVUSD insurance consultant, who was also an insurance vendor.^[2]

Employee benefits are the second largest portion of the overall PVUSD budget after salaries. According to the Second Interim 2010-11 PVUSD SACS report, expenditures for employee benefits are \$47.2 million of the total \$182.7 million Operating Budget for fiscal year 2010-2011.^[3] \$26.3 million of these benefits are for Health and Welfare alone.^[4] PVUSD medical costs have tripled over the last 14 years, while dental and vision costs have remained relatively flat.^[5]

Scope

Grand Jury members reviewed PVUSD Board Meeting packets and minutes, PVUSD budgets, PVUSD purchasing procedures, PVUSD Board bylaws, several PVUSD audit reports, web content related to insurance vendors that had contracted with PVUSD, and lawsuit documents filed in Alameda County (Alameda County Superior Court Case No. RG04183334). This is a class action lawsuit against one of the PVUSD vendors, Keenan & Associates, that alleges various improper business practices relating to the brokerage of insurance for public schools and community colleges. The Grand Jury conducted interviews with employees of the County Office of Education (COE), PVUSD Administration, and the PVUSD Board of Trustees. PVUSD purchase order (PO) history and warrants (payments) were reviewed. This work was performed to determine if there were any apparent improprieties or conflicts of interest regarding insurance vendor selection.

Investigation

The investigation initially focused on whether a conflict of interest existed within PVUSD, regarding the choice of health insurance vendors. The scope of the investigation was subsequently expanded to examine the dominance of one vendor, playing a role across almost all PVUSD insurance needs, in more detail. The reliance on a single vendor also triggered a closer examination of the PVUSD bid process and level of contract review.

In initial interviews at the COE, it was learned that districts within the county select their own vendors, subject to the State of California Public Contract Code Section 20111(a), which requires school district governing boards to competitively bid for services that exceed \$50,000 (adjusted annually for inflation).^[6] The COE does not control contracts awarded by individual districts; however, a financial audit by an independent firm of Certified Public Accountants is required annually.^[7] During these audits, the accountants may request documentation on selected contracts.

PVUSD Board meeting minutes,^[8] Board packets^[9] and related newspaper articles were reviewed for any mention of contracts regarding health insurance. At the August 26, 2009, Board meeting, a contract for Keenan & Associates to provide Medical, Dental and Vision Consulting Services was submitted for approval. The Board packet documented that requests had been sent to five prospective vendors. Keenan & Associates was the only vendor to send a proposal prior to the submittal deadline. Another proposal was received after the deadline and was returned unopened.^[12] A Santa Cruz Sentinel article reported that the contract was discussed at the Board meeting, but it was tabled at the request of one of the trustees who was concerned that in acting as both as a District consultant and insurance vendor, Keenan & Associates had a conflict of interest.^[2] The official Board meeting minutes document that the contract approval was deferred, to clarify concerns of potential conflict of interest.^[13]

Keenan & Associates made a presentation to the Board, clarifying the services they provide to schools, on October 14, 2009.^[14] The contract with Keenan & Associates was eventually approved at the Board meeting on October 28, 2009. The cover page in the Board packet clarified that the consultant, Keenan & Associates, would be acting exclusively in an advisory and consultative capacity.^{[15] [16]}

Upon further review by the Grand Jury, the agreement with Keenan & Associates revealed several clauses which clearly authorize Keenan & Associates to provide brokerage services in addition to consulting services. In Section 2 of the agreement, the Brokerage Services option has been accepted. In Section 3, it states that Keenan shall procure and maintain Workers' Compensation and General Liability coverage. In Exhibit B of the agreement, Keenan & Associates has exclusive authority and right to negotiate with insurance carriers covering Prescriptions, Short and Long Term Disability, Life and AD&D (Accidental Death & Dismemberment). In Exhibit C, it states Keenan shall receive commissions from the insurance carriers and/or other vendors for the placement of insurance coverage.^[16]

At this point the investigation was expanded to look at the services provided by Keenan & Associates. This company focuses on providing insurance, employee benefits, and financial services for California schools and community colleges.^[17] Their insurance services include consulting, brokering, and managing numerous JPA's (Joint Powers Authorities). Public entities join JPA's like SAWCX II (Schools Alliance for Workers' Compensation Excess) JPA^[18] or Nor Cal ReLiEF (Northern California Regional Liability Excess Fund) JPA,^[19] to collectively purchase insurance and other products as a large pool. Keenan & Associates forms and manages these JPA's and provides the brokerage services. They also have a division, Keenan Financial Services, that provides retirement financial solutions for school employees, such as SERP (Supplemental Early Retirement Program) and Futuris (trust fund for post-employment benefits).^[20]

The Grand Jury did Internet research on Keenan & Associates, and discovered some material on blogs^{[21] [22]} and the Alameda County website for the Superior Court of California.^[23]

While the blog content could be biased, it did lead the Grand Jury to the court documents for case No. RG04183334 on the Alameda County website. On November 2, 2004, the County of Santa Clara filed a complaint against several insurance brokers, including Keenan & Associates.^[24] The complaint has been amended a number of times over the years. The fourth version of the complaint was filed on July 12, 2006. At that time, it was a class action lawsuit, with a list of plaintiffs including San Francisco Community College District, San Francisco Unified School District, Tuolumne Joint Powers Authority, and the People of the State Of California, by and through San Francisco City Attorney Dennis Herrera. Keenan & Associates was the only remaining defendant left in the complaint by that time.^[25]

The fourth version of the amended complaint alleges Keenan has “represented itself as a sophisticated and trustworthy insurance business expert,” but has engaged in “secret fee agreements,” “undisclosed kickbacks,” “bid-rigging,” “improper steering,” and “anti-competitive practices.”^[25] Overall, the complaint alleges that Keenan & Associates abuses its position of trust, as an advisor to public entity clients and JPA's, to maximize the undisclosed compensation they receive as a broker from carriers and vendors to whom they steer insurance business. The allegations conclude that the carrier and vendor recommendations made by Keenan & Associates may not be in the best interest of their public entity clients. The alleged undisclosed broker compensation received from carriers and vendors prevents clients from verifying whether they are getting the best deal or understanding the impact to their premiums. It should be noted that everything in the Fourth Amended Complaint must be treated as unproven allegations only.

On August 24, 2010, one of the plaintiffs, the San Francisco City Attorney, settled out of court and is no longer part of the case, which is now in its seventh year. At the time of this report there are 779 documents filed under the Register of Actions in the case, and it has not yet gone to trial.

This lawsuit was discussed in a front page article in the September 22, 2005, issue of The Recorder, a provider of California legal content. The article stated “Santa Clara County is suing several top insurance brokerage firms, claiming they have duped customers out of millions through secret ‘kickbacks’ and other ‘lucrative’ service deals and are ‘steering’ clients towards insurers that are offering brokers undisclosed commissions, funded through insurance premiums.”^[26]

A letter posted on the Internet from the Capistrano Unified Education Association (a teachers’ Union) dated May 19, 2009, asked the Capistrano Unified School District Board of Trustees to rescind their selection of Keenan & Associates, citing issues surrounding the previously mentioned lawsuit, the need to use objective criteria to evaluate service proposals, and the appearance of impropriety.^[27]

The next step in the investigation was to request vendor-related financial documents from PVUSD. They responded promptly, by directing us to their website where this information was located. The website contains detailed budget information,^[28] bidding policies,^{[29] [30]} and conflict of interest policy.^[31] In response to the Grand Jury request for vendor information, PVUSD created new public web pages with purchase order^[32] and vendor payment (warrant) histories.^[33]

The Grand Jury also reviewed PVUSD audit reports. The Grand Jury observed that the three JPA's noted in the audit reports were also JPA's mentioned in the lawsuit, as examples where Keenan & Associates allegedly engaged in deceptive business practices.^[25] These independent audits were performed by Vavrinek, Trine, Day & Co., LLP, Certified Public Accountants, in Palo Alto.

Table 1. Participation in Keenan managed JPA's noted in PVUSD audits.

	2006 Audit ^[34]	2007 Audit ^[35]	2008 Audit ^[36]	2009 Audit ^[37]	2010 Audit ^[38]
SAFER JPA	X	X	X	X	X
SAWCX JPA			X	X	X
BeLiEF JPA			X	X	X

The SAFER (Schools Association For Excess Risk) JPA provides excess property and liability insurance coverage, and provides an umbrella that includes the Nor Cal ReLiEF JPA mentioned previously.^[39] The SAWCX II (School Alliance for Workers' Compensation Excess II) JPA provides excess workers' compensation insurance. The BeLiEF (Benefits Liability Excess Fund) JPA is used for excess medical insurance.^[38]

After reviewing information requested from PVUSD, the Grand Jury scheduled interviews with PVUSD administrators and learned that PVUSD does not purchase health insurance from insurance vendors, or via brokers like Keenan & Associates. Instead, their health and workers' compensation benefits are paid from a self-insurance fund up to a certain level. An actuarial analysis determines the size of the annual contributions needed to maintain the fund to pay claims.^[40]

PVUSD "Fund 67" Self-Insurance Fund 2010-2011 Budget

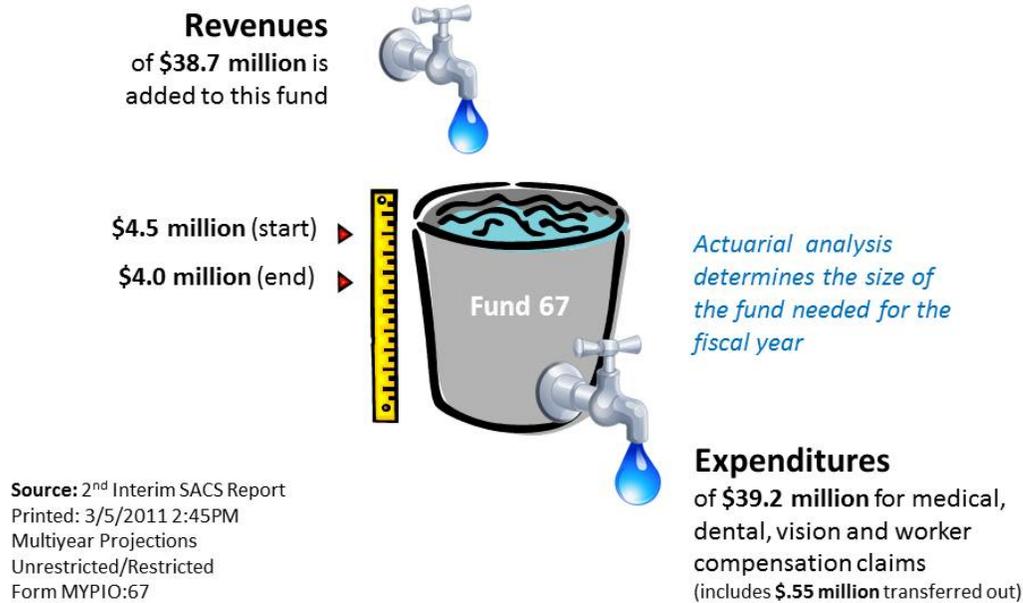


Figure 1. Illustration of PVUSD Self-Insurance Fund.

For the current fiscal year (2010-2011), according to the Second Interim SACS Report, PVUSD estimates it will add \$38.7 million to the fund. The beginning balance is \$4.5 million (which has an audit adjustment applied). The ending balance is \$4.0 million. The estimated expenditures from this fund are \$39.2 million for medical, vision, dental, and workers' compensation claims (includes administration and a transfer out amount of \$0.55 million).^[41] An earlier report, when the budget was adopted, details the breakdown of expenditures. At \$32.7 million, medical is the largest portion.^[42]

PVUSD pays large claims, above \$285,000, with stop-loss excess insurance through the BeLiEF (Benefits Liability Excess Fund) JPA. Members in this JPA include other self-funded public school districts and community colleges. Keenan & Associates created and manages the BeLiEF JPA.^[43] The cost for this stop-loss protection is currently \$1.7 million per year.^[44]

A copy of the latest Keenan & Associates Stewardship Report^[43] clearly indicates that the overall relationship with Keenan & Associates goes beyond acting "exclusively in an advisory and consultative capacity between vendors such as Coastal Healthcare and Blue Cross" as stated in Board Agenda Backup Item 12.3, dated October 28, 2009.^[16]

Purchase orders reports, available from PVUSD website, were reviewed, to better understand the extent of the business relationship with Keenan & Associates. In addition to the purchase order for the Medical, Dental and Vision Consulting Services contract, purchase orders were also noted if they:

- Were made out directly to Keenan & Associates for other services.

- Were made out to other vendors and Keenan & Associates received indirect compensation.
- Were made out to other vendors that were related in some way to Keenan & Associates.

Table 2 shows selected purchase orders and amounts to be paid to Keenan and Associates for insurance and workers' compensation services.

Table 2. Selected purchase orders directly to Keenan & Associates in the 08/11/2010 Board Meeting Purchase Order Report.^[44]

<i>Purchase Order</i>	<i>Vendor</i>	<i>Amount</i>	<i>Description</i>
110755	Keenan & Associates	\$49,000	Insurance Consultant services
110756	Keenan & Associates	\$1,720,000	Stop-Loss protection plan 2010 (BeLiEF JPA)
110636	Keenan & Associates	\$41,000	Life insurance premiums 10-11
110754	Keenan & Associates	\$195,000	Keenan Workers Compensation 2010-2011

As stated in the Keenan Stewardship Report,^[43] Keenan receives:

- A consulting fee of \$1.76 PEPM for Medical, Dental and Vision.
- A JPA Management Fee of 3% premium for the BeLiEF JPA stop-loss protection. If there is any indirect broker compensation (as alleged in the lawsuit) it was not disclosed in the Stewardship report.
- A commission of 14% for the placement of term life and AD&D insurance and ongoing service responsibilities, via MetLife.

Table 3 shows purchase orders for services paid to other vendors for which it is known Keenan receives other compensation.

Table 3. Selected purchase orders to other vendors, for which it is known Keenan receives other compensation, in the August 11, 2010, Board Meeting Purchase Order Report.^[44]

Purchase Order	Vendor	Amount	Description
110757	KPPC ^[45]	\$55,000	KPPC Agency Coalition Billing
110760	Chiropractic Health Plan	\$242,000	Chiropractic Health Plan of CA
110753	UNUM Provident	\$660,000	Short/Long Term Disability Coverage

As stated in the Keenan Stewardship Report,^[43] Keenan receives:

- Coalition Management Fee of \$0.80 PMPM for KPPC.
- Commission of \$0.50 PEPM for the “Chiropractic Carve Out program.”
- Commission of 10% for the placement of long and short term disability insurance from Unum.

Table 4 includes purchase orders for other related Keenan & Associates products and services.

Table 4. Selected purchase orders to JPA's and other products related to Keenan & Associates in the August 11, 2010, Board Meeting Purchase Order Report.^[44]

Purchase Order	Vendor	Amount	Description
110906	SAWCX II ^[18]	\$151,154	SAWCX II Member Contribution
110509	Nor Cal ReLiEF ^[19]	\$726,523	Insurance Coverage
Various	United of Omaha	\$2,894,069 (<i>subtotal</i>)	SERP ^[46] Installments

The Grand Jury was not able to determine what, if any, indirect compensation Keenan & Associates receives for the items in the table above. Keenan & Associates manages the SAWCX II and Nor Cal ReLiEF JPA's, and SERP is a Keenan product. There were no disclosures for these items in the Keenan Stewardship report. The lawsuit alleged that Keenan & Associates

obtains insurance for JPA's such as SAWCX II and Nor Cal ReLiEF but does not disclose indirect compensation received from insurance carriers.

Keenan & Associates has had a contractual relationship with PVUSD since November 2003. The Grand Jury explored the bidding process behind the last Medical, Dental and Vision Consulting Services contract with Keenan & Associates. According to PVUSD, there are only a handful of vendors in California that are qualified to provide the kind of insurance consulting services they require. Bid requests were sent to five prospective vendors. There was a period of two weeks for vendors to respond. The only bid received prior to the stipulated deadline was from Keenan & Associates, with a second bid returned unopened because it arrived thirty (30) minutes late.

PVUSD is in compliance with all bidding regulations and policies. State law and PVUSD policies stipulate minimum requirements for the bidding process for services. As mentioned previously in this report, Public Contract Code 20111(a) specifies a bid threshold, above which competitive bids shall be sought through advertisement. This threshold is revised every year and communicated by the State Superintendent of Public Instruction. In 2009, this threshold had increased to \$76,700.^[47] PVUSD Board Policy section AR 3311(a) describes the method for obtaining services, and section AR 3311(b) stipulates bids must be advertised for a minimum of two weeks.^[21]

Near the end of the investigation, additional interviews were held with PVUSD trustees, one of whom pointed out that clause 4-D in the Medical, Dental and Vision Consulting Services contract with Keenan & Associates offers some protection to PVUSD against conflict of interest. This clause states:

Keenan shall comply with all applicable state and/or federal laws and regulations regarding disclosure of compensation. We embrace industry efforts for transparency and believe that it is important that clients have access to information that may be relevant to their choice of insurance products, including cost of such insurance and services, and, the compensation that may be directly or indirectly paid to Keenan in connection with the products or services that are selected. If you have any questions regarding any of these items or desire additional information, you may contact your Keenan account representative to discuss this matter in more detail.^[16]

Trustees appear to have relied heavily on information and recommendations provided by the administration when reviewing the contract. The PVUSD trustees and administrators interviewed were not aware of the class action lawsuit brought against Keenan & Associates. As of the writing of this report, these allegations have not been resolved and the case has not yet gone to trial.

Keenan & Associates appears to be a professionally-run company with a solid understanding of the insurance market. They also appear to provide a comprehensive set of solutions to satisfy their customers' needs.

The Grand Jury made contact with an executive from Keenan & Associates at the end of the investigation. The executive stated that Keenan & Associates' objective is to assist their clients

to find the best insurance products and services at the best price. The executive also added that any commissions they receive when acting as a broker are consistent with industry practices.

Findings

- F1.** The Grand Jury found no evidence of any conflict of interest between PVUSD insurance related vendors and PVUSD employees or trustees.
- F2.** It appears that the PVUSD Board of Trustees has relied heavily on the administration for information and recommendations on vendor selection and contract approval.
- F3.** During the initial interviews, PVUSD Board of Trustees and administrators appeared to be unaware of ongoing litigation concerning Keenan & Associates.
- F4.** The services that Keenan & Associates provide PVUSD go beyond an advisory and consultative capacity for health benefits to also include brokering a wide variety of insurance, prescription management, early retirement planning and administration of several JPA's.
- F5.** Even though PVUSD requested proposals from five qualified vendors for Medical, Dental and Vision Consulting Services, and followed California Code and district purchasing policies, the process does not appear to encourage multiple bids.
- F6.** The Medical, Dental and Vision Consulting Services contract discloses that Keenan & Associates receives direct compensation from PVUSD and indirect compensation from brokered vendors, which is a conflict in that it diminishes the incentive for Keenan & Associates to always recommend vendors offering PVUSD the best deals.

Recommendations

- R1.** PVUSD Board of Trustees should act more independently of the administration when reviewing and approving significant contracts and vendors.
- R2.** PVUSD should include in their purchasing process an Internet background check on prospective vendors, relating to litigation or other issues.
- R3.** PVUSD should review their purchasing process and identify possible changes that would increase the number of qualified bids.
- R4.** PVUSD should consider the nature of the issues raised in the Fourth Amended Class Action Complaint to determine if they apply to their district. Following that, they should exercise clause 4-D in the Medical, Dental and Vision Consulting Services contract, to review both total direct and indirect compensation received by Keenan & Associates and the potential impact to PVUSD's overall costs.

Commendations

The Grand Jury requested budget information, purchasing policies and spending records from PVUSD. They responded with links to existing information on their website and added new detailed purchase order and payment history content at:

<http://www.pvUSD.net/info/public-notice/PurchaseOrdersReport.html>

<http://www.pvUSD.net/info/public-notice/WarrantReports.html>

This PVUSD website contains a large amount of detailed information and historical data. It is an excellent example of transparency for which they should be commended.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
PVUSD Superintendent	F3-F6	R2-R4	60 Days September 1, 2011
PVUSD Board of Trustees	F2-F3	R1	90 Days October 1, 2011

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Site Visits

County Office of Education, Santa Cruz
Pajaro Valley Unified School District Office, Watsonville

Santa Cruz County Correctional Facilities: Are They Effectively Utilized and What Are the Options?

Summary

Santa Cruz County Correctional facilities are currently facing many challenges, including continued reduction in funding for staff, facilities and programs as well as the looming return of inmates from state prisons. Educational programs have been shown to reduce recidivism; however, there are no performance assessment tools in place to determine if the current programming is effective. In addition, the lack of measurements hampers the ability to prioritize programs and utilize declining funds in the most beneficial manner. These issues led the Grand Jury to investigate whether options and strategies exist to improve efficiency that may help improve program effectiveness, development of an efficient jail population distribution and provide adequate services to incarcerated individuals.

Definitions

- **Capacity:** The number of inmates each detention facility was designed to hold (rated capacity) or the number of inmates that can safely be housed in the facility (maximum capacity).
- **Friends Outside:** A national non-profit organization providing services to incarcerated individuals.
- **Gemma:** A program provided by the Community Action Board of Santa Cruz County, Inc., dedicated to preparing women in jail for their reentry into society and to reunite with their families. The program provides diverse life skills classes to help prevent the women from falling into the recidivism cycle.
- **Infirmary:** A healthcare unit set up and operated for the purpose of caring for inmates who need skilled nursing care but not in need of hospitalization or placement in a licensed nursing facility and whose care cannot be managed safely in an outpatient setting.
- **LVN:** An LVN is a Licensed Vocational Nurse licensed by the state to provide routine patient care. An LVN must be supervised by either a Registered Nurse or physician. The LVN is unable to provide medical assessments.
- **Medium Security:** A locked facility in a dorm-like setting, rather than individual cells, for inmates that do not pose a high security risk.
- **Minimum Security:** An unlocked facility for inmates who pose very little security risk.
- **“O” unit:** The observation unit that includes rooms within the medical unit where physically and mentally ill inmates are monitored by video and medical staff.
- **Recidivism:** Habitual or chronic relapse especially into criminal or anti-social behavior.
- **Registered Nurse (RN):** RNs are nurses that have been licensed by the State of California Board of Registered Nursing. RNs go to college for two to four years and must pass the National Council Licensure Examination in order to obtain licensure in California. They typically independently provide a wide range of complex health care in many types of settings.

- **Sally Port:** A secure, controlled entryway, as at a fortification or a prison. The entrance is usually protected in some way, such as with a fixed wall blocking the door which must be circumvented before entering, but which prevents direct enemy fire from a distance.
- **Sheriff's Treatment Program:** This is a program established in Santa Barbara County that is designed to help inmates who are serving time to eliminate their alcohol and drug use, establish a foundation in recovery and reduce their involvement with law enforcement. The program accommodates inmates at different levels of sentencing.
- **Title 15:** Regulations adopted by the State of California that set minimum jail standards for operation and administration of detention facilities covering classification of inmates, safety issues, educational programs, disciplinary guidelines and medical services.
- **Title 24:** Regulations adopted by the State of California that set minimum standards for the physical plant, furnishings and equipment for local correctional facilities.
- **Warrant Reduction Project (WRAP):** WRAP is a program developed by the Santa Cruz County Probation Department in conjunction with Friends Outside to reduce the number of released prisoners who may re-offend due to probation violations. The individuals with Friends Outside are also able to provide resources for peer and group support as well as aftercare management.

Background

The correctional system in Santa Cruz County consists of four facilities: The Main Jail on Water Street, Rountree Medium and Rountree Minimum (which is currently only being utilized for day programs) in Watsonville, and Blaine Street behind the Main Jail which is a minimum security facility for women only. Over the years, there have been ongoing overcrowding issues in the Main Jail.^[1] The Grand Jury decided to investigate how the Rountree Facility could be better utilized to assist in overcrowding as well as reintroducing medical services at the facility. In addition, we began to look at the educational programs that were offered at all of the facilities. How effective were they and, more importantly, did they help with the reduction in recidivism? Another area that came to our attention was Blaine Street and how it appears to be under utilized. The potential for increased jail populations exists due to the state's decision to send prisoners who have less than three-year sentences back to local facilities. The Grand Jury determined it is timely to explore options for improving program effectiveness, development of an efficient jail population distribution and provide adequate services to incarcerated individuals.

Scope

Under California Penal Code Section 919 (b),^[2] the Grand Jury is charged with inspecting the correctional facilities for the county on an annual basis to ensure they are in compliance with the California Correctional Authority and Standards contained in Title 15 and Title 24 of the California Code of Regulations. After conducting our inspections, we decided to investigate further potential strategies the correctional system could employ in their efforts to manage the County's jail population. The investigation concentrated on three main areas: jail population distribution, medical/dental services and the inmate program assessment/tracking process.

We used the following methods to gather our data:

- Jail Inspections
- Interviews with correctional staff
- Interviews with medical staff
- Interviews with inmates
- Interviews with program providers
- Researching programs/practices of other counties throughout California
- Distribution of jail populations

Investigation

The Grand Jury’s intent was to provide a constructive report that could assist the County in addressing some of the chronic issues with its various correctional facilities.

A. Jail Population

We observed overcrowded conditions in the Main Jail and under-utilization of the capacity at both Blaine Street and Rountree Minimum Facility.

The Main Jail has a rated capacity of 311 inmates; however, the average number of inmates per month in 2009 was 336 and by 2010 it had increased to 350.^[1] The Rountree Facility includes two separate buildings. One is designated for minimum security inmates and the other for medium security inmates. All minimum security inmates are housed in the medium security building at present and no inmates are being housed in the minimum security building. Blaine Street Women’s Facility is for minimum security inmates and has a rated capacity of thirty-two. For the past two years Blaine Street has not been utilized to its fullest with an average monthly population of twenty in 2009 and nineteen in 2010 (Table 1).

Table 1: Jail Population from 2008 - 2011^[1]

<i>Facility</i>	<i>Rated Capacity</i>	<i>Average Monthly 2008</i>	<i>Average Monthly 2009</i>	<i>Average Monthly 2010</i>	<i>Average Monthly 2011 (Jan-Feb)</i>
Main Jail Maximum & Medium	311	314	336	350	339
Rountree Medium Minimum	96 162	61 97	51 77	93 n/a	94 n/a
Blaine Street Minimum	32	23	20	19	15

A variety of factors determine the security classification of an inmate, whether minimum, medium, or maximum. This classification is the basis for where an inmate will be housed. To make the decision, the intake officer will ask a series of questions about previous crimes, gang affiliation, medical issues/medications, etc. If inmates of any classification require specialized medication such as insulin or psychotropic drugs, they will automatically be housed in the Main Jail due to the lack of medical services at Rountree. In addition, if inmates are unwilling to give up their gang affiliation, they must be housed at the Main Jail even if their classification is minimum security. Women are housed at the Main Jail if they are classified as a maximum or medium security risk prisoner, or at Blaine Street if they are deemed a minimum security risk. Blaine Street has operated below capacity for the last several years.

B. Medical/Dental

Currently, the Main Jail is the only facility that has an infirmary as well as medical personnel on-site. The Rountree Medium Facility does have an infirmary but, due to budget constraints, it was closed in 2008 and the medical staff and equipment were moved back to the Main Jail. The medical staff at the Main Jail consists of a medical director, a special services Lieutenant (responsible for court security, transportation and medical services), two Assistant Nursing Directors, eight Registered Nurses (RNs), three Licensed Vocational Nurses (LVNs), and three medical assistants. The Assistant Nursing Directors are also RNs which brings the total of RNs to ten at the Main Jail. In addition, the Main Jail has on-call staff to cover vacations of medical staff but they are not allowed to cover furlough time. The current furlough hours are 156 hours per person/per year which equates 19½ days per year for an eight-hour workday. The nursing staff is scheduled for eight-hour shifts, with coverage 24/7. The Assistant Nursing Directors work ten-hour day shifts, where they overlap one day a week to complete administrative tasks. The minimum nursing staff is one RN and one LVN for a shift.

An RN is required to assess all new intakes in the sally port/holding area to determine if they are medically able to be incarcerated or if they need to be transported to Dominican Hospital for further observation. This assessment consists of a quick interview history, to determine if they are currently taking any medication or have any psychological problems. The average number of inmate bookings per month at the Main Jail in 2009 and 2010 were respectively 1068 and 1061^[3] equating to approximately thirty-five intakes per twenty-four hour period. The result is that most RN staff time is utilized to perform the required initial assessments with little time to assist in medication distribution or daily contact and care of the incarcerated.

Medication distribution is a large task and part of the RN and LVN staff responsibility. The Main Jail has two major medication distributions during the day with several other minor distribution periods, resulting in an average of 800 to 850 medications per major distribution. The LVN staff is allowed to distribute medications but they are not allowed to handle the initial inmate assessment process during the intake procedure.

Inmates that require extensive medical observation, primarily individuals undergoing detoxification, are housed in the “O” unit within the Main Jail, so the RN staff can monitor their vitals to evaluate the need to transport them to another medical facility.

In addition to medical services, the Main Jail provides dental services to inmates on a limited basis when warranted. The sentiment that dental services for the inmates needed improvement

came up repeatedly during our investigation. A majority of inmates are often in need of basic dental treatment upon entry into jail, due to prior limited access to dental services and poor lifestyle choices of inadequate nutrition and drug use. Furthermore, inmates' self-esteem is negatively impacted by their appearance resulting from poor dental hygiene, as was noted by several of our interviewees. Inmates must currently rely on outside dentists to perform more complex procedures such as root canals, because of the limited dental services available at the Main Jail. This entails the use of an officer and van to transport inmates to off-site dental facilities for their appointments, resulting in an increased security risk.

C. Programs

Title 15 of the California Correction Standards Authority requires the Santa Cruz County Sheriff's office to provide a variety of offerings in the areas of education, recreation, and religion. Many types of programs offered are facility-dependent and gender-specific. Examples of these programs are the auto body classes offered only at the Rountree Minimum Facility, and Gemma, a life skills program for women at Blaine Street. GED classes leading to a high school equivalency diploma are offered at all four facilities, but at the Main Jail the classes are hit and miss. The Sheriff-Coroner's Office report from October 2010 stated Santa Cruz County combined jail facilities provided about 200 hours of programming per month to inmates.^[4] The Main Jail has the largest number of inmates in the County and the inmates are not required to be enrolled in any educational programs. In contrast, Rountree and Blaine Street inmates are required to participate in programs and most of the classes are provided on a continuous basis.

To date there are **no** measurements in place to evaluate the programs offered in the jail facilities. A 2009 report about the inmate programs in Santa Cruz County stated the following: *"Evaluating program efficacy is elusive, as the measure most commonly used is recidivism: or the number of people who return to custody."* However, the report also noted that there is no consistent operational definition of recidivism.^[5] In a recent *Good Times*^[6] article Sheriff Wowak stated, "It's because we don't do a good enough job in teaching corrective behavior to keep them from coming back into the system."

Several different databases in the County – Health Services, Courts, Jails and Probation – do track a variety of information on inmates.^[5] Unfortunately, these databases are not linked, preventing staff from cross-referencing the data and using this valuable information to assist in program development and evaluation. Furthermore, tracking of inmates' success upon reentry into society is anecdotal instead of being based upon data.

Santa Barbara County has developed a funded and successful substance abuse program called the Sheriff's Treatment Program (STP). The STP began in 1996 in the Male Honor Farm and has expanded to include participants in both male and female facilities. The STP has measurably reduced recidivism:

National and Regional statistics state that 75% to 80% of all inmates incarcerated have committed their crime as a direct result of using chemical substances (alcohol and/or drugs). These statistics also say that 75% of those inmates will be re-arrested within the next two years for a similar offense... still as a result of alcohol and/or drug usage. We have

reduced the recidivism rate for the inmates participating in STP to approximately 35 to 40%.^[7]

The result of the reduced recidivism has contributed to fewer jail beds being occupied and reduction in law enforcement hours needed as well as dollars that can be utilized in other important areas.

In contrast, Santa Cruz County reduced funding by 90% for substance abuse programs from 2003 to 2009 and those funds were reallocated to other programs.^[5] Unfortunately, we were unable to determine the impact that this reduced funding had upon the recidivism, since there is no mechanism to track this data in Santa Cruz County.

A study by the U.S Federal Bureau of Prisons^[8] found a strong correlation between inmates' successful completion of educational programs and reduction of recidivism. Most of the programs were designed to supply tools for the inmates' reintroduction into society. Although the federal prison inmates in this study had a much longer length of stay than Santa Cruz County inmates, the data illustrates the strong correlation between educational programs and recidivism.

Another inmate educational program with proven success is a horticultural program in Sonoma County.^[9] This program places emphasis on the practical use of horticultural techniques necessary to maintain five acres of ornamental flowers and trees, shrubs, and various annual plants, as well as a summer vegetable garden. The flowers and plants are sold to the public by appointment twice a year. Programs such as this could be used to provide produce within the jail system to save money and offer more nutritional options for inmates.

In Santa Cruz County a successful program that has been implemented is the Gemma Day program. Unfortunately, this program reaches only a limited number of inmates, as it is only available to women who are housed at the Blaine Street Facility. The participants are involved in a life skills curriculum which includes parenting, relapse prevention, job preparation and other classes. The classes are approximately twelve hours per week for nine weeks and released inmates are allowed to live at the facility for up to eighteen months.

Another area of concern we learned through our interviews was the lack of transitional support for released inmates. A need exists for additional support in the form of housing and jobs, as well as therapy for these individuals, such as the Gemma Residential program. We were made aware by volunteer counselors that many of the inmates have nowhere to go upon leaving the jail facility. Some transitional housing is available, but there is no process to ensure that all inmates are aware of how to sign up and take advantage of the housing.

Rather than reverting back to the environment that led to their incarceration, released inmates can choose to integrate back into society. To help them, the Santa Cruz County Probation Department, in conjunction with the non-profit organization Friends Outside, has instituted the Warrant Reduction Project (WRAP). The program provides assertive outreach to individuals who have failed to check in with their probation officer and are about to have a warrant for their arrest issued. In addition, the WRAP specialists are also able to assist individuals with peer and support groups and aftercare case management.

Since inception of the program in December 2005, WRAP has averted over 390 warrants saving an estimated 15,600 jail bed days, with 10,140 at the main jail. Probation bench warrants issued has dropped by 62% since the program began in 2005. This successful innovation has been recognized by other jurisdictions who plan to implement similar programs.^[10]

Findings

- F1.** The overcrowded conditions of Santa Cruz County Main Jail will be exacerbated with the transfer of state prisoners back to their originating county.
- F2.** Rountree and Blaine facilities are not fully utilized with respect to capacity.
- F3.** Security, staff and vehicles are required to transport inmates to the Main Jail for medical/dental needs due to limited medical services at the Rountree Facility.
- F4.** The lack of sophisticated dental equipment at the Main Jail requires secure transportation to off-site facilities for those inmates requiring more complex dental work.
- F5.** There are no program performance assessment tools, which prevents staff from evaluating the effectiveness of the educational programs.
- F6.** Due to a lack of consistent communication from jail personnel, not all inmates are aware of reentry programs offered at the time of their release.
- F7.** There are inadequate programs and resources to assist inmates in their reentry into society, such as job skill training, treatment programs, counseling, and transitional housing.

Recommendations

Reduction of recidivism should be one of the primary goals for the correction system. Anything contributing towards that goal should be encouraged and continued.

- R1.** Conversion of the Blaine Street Facility into a transitional housing facility or consolidation with another facility should be considered.
- R2.** The Sheriff's Office should perform a cost-benefit analysis of re-opening the housing portion of the minimum security facility at Rountree to reduce overcrowding at the Main Jail.
- R3.** The Sheriff's Office should perform a cost-benefit analysis of providing medical services at Rountree, such as staffing a physician assistant, nurse practitioner or a physician on site, versus the current need for secured transportation costs and associated risks.
- R4.** The Sheriff's Office should perform a cost-benefit analysis of the acquisition and installation of more sophisticated dental equipment for the Main Jail versus the current method of securely transporting inmates off-site for dental care.

- R5.** The Sheriff’s Office should implement a mechanism to track the effectiveness of educational programs within the 2011-12 fiscal year.
- R6.** Based upon analysis of the tracking data, the Sheriff’s Office should modify their existing educational programs where warranted or consider implementing successful educational programs in use in other jurisdictions, such as Santa Barbara County.
- R7.** Inmates should be better informed of post-release resources, such as job skill training, treatment programs, counseling, and transitional housing.
- R8.** Santa Cruz County should perform a cost-benefit analysis of the implementation of additional programs and resources to assist inmates in their re-entry into society.

Commendations

The Grand Jury would like to commend the entire corrections staff of the county. They were extremely accommodating, informative, and helpful in providing information, arranging tours and interviews. Each interaction with staff revealed caring and compassionate individuals who were able to perform their duties diligently and provide strict parameters for expected behavior in a safe and orderly environment.

A special commendation should be given to the staff of Blaine Street. The average population has been reduced from thirty-three in 1998 when it was opened to fifteen in 2011, through the ongoing efforts of the dedicated staff.

Responses Required

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Santa Cruz County Sheriff	F1-F7	R1-R8	60 Days September 1, 2011
Santa Cruz County Board of Supervisors	F1-F7	R1-R8	90 Days October 1, 2011

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Interviews

Administrators and personnel:

Main Jail
Rountree
Blaine House

Administrators and personnel:

County Board of Education
Santa Cruz Adult Education
Volunteer Program providers
Health Services Agency

Site Visits

Main Jail - September 8, 2010

Rountree Facility - October 6, 2010

Blaine Street - September 8, 2010

Documents

Adult Title 15 Regulations: Minimum Standards for Local Detention Facilities, Crime Prevention and Corrections, Division 1, Chapter 1, Subchapter 4

Adult Title 24: Minimum Standards for Local Detention Facilities, Part 1, Section 13-102 and Part 2, Section 1231

Santa Cruz Grand Jury Report 2007-2008, Santa Cruz County Jail Review
<http://co.santa-cruz.ca.us/grandjury/GJ2008>