



## THE SONOMA COUNTY CIVIL GRAND JURY

P.O. Box 5109 Santa Rosa California 95402 (707) 565-6330  
[www.sonomagrandjury.org](http://www.sonomagrandjury.org)

February 19, 2013

The Honorable Rene Chouteau  
Presiding Judge, Superior Court  
County of Sonoma  
600 Administration Drive  
Santa Rosa, CA 95403

Citizens of Sonoma County

Subject: Responses to the 2011-2012 Sonoma County Grand Jury Report

Dear Judge Chouteau and Citizens of Sonoma County,

Every year the Sonoma County Grand Jury conducts investigations, writes reports, and makes findings and recommendations. Responses are required from the related agencies or officials and are then published for public record by the sitting Grand Jury. The 2012-2013 Sonoma County Civil Grand Jury has received and reviewed all required responses as noted in the 2011-2012 Grand Jury Report. The responses are published in this report.

In its role as watchdog for our county, the Grand Jury members spend thousands of hours serving our community. We commend the prior Grand Jury for their dedication, time, energy, and effort. We would also like to recognize the efforts of our public officials. Their responses to the report recommendations deserve thorough review.

It is now your responsibility as citizens of this county to read the responses and determine the adequacy of them. The investigations and the associated responses are sometimes controversial. If you are not happy with the outcome, it will be up to you, as concerned citizens to file further complaints or form grass root committees to ensure that change does take place. It is you that can make this happen.

I know I speak for all Grand Jurors, both past and present, when I say it is an honor to serve you.

Regards,

Ernie Loveless  
Foreperson  
2012-2013 Sonoma County Civil Grand Jury

**FILED**

SEP 18 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA

BY [Signature] DEPUTY CLERK

Approved: [Signature]  
Superior Court Judge  
Date: SEP 18 2012

**RESPONSE TO GRAND JURY REPORT FORM**

Report Title: Whose library, As It?

Report Date: JUNE 28, 2012

Response by: JANDRA M COOPER Title: LIBRARY DIRECTOR

**FINDINGS**

- I (we) agree with the findings numbered: F6
- I (we) disagree wholly or partially with the findings numbered: F1-5, F7-10  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered R12 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered R8, R9, R10 have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered NA require further analysis.  
(Attach 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.)
- Recommendations numbered R6, R7, R11, R13, R14 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 9.6.12 Signed: Jandra M. Cooper

Number of pages attached 4

1  
2 **SONOMA COUNTY LIBRARY DIRECTOR**  
3 **RESPONSE TO THE 2011-2012 GRAND JURY REPORT**

4 **INTRODUCTION**

5 This is the Sonoma County Library Director's response to the 2011-2012 Grand Jury  
6 Report.

7  
8 Because the Library Commission has commented on assertions in the summary,  
9 background, and discussion portion of the report, please refer to that response for  
10 factual information on statements in the report.

11 **RESPONSE TO FINDINGS**

12 The Library Director agrees with the comments on findings outlined in the response  
13 from the Library Commission for Findings 1-7. Please refer to that response for  
14 additional information.

15  
16 **F8. The majority of performance reviews are not being completed on a regular**  
17 **basis. There appeared to be no urgency at the library director level to get**  
18 **reviews up to date.**

19 The Library Director disagrees wholly or partially with this finding.

20  
21 The Library Director agrees that a majority of the employee performance  
22 reviews are not being completed on a regular basis. However, the Library  
23 Director disagrees that there is no urgency at the Director level to get the  
24 reviews up to date. The Library Management Team has provided options and  
25 support to encourage managers and supervisors to complete their performance  
26 reviews. The issue across the system has been the lack of adequate staffing to  
27 carry out the work of the Library and competing priorities that have been  
28 barriers to accomplishing performance reviews in a timely manner.

29  
30 **F9. The absence of written policies and procedures is causing a lack of follow-**  
31 **through on the expenditure of funds received from the FOL.**

1 The Library Director disagrees wholly or partially with this finding.

2  
3 There are procedures for branch managers to use to order items funded by the  
4 Friends of the Library. The delays are not due to lack of procedures, they are  
5 due to a lack of staffing and to the workload for existing staff.

6  
7 **F10. Furniture orders for some branches are unnecessarily held up at the**  
8 **Library Director's level.**

9 The Library Director disagrees wholly or partially with this finding.

10  
11 The orders are not "unnecessarily held up at the Library Director's level." The  
12 issue is lack of adequate staff to manage the Library's purchasing as well as  
13 the demands on the time of existing staff that creates higher priorities.

14 **RESPONSE TO RECOMMENDATIONS**

15  
16 **R-6. The library director bring all employee job descriptions up to date, with**  
17 **the approval of the Library Commission.**

18  
19 The Library Director will not implement this recommendation because it is  
20 unwarranted or is not necessary.

21  
22 The Library has position classifications for all 32 of its positions, and they have  
23 been approved by the Library Commission. Position descriptions are only  
24 developed by top library management to describe the unique characteristics of  
25 a few higher-level positions that are more complex. The position descriptions  
26 are based on approved position classifications.

27  
28 **R-7. The Library director revise the Performance Management Program work**  
29 **plan performance review template to make it a workable document and**  
30 **institute its usage.**

31  
32 This Library Director will not implement this recommendation because it is  
33 unwarranted or is not necessary.

1 There has been a template in use since the program was instituted. For the  
2 majority of the positions in the Library, the template includes performance  
3 standards developed by a staff committee and reviewed by the union.

4  
5 **R-8. The library director advise all managers of the past due employee**  
6 **performance reviews and get them up to date.**

7  
8 The Library Director will implement this recommendation within the next six  
9 months.

10  
11 **R-9. The library director develop a follow-up method to ensure that reviews are**  
12 **done on time.**

13  
14 The Library Director is working with the Library Commission to implement this  
15 recommendation within the next six months.

16  
17 **R-10. The library director report to the Library Commission the status of**  
18 **library employee reviews on a monthly basis to ensure compliance with**  
19 **library policies and procedures for reviewing all employees in a timely**  
20 **fashion.**

21  
22 The Library Director will implement this recommendation beginning with the  
23 September meeting of the Library Commission.

24  
25 **R-11. The library director order the two end panels for the Guerneville library.**

26  
27 The Library Director will not implement this recommendation because it is  
28 unwarranted or is unnecessary.

29  
30 The Library has returned the donation plus interest to the River Friends of the  
31 Library and, at the request of the branch manager, will not order the end  
32 panels.

33  
34 **R-12. The library director order the other delayed furniture for the Rincon**  
35 **Valley and Coddington branches.**

36  
37 The Library Director has already implemented this recommendation by  
38 ordering the furniture for a number of library branches.

39  
40 **R-13. The library director delegate the ordering of furniture to the library**  
41 **branch manager level when the item is being purchased with FOL funds**  
42 **and within the furniture catalog guidelines.**

1 The Library Director will not implement this recommendation because it is  
2 unwarranted or is not reasonable.

3  
4 Under the Library's policies, branch managers do not have the authority to  
5 approve purchases. Nor do they have any secretarial support to gather quotes,  
6 prepare purchase orders, or monitor purchases.  
7

8 **R-14. The library director establish and implement a furniture ordering policy**  
9 **so that orders requested are placed in a timely fashion.**

10  
11 The Library Director will not implement this recommendation because it is  
12 unwarranted or is not reasonable.

13  
14 The barrier to ordering furniture is not the lack of policies or procedures. It is  
15 due to the lack of adequate staffing and the competing priorities faced by staff  
16 who are responsible for the task.  
17  
18  
19


Approved:   
Superior Court Judge

Date: SEP 25 2012

SONOMA COUNTY BOARD OF SUPERVISORS  
RESPONSE TO GRAND JURY REPORT

**FILED**

SEP 24 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY  DEPUTY CLERK

Report Title: Whose Library Is It?

Report Date: June 28, 2012

Response by: Sonoma County Board of Supervisors

**RECOMMENDATIONS**

**R1 The Board of Supervisors evaluate the Library's leadership structure, including the JPA, and write a report suggesting ways to improve collaboration.**

**Board of Supervisors' Response:** This recommendation has not yet been implemented, but will be by the end of 2012.

To date, the Board has instructed County Administrator's staff to review the Joint Powers Agreement structure and find opportunities for update given it was established in 1975. The County Administrator and City Managers group assigned a working group to review the JPA agreement and leadership structure. The group includes the County Administrator, Sonoma City Manager, Healdsburg City Manager, Cotati City Manager, Santa Rosa Assistant City Manager, and a County Administrator Analyst.

Subsequently, on August 8, 2012, the Sonoma County Mayors & Councils Group established an expanded working group with appointees from the 9 cities, the County and the Library Commission. The individuals assigned to this group are to be identified by September 21, 2012.

Since Board of Supervisors has requested the JPA document be reviewed, staff will work with the expanded working group, and provide a report to the Board of Supervisors by June 30, 2013.

**R2 The Board of Supervisors establish an education and training process, including budget analysis, for current and future Library commissioners.**

**Board of Supervisors' Response:** This recommendation has not yet implemented, but will be implemented in the future.

The county will coordinate with the Commission to establish a training program as part of the JPA and leadership structure review.

Date: 9-21-12 Signed: 

Approved:

  
Superior Court Judge

Date:

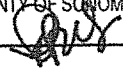
OCT 11 1 2012

**FILED**

SEP 26 2012

**RESPONSE TO GRAND JURY REPORT FORM**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA

BY  DEPUTY CLERK

**Report Title:** Library; Whose Library Is It?  
**Report Date:** June 28, 2012  
**Response by:** The Sonoma County Library Commission  
Approved at the September 5, 2012 meeting  
Signed by the Commission Chair, Julia Freis

**FINDINGS:**

We agree with findings numbered F6.

We disagree wholly or partially with the findings numbered F1, F2, F3, F4, F5, F7, F8, F9, and F10.

**RECOMMENDATIONS:**

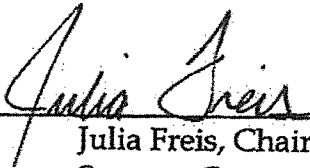
Recommendation R10 has been implemented.

Recommendations R3, R4, and R5 will not be implemented because they are not warranted.

Other recommendations in the report were not meant for the Commission.

Date:

09/18/12

  
\_\_\_\_\_  
Julia Freis, Chair

Sonoma County Library Commission

14 pages attached.



1  
2 **SONOMA COUNTY LIBRARY COMMISSION**  
3 **RESPONSE TO THE 2011-2012 GRAND JURY REPORT**

4 **INTRODUCTION**

5 This response is on behalf of the Sonoma County Library Commission (Commission).  
6 The Library Director will be filing her own response.

7  
8 The Commission appreciates the public's passion and Grand Jury's continued  
9 interest in the health and welfare of our public library system. However, we are  
10 concerned that the Grand Jury has completed an investigation into the efficacy of the  
11 current Director and Commission without ever talking with the chair or vice-chair of  
12 the Commission or a majority of its members.

13  
14 **COMMENTS ON REPORT**

15 Before responding to the Grand Jury's findings and recommendations, we would like  
16 to respond to some of the assertions in the summary, background, and discussion  
17 portion of the report.

18  
19 *Excerpt from the report: Only one Commissioner, a newer member, regularly confronts*  
20 *or questions the director regarding evidence put forth by the director in support of a*  
21 *claim or request.*

22  
23 Commission Response: This is inaccurate. The Commission regularly questions  
24 the Director regarding information presented and requests follow-up  
25 information from staff and the Director. While this may not be done in a  
26 confrontational tone, it is done. Further, the chair of the Commission has  
27 final approval over the agenda. The Commission regularly directs  
28 information items and reports be added to the agenda in areas of interest or  
29 concern.

30  
31 We would also note that while the Commission does not simply accept  
32 everything presented, our role with the Director is not meant to be

1           adversarial. It is the job of the Commission to work with the Director in a  
2           professional manner. This means providing a stable environment in which  
3           problems may be presented and discussed openly.  
4

5     *Excerpt from the report: The following statement by the director is representative of*  
6     *what the Grand Jury repeatedly heard from interviewees when they talked about*  
7     *the director's disregard for the needs of the public and the manner in which she*  
8     *interacts with stakeholders regarding library issues at open, public meetings.*

9           *We continue to lock the book drops for the 10-day holiday....*  
10

11     Commission Response: The decision to lock the book returns and “go dark” was  
12     made by the Library Commission with input from the public and staff at a  
13     number of levels.  
14

15           There are multiple reasons for the decision. Mainly, leaving the book drops  
16     open and the computer system running would require expending resources  
17     during and after the MTO, thereby negating savings.  
18

19           Further, the decision to shut down all services was consciously made by the  
20     Commission after discussion in open session. The Commission believed that,  
21     in order to communicate to the public the economic realities it was facing, all  
22     services had to be shut down.  
23

24     *Excerpt from the report: ...and the county provides the funds which are drawn from*  
25     *property taxes that make up the county General Fund.*  
26

27     Commission Response: This is inaccurate. The funding for the Library comes  
28     from a designated portion of the property taxes, collected by the County and  
29     placed into a special library fund. The Library then pays the County to manage  
30     the fund. However, this money is not part of the county General Fund.  
31

1 The Library is a designated special library district and was so at the passage of  
2 Proposition 13, in 1978. Pursuant to the interpretation of Proposition 13, the  
3 library system as a special district is entitled to the same percentage of the  
4 property taxes that it was receiving prior to the passage of Proposition 13.  
5

6 *Excerpt from the report: Each branch has a Library Advisory Board (LAB) consisting of*  
7 *members who are appointed by the commissioner from that area.*  
8

9 Commission Response: This is inaccurate. Each city has a LAB, thus there is one  
10 LAB for all three branches in Santa Rosa. The Commissioner from each area  
11 makes recommendations to the Commission regarding appointments. When  
12 the areas overlap, such as the Third Supervisory District and the City of Santa  
13 Rosa, the Commissioners involved share in the recommendations. The  
14 Commission then votes whether to approve the person recommended.  
15

16 *Excerpt from the report: In May 2010, the commissioners unanimously approved a*  
17 *budget presented to them by the director which contained a seven million dollar*  
18 *error.*  
19

20 Commission Response: The Commission has never approved a budget with a \$7  
21 million error in it. Review of the documents from the May 2010 meeting  
22 show that approval of the budget was not on the agenda, nor is it reflected  
23 in the minutes that a budget was approved. It is unclear where the Grand  
24 Jury obtained this piece of information, but it is simply untrue.  
25 Additionally, the Library's budget is submitted for review and approval to  
26 the Board of Supervisors. If indeed the Commission had approved a budget  
27 with a \$7 million error, it would have been discovered and made public  
28 during that process.  
29

30 There was, however, a \$7 million error in the May 2010 financial report,  
31 provided for information only. The error was not noted at the time, but was

1           noted and corrected by the next Commission meeting.

2  
3   *Excerpt from the report: On October 5, 2011, a "Vote of No Confidence" petition with 78*  
4   *signatures of library employees and others was presented to the Library*  
5   *Commission at the commission's monthly meeting. The petition was accepted with*  
6   *the understanding that the commissioners would consider the contents and respond*  
7   *at a later date.*

8  
9   Commission Response: The background fails to include the information that the  
10   chair and vice-chair of the Commission met with SEIU representatives to  
11   obtain additional information and more specifics about the allegations  
12   contained in the petition, which SEIU agreed to provide. Despite numerous  
13   follow-up emails over the next several months, no additional information was  
14   forthcoming. The Commission responded to the petition in writing on  
15   November 2 and read the written response into the record at the meeting.  
16   (Copy of that written response is Attachment A.)

17  
18   *Excerpt from the report: On March 27, 2012, the commissioners appeared in front of*  
19   *the BOS to respond to many of the same issues [referring to the Vote of No*  
20   *Confidence]...*

21  
22   Commission Response: The purpose of the Commissioners' meeting with the  
23   Board of Supervisors (BOS) was unrelated to the "vote of no confidence."  
24   The Joint Powers Agreement (JPA) contains a provision that the Commission  
25   will, on an annual basis, report to the BOS. This provision has been largely  
26   neglected over the past years. On December 2, 2011, Supervisor Carrillo  
27   sent a letter asking the Commission to make a presentation "about current  
28   initiatives, the fiscal state of the Library, as well as an overview of current  
29   and proposed capital projects." (A copy of the letter is Attachment B.) The  
30   Commission prepared a PowerPoint to address the questions raised, and the  
31   chair of the Commission presented it to the BOS.

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The JPA makes it clear that the Director is appointed by and serves at the will of the Commission, and she does not answer directly to the BOS. The Commission seeks to develop a stronger relationship with the BOS and improve the flow of communication between the two.

*Excerpt from the report: Many LABs meet irregularly and have been lax in making recommendations to the director and the commissioners.*

Commission Response: The LABs are authorized to develop their own bylaws, which set the schedule of meetings. All LABs meet regularly, although some choose to meet quarterly while others have chosen to meet more frequently. The bylaws, agendas, and minutes of all the LABs are available on the Library's web site at:  
<http://www.sonoma.lib.ca.us/libinfo/AdvisoryBoards/>.

A commissioner attends each LAB meeting, and the Director attends as often as possible. In addition, the Commission has sought LAB input on topics that include the *Standards of Behavior* policy, public service hours, internet filtering, and (most recently) an increase in the fines and fees.

*Excerpt from the report: The JPA places all final decisions affecting the running of the library on the desk of the director.*

Commission Response: This statement is inaccurate. In fact, many final decisions that significantly affect the way in which the Library is run are in the hands of the Commission. For instance, it is the Commission that decides the days and hours of operation, designates the budget for materials, negotiates with the Union for wages and work conditions, and determines policies regarding public service and use of the facilities and

1 equipment.

2  
3 In addition to the information presented by staff, the Commission takes  
4 public comments on each agenda item. Individual commissioners are free to  
5 contact and talk with branch managers or any member of staff, and  
6 commissioners are accessible to the public and staff by email, telephone or  
7 traditional mail. Commissioners communicate with LAB members, the  
8 Supervisor or City Council that appointed him/her, representatives of SEIU  
9 and other stakeholders, even outside of the formal setting of meetings.

10  
11 *Excerpt from the report: The tenth item on the November agenda was the Book Return*  
12 *Retrofit...The request was not substantiated with cost details, broken down by*  
13 *branch, or specifically what was to be done; however, the director did indicate that*  
14 *the bins were already ordered...*

15  
16 Commission Response: The Commission received a full written proposal with a  
17 detailed budget for the book return retrofit. Those documents are #10.2.1  
18 and 10.2.2 on the Library's website at:  
19 [http://www.sonoma.lib.ca.us/agenda/20111102/Agenda%20Documents%](http://www.sonoma.lib.ca.us/agenda/20111102/Agenda%20Documents%2011.2.11.pdf)  
20 [2011.2.11.pdf.](http://www.sonoma.lib.ca.us/agenda/20111102/Agenda%20Documents%2011.2.11.pdf)

21  
22 For convenience, the documents are provided here as Attachment C.

23  
24 None of the items proposed at the November 2011 Commission meeting were  
25 ordered prior to the meeting.

26  
27 *Excerpt from the report: As this report goes to print, the library has posted an*  
28 *opening for an Assistant Director.*

29  
30  
31 Commission Response: This is inaccurate. The position referenced is an

1 Assistant to the Director not Assistant Director, which is significantly  
2 different. The position was funded by modifying an unfilled Community  
3 Manager position and leaving unfunded two Administrative Aide  
4 positions. This was done at the behest of the Commission to enable the  
5 Director to delegate more tasks.

6  
7 *Excerpt from the report: The JPA does not require the director to heed the advice of*  
8 *the commissioners or the advisory boards, nor is she obligated to listen to the*  
9 *voices of the FOL's or other stakeholders.*

10  
11 Commission Response: As noted above, the Director serves at the will of the  
12 Commission. A brief review of the history of directors shows that the  
13 Commission has asked for and received the resignation of at least one of its  
14 prior directors.

15  
16 The Director receives an annual performance evaluation by the Commission.  
17 There is a standing evaluation subcommittee that meets with the Director on  
18 an ongoing basis. Review of the agendas for the past year shows the  
19 Director evaluation as a closed session item for meetings in January,  
20 February, April, May, and July 2012. The Director's evaluation uses a  
21 method and format substantially similar to that adopted for the evaluation of  
22 the rest of the staff. A blank evaluation form is Attachment D. Like all  
23 employee evaluations, the Director's evaluation is a confidential personnel  
24 matter.

25  
26 *Excerpt: The shortening and standardization of library hours and the decision to close*  
27 *the Library...*

28  
29 Commission Response: At the time the Commission decided to change hours, the  
30 Library was facing a deficit in the operating budget of between \$500,000  
31 and \$1 million for the third year in a row. Reducing the hours of service

1 was proposed as a way of balancing the budget. A specific proposal was  
2 sent to the Union, since they needed to agree to the changes in the working  
3 conditions of their members. The Union then released the proposal to the  
4 press, presenting it as having already been approved by the Commission.  
5

6 In fact, the Commission took almost four hours of public comment over the  
7 course of three months before making a final decision regarding the  
8 reduction of hours. Feedback was given by each of the LABs. Members of  
9 the public contacted the Commissioners individually, by email. Staff,  
10 represented by SEIU, voiced their concerns and opinions both at public  
11 meetings and in negotiation sessions.

## 12 **RESPONSE TO FINDINGS**

### 13 14 **F1. The Joint Powers Agreement appears to be outdated and needs to be** 15 **revised.**

16  
17 The Commission disagrees wholly or partially with this finding.

18  
19 The Joint Powers Agreement has been in place for 37 years, and has effectively  
20 advanced the services provided as the community has grown and changed. In  
21 the view of the Commission, the problem is not with the structure of the JPA,  
22 but rather with the reduced budget due to the economic downturn in 2008.  
23 The JPA has protected the Library's funding as well as the institution of the  
24 Library as a free and independent source of information.  
25

26 That said, the Commission agrees that it is useful to re-examine the JPA and  
27 find ways to strengthen it. However, the Commission is concerned that any  
28 proposed changes to the JPA must take care not to unintentionally endanger  
29 either the protected funding or independence of the Library.  
30

### 31 **F2. The Joint Powers Agreement states that individual library branches have** 32 **input in major decisions; however, it appears that they are not heard and** 33 **basically ignored.** 34



1 The Commission disagrees wholly or partially with this finding.

2

3 There is no such statement in the Joint Powers Agreement<sup>1</sup>. The JPA creates a  
4 consolidated library system that operates as a single entity governed by the  
5 Commission. Section 24 of the JPA establishes the LABs to advise the  
6 Commission on matters affecting library service in the various regions of the  
7 county. It is through the LABs that both staff and the public can make  
8 regional issues known and raise concerns with the Commission. For this  
9 reason, a member of the Commission and members of Library management  
10 attend every LAB meeting held in the county.

11

12 While the Commission strives to solicit the opinions of and input from the  
13 LABs, it recognizes that there is room for improvement. To that end, educating  
14 the public about the important role of the LABs and encouraging the public to  
15 attend and participate is a priority.

16

17 *1. "24. Advisory Boards. The Commission shall establish advisory boards in regions of the*  
18 *county centering upon the urban areas designated in Section 21 above, and shall maintain*  
19 *these boards so long as they are desired by the communities which they represent. The*  
20 *advisory boards shall organize and meet as they shall each determine, and shall make*  
21 *recommendations to the library director and the Commission on all matters affecting library*  
22 *service in the regions which they represent. The library boards, library advisory boards and*  
23 *library advisory committees which presently exist, and the members thereof, shall be*  
24 *designated to be the initial regional Library Advisory Boards established pursuant to this*  
25 *section."*

26

27 **F3. Having an unresponsive library director undermines the original intent of**  
28 **the JPA.**

29

30 The Commission disagrees wholly or partially with this finding.

31

32 If the Library Director were unresponsive, that would undermine the original  
33 intent of the JPA. Beyond that, the Commission cannot comment on anything  
34 involving personnel matters.

---

<sup>1</sup> The JPA is available on the Library's website at: <http://sonomalibrary.org/jpa.html>

1  
2 **F4. Library Advisory Boards are not functioning as per the original intent of**  
3 **the JPA.**

4  
5 The Commission disagrees wholly or partially with this finding.  
6

7 The JPA established the LABs to be independent entities to encourage the free  
8 flow of information and recommendations to the Commission and the Library  
9 staff. While the Commission and staff seek feedback on specific issues, it is up  
10 to each LAB to determine its own priorities and areas of interest.  
11

12 However, the Commission recognizes that it could provide more leadership to  
13 the LABs regarding the role of the LABs in the Library system. It is the intent  
14 of the Commission to begin discussing with each LAB how the LAB views its  
15 utility within the system and how it defines its goals and priorities.  
16

17 **F5. The Library Commission seems unclear as to their duties and function.**  
18

19 The Commission disagrees wholly or partially with this finding.  
20

21 The Commission is responsible for adopting and overseeing the implementation  
22 of policies and for the budget. It does not micromanage the running of the  
23 Library. Additionally, it is responsible for the long-term health and stability of  
24 the Library system.  
25

26 To that end, the instability caused by the constant complaint about and  
27 turnover of our Directors is of concern. Between September of 1993 and  
28 December of 2005, when the current Director was hired, the Library was  
29 managed by no less than three permanent Directors and two interim Directors.  
30 No previous Director stayed longer than 5 years, 1 month. This continuous  
31 disruption of authority resulted in a system, by 2005, in which staff  
32 evaluations were not regularly conducted; there were few personnel and

1 financial policies; the Standards of Behavior policy was outdated; there were no  
2 policies on workplace safety and security; there was no human resources staff;  
3 there was no cataloguer; and the management team had no employment  
4 policies or agreements.

5  
6 Although progress has been slowed since 2009 by the time necessary to  
7 address the budget crisis and renegotiate Union contracts, the Library is  
8 making steady progress to correct these failings.

9  
10 Further, the Commission is responsible for the long-term financial stability of  
11 the Library. In this regard, it must do more than just cover the operating  
12 budget from year to year. It must plan for capital improvements, purchase of  
13 replacement equipment, and maintenance of facilities. It must also plan for  
14 the coverage of the unfunded retiree health insurance liability. That means  
15 occasionally making decisions that are unpopular with the public or with SEIU,  
16 such as reducing service hours. However, that does not mean the Commission  
17 is ignoring public opinion or comment. It is charged with making thoughtful  
18 and balanced decisions, taking into account long-term implications.

19  
20 **F6. The Library Commission appears to have no formal training sessions to**  
21 **assist them.**

22 The Commission agrees with this finding.

23  
24 **F7. The Library Director is inappropriately editing meeting minutes.**

25 The Commission disagrees wholly or partially with this finding.

26  
27 Minutes are not meant to be transcripts, and editing is required to summarize  
28 a meeting. The edits cited in the report did not appear to mischaracterize what  
29 occurred at the meeting.

30  
31 **F8. The majority of performance reviews are not being completed on a regular**

1       **basis. There appeared to be no urgency at the library director level to get**  
2       **reviews up to date.**

3       The Commission disagrees wholly or partially with this finding.

4  
5       The Commission agrees that a majority of the employee performance reviews  
6       are not being completed on a regular basis. However, the Commission  
7       disagrees that there is no urgency at the Director level to get the reviews up to  
8       date. Both the Commission and the Director believe that this is a high priority.

9  
10   **F9. The absence of written policies and procedures is causing a lack of follow-**  
11   **through on the expenditure of funds received from the FOL.**

12  
13       The Commission disagrees wholly or partially with this finding.

14       The Commission agrees that the library does not currently have a clear  
15       purchasing/ordering procedure or a designated purchasing manager. The  
16       Commission plans to review the management structure and staffing along with  
17       the purchasing policies to address the problem by June 30, 2013.

18  
19   **F10. Furniture orders for some branches are unnecessarily held up at the**  
20   **Library Director's level.**

21       The Commission disagrees wholly or partially with this finding.

22  
23       The Commission agrees that the furniture orders are held up. However, the  
24       Library does not currently have a designated purchasing manager. The  
25       Commission plans to review the management structure and staffing along with  
26       the purchasing policies to address the problem by June 30, 2013.

27  
28   **RESPONSE TO RECOMMENDATIONS**

29  
30  
31   **R-3. The Library Commission establish a method to facilitate communication**

1           **between the LABs and the Commission.**

2  
3           This recommendation will not be implemented because it is unwarranted.

4  
5           Commissioners attend the LAB meetings and report back to the full  
6           Commission. If an assigned Commissioner cannot make it to the meeting, he  
7           or she will contact another Commissioner to attend. When the Commission  
8           holds a meeting at one of the branches, the members of the local LAB are  
9           invited to meet with the Commission to share their perspective on issues of  
10          common concern. Additionally, individual LAB members are free to  
11          communicate directly with any Commissioner.

12  
13          This year, the Commission sponsored the first LAB Conclave—a joint meeting  
14          of the Commission and LAB members from across the county. Holding such a  
15          session on a regular basis is being reviewed.

16  
17          **R-4. The Library Commission establish a regular monthly schedule for LAB**  
18          **meetings with the library patrons and then monthly with the Library**  
19          **Commission to discuss findings.**

20  
21          This recommendation will not be implemented because it is unwarranted.

22  
23          Each LAB is an individual entity with its own bylaws and has the authority to  
24          set its own meeting schedule. Under the JPA, the Commission does not have  
25          the authority to implement this recommendation.

26  
27          The LABs already meet regularly on the schedule they set, and there is an  
28          established channel for communication between the Commission and the  
29          LABs.

30  
31          **R-5. The Library Commission instruct the director to cease editing meeting**  
32          **minutes. Any corrections or edits should be brought up at the subsequent**  
33          **Library Commission meeting when the minutes are approved.**

34

1 This recommendation will not be implemented because it is unwarranted.

2

3 There are a variety of approaches for creating an official record of meetings.

4 For example, the Board of Supervisors posts informal minutes and videos of  
5 the meetings. The Commission intends to evaluate the role of minutes and  
6 consider the best method for creating a record of its meetings.

7

8

9 **R-10. The library director report to the Library Commission the status of**  
10 **library employee reviews on a monthly basis to ensure compliance with**  
11 **library policies and procedures for reviewing all employees in a timely**  
12 **fashion.**

13

14 The Commission will implement this recommendation.

15

16

November 1, 2011

SEIU  
Local 1021

To SEIU Union Local 1021:

In recent weeks, SEIU has presented a number of concerns regarding budget expenditures and communications with the Sonoma County Library Commissioners. In response to the Union's concerns, the Commission offers the following information regarding difficult budget decisions it has made in the current fiscal year, and the Library's approach to communications.

**1. Sonoma Branch and Burlingame Hall**

SEIU has expressed concerns regarding the use of library funds for renovations to the Sonoma Valley Library branch. However, the Commission has not allocated any Library funds for these renovations. Instead, these renovations are being paid for with \$2.5 million of City of Sonoma redevelopment funds, as well as a generous donation from the Sonoma Friends. The renovations are essential for staff safety, improved ergonomics, and compliance with the Americans with Disabilities Act. The Commission is pleased to take advantage of this opportunity so that the community of Sonoma can benefit from the City's redevelopment funds.

Concerns were raised regarding spending for the temporary location of the Sonoma branch at Burlingame Hall. The Library Commission approved an expenditure of roughly \$400,000 of reserve funds for the temporary location while the Sonoma branch is being remodeled. The alternative to paying for a temporary location would have been to leave the City of Sonoma without a branch for as long as 9 to 12 months. While the Library considered closing down the Sonoma branch, in response to community demand, the Commission opted to maintain services to Sonoma during the period of renovation. The full cost of the temporary accommodations at Burlingame Hall is paid for from our reserve fund for capital improvements, not from our operating budget. Money from the reserve fund for capital improvements is restricted and cannot be allocated to another expenditure, such as salaries.

Contrary to the concerns raised, Burlingame Hall was an affordable and competitive option for temporary relocation. Director Cooper spent a significant amount of time and worked with a Sonoma realtor to locate a building that would suit the needs of the Library. Very few properties

## ATTACHMENT A

met the library's needs, and most suitable properties were not available. The Library was considering the option of installing temporary structures near the building site – one of the most costly options – when Burlingame Hall was suggested.

Part of the cost of Burlingame Hall involved upgrades to the facility for public usage. The upgrades to Burlingame Hall were necessary to comply with ADA regulations and infrastructure needs for service to the public, such as lighting, Internet access and bicycle racks. These upgrades would have been necessary at almost any location we leased, and are the cost of continuing to provide services to the community of Sonoma during the renovation. Director Cooper worked closely with the City of Sonoma and was able to negotiate some of the city permitting requirements in order to save costs.

Concerns were raised because the Commission did not approve a proposed budget prior to initiation of the Burlingame relocation. However, given the uncertainty of potential temporary relocation, the Library could not begin planning until the location was secured. Considering the challenge of finding appropriate space, the budget was submitted in a timely manner.

While spending on a temporary location may seem excessive in the face of reductions to public service hours, the deficit of approximately \$1 million in the 2011-12 operating budget would have remained the same whether or not we renovated the Sonoma Valley branch, and whether or not we opened a temporary location to serve the community of Sonoma during the renovation.

Before giving Director Cooper authority to negotiate or enter into a lease, the Commission provided very clear parameters regarding project costs. Overall, Burlingame Hall has proven to be a cost effective means of continuing services to Sonoma during the remodel.

### **2. Spending for Furniture, Materials and Consultants**

The Commission also provides clear parameters and authority for major expenditures and procurement, whether for a project, negotiating a large vendor contract, or negotiating with the Union.

To further ensure proper expenditure of Library funds, the Library undergoes an independent audit on a yearly basis, which includes multiple presentations to the Commission directly from the auditor. The Library's budget is also approved on an annual basis by the Sonoma County Board of Supervisors.

The Library's primary source of funding is property taxes, which have declined substantially in recent years, resulting in a budget deficit this year of \$1 million. To address this enormous deficit, the Library has had to significantly reduce ongoing costs. To achieve this goal, the Library Commission opted in July to reduce public service hours. This decision was made after a thorough review of budget items, with significant reductions to expenditures wherever possible. The decision was not made lightly.



## ATTACHMENT A

SEIU has complained about the money spent on “consultants.” Ironically, this concern arises from the fact that negotiations with the Union were so challenging, the Commission felt compelled to bring in outside counsel to assist with the negotiations. The Library and Union have been immersed in concentrated negotiations for over six months. The Commission hopes the bargaining teams can quickly resolve outstanding issues, which will end the need for an outside consultant for labor negotiations for the current fiscal year.

### **3. Communication**

Finally, the Library Commissioners take care to seek input and communicate with members of the community and community groups. Members of the Library’s management team, in addition to the director, present directly to the Commission at most meetings. Members of the public and outside organizations may ask to present to the Commission, as well. At least one commissioner attends each Library Advisory Board meeting, where members of the public discuss issues of concern about the Library. And, of course, we take public comments at every meeting.

The Commission is supportive of Director Cooper during these very difficult times. Decisions made this year by Library management and the Commission have been challenging and disheartening at times. While no one likes to see services reduced, the Library cannot turn a blind eye to the drastic reduction in tax and state revenue faced this year.

The Commission is disappointed that the Union has expressed its concerns in such a public attack, which appears to be a negotiating tactic. However, we provide this informational response to address the concerns raised in the spirit of transparency and collaboration.

Sincerely,

Melissa Kelley, Chair  
Sonoma County Library Commission

COUNTY OF SONOMA  
BOARD OF SUPERVISORS  
575 ADMINISTRATION DRIVE, RM. 100A  
SANTA ROSA, CALIFORNIA 95403  
(707) 565-2241  
FAX (707) 565-3778



## ATTACHMENT B

MEMBERS OF THE BOARD

EFREN CARRILLO  
CHAIR

SHIRLEE ZANE  
VICE CHAIR

VALERIE BROWN

DAVID RABBITT

MIKE MCGUIRE

December 2, 2011

Melissa Kelley, Chair  
Sonoma County Library Commission  
211 E St  
Santa Rosa, CA 95404

Dear Chair Kelley:

The Sonoma County Board of Supervisors requests that the Sonoma County Library Commission present a library overview and update at a Board of Supervisors meeting during the first quarter of 2012. Our current Board has not had the pleasure of receiving an update, and in preparation for our budget discussions for 2012-13, we would appreciate hearing about current initiatives, the fiscal state of the Library, as well as an overview of current and proposed capital projects.

Please request that Ms. Cooper contact our Clerk of the Board, Michelle Arrellano, in order to schedule a presentation at an upcoming meeting. Our County Administrator's analyst, Christina Rivera, will be happy to assist you with preparing the item to come to the Board. We look forward to hearing more about the Sonoma County Library system and your important public role.

Best regards,

Efrén Carrillo

Chair, Sonoma County Board of Supervisors

cc: Board of Supervisors Members  
Library Commission Members  
Sandra Cooper, ED Sonoma County Library  
Veronica Ferguson, County Administrator  
Michelle Arrellano



## ATTACHMENT C

- 1 between closing time on Saturday and start of work on Tuesday in September.  
2 (The book returns were locked over the three-day closure over Labor Day.)

3

BOOKDROP COUNTS SEPTEMBER 2011				
BRANCH	9.13.11	9.20.11	9.27.11	AVG
CENTRAL	746	655	569	656.7
CLOVERDALE	233	181	140	184.7
GUERNEVILLE	206	241	239	228.7
HEALDSBURG	716	439	389	514.7
NORTHWEST	661	756	762	726.3
PETALUMA	1153	1020	1077	1083.3
RINCON VALLEY	521	388	573	494.0
ROHNERT PARK (2)	625	842	816	761.0
SEBASTOPOL (2)	1191	838	800	943.0
SONOMA (BH)	435	413	319	389.0
WINDSOR	842	487	440	589.7
<b>TOTALS</b>	<b>7329</b>	<b>6260</b>	<b>6124</b>	<b>6571.0</b>

4

5

6

7

8

9

10

11 **Recommended Solutions**

12 The Library Management Team (LMT) has focused on two goals:

- 13 1. Prevent jamming.
- 14 2. Stop the practice of having items fall on the floor to improve staff working
- 15 conditions as well as minimize damage to materials.

16

17 Since the reduction in service hours, the LMT has taken the following steps:

- 18 1. Emptying the drops themselves in August to understand the issue first-
- 19 hand.

## ATTACHMENT C

- 1 2. Engaging a substitute driver and a Library Technician II to visit the majority  
2 of the branches at least once a day on Mondays to empty drops, change out  
3 book bins, and/or place items on book trucks. The two are using an extra  
4 library pick-up, and substitute drivers have clearance to enter libraries  
5 when they are closed (including a master key and master security code).
- 6 3. Working with the Facilities Services staff and Branch Managers to identify  
7 ways to retrofit the book returns so that we can minimize the problems.  
8 The plans are summarized below.
- 9 4. Exploring the feasibility and cost of automated returns and materials  
10 handling for four of the libraries—Petaluma, Rohnert Park-Cotati,  
11 Sebastopol, and Rincon Valley to help control staff workload and reduce  
12 repetitive stress injuries.

13

14 In general, the retrofit solution includes:

- 15 1. Raising the return slots so that they can accommodate larger, deeper return  
16 bins.
- 17 2. Wherever possible, replacing the single slot with dual returns—one for  
18 books and one for media.
- 19 3. Buying multiple bins for libraries with a high volume of returns so a full bin  
20 can be replaced with an empty one.

21

### 22 **Financial Implications**

23 A budget for the book return retrofit, which requires Commission approval so  
24 that we can proceed, is included with this report.

## ATTACHMENT C

1 Once we retrofit the returns, we are assuming that we will have resolved the  
2 two major issues (jamming; materials on the floor); however, we are also  
3 assuming that someone will still have to visit some branches to switch out the  
4 bins in the returns anytime the Library is closed two days or more.

5

6 Right now, we are using funds from the extra help budget to pay for staff time  
7 to visit the libraries on Monday. Any long-term staffing solution will require  
8 further discussion and Commission approval. If we continue to use extra  
9 help, the cost will be approximately \$9,000 for the rest of this fiscal year. If we  
10 added staff hours to the regular budget, the cost could be up to \$16,000.

11

12 We have considered having regular branch staff work on Mondays to empty the  
13 book drops but believe having non-public service staff is preferable. If we use  
14 regular part-time or full-time branch staff, we would either have to add  
15 additional staff hours or reduce staff who can cover absences on days the  
16 Library is open. If staff flexed their schedules to empty bookdrops, some  
17 people would be working six days a week, increasing the risk of repetitive  
18 stress injury. Paying one or two staff members to visit selected libraries system  
19 wide on Mondays is preferable from our perspective.

20

### 21 **Locking Book Returns**

22 The Library locked book drops during the holiday closures in 2009 and 2010 to  
23 control workload. The Commission agreed with this approach along with

## ATTACHMENT C

1 “darkening” all online services to reinforce the message that all those services  
2 require staff and/or financial resources.

3

4 When we planned for the reduction in service hours, we told the staff that we  
5 would lock the book returns anytime the Library was closed for three or more  
6 days. The first long weekend after the change in service hours was Labor Day,  
7 and the Library was closed for three days. The locking resulted in complaints  
8 from the Friends of the Healdsburg Regional Library as well as comments at  
9 the Guerneville Library Advisory Board.

10

11 After talking with the Branch Managers, we would like the Commission’s advice  
12 on this approach to locking the book drops.

13 1. We leave the book drops open for most closures and engage the substitute  
14 driver and Tech II to visit libraries on both the Saturday and Monday of  
15 three-day weekends. We have already arranged for them to visit libraries on  
16 the Friday after Thanksgiving.

17

18 2. We continue to lock the book drops for the 10-day holiday/MTO closure and  
19 also have all online services “go dark.” Not only will this help remind the  
20 public that they cannot take the Library for granted—but it will also help  
21 mitigate workload caused by the deluge of returned materials and requests  
22 to pull.

23

24

ATTACHMENT C

BUDGET FOR BOOK DROP RETROFIT

DOCUMENT #10.2.2 (11.2.11)

PRIORITY	BRANCH	MODIFICATION	ITEMS TO ORDER	
			Description & Number	Price
6A	Cloverdale	Dual media slots with 2 carts	38-6060 (2)	\$3,998.00
6B	Guerneville		Dual return	\$1,999.00
			38-6060 (2)	\$3,998.00
?	Healdsburg	Reconfigure closet; 2 dual return & new bins	Dual return	\$1,999.00
			38-6060 (2)	\$3,998.00
?	Petaluma		Dual return	\$1,999.00
			30-6060(2) 30-6055(2)	\$2,890.00
2	Rohnert Park-Cotati	Modify the chutes/taller bins for books	Dual return	\$1,999.00
			30-6060(2)	\$1,590.00
1	SR: Central	Order additional bins	30-9050(2)	PAID
			see Central's carts below	
4	SR: Northwest	2 single drops/raise to max height & switch door	30-6060(4)	\$3,180.00
			single return(2)	\$2,798.00
3	SR: Rincon	Raise, 2 slots, new bins	30-6055(2) 30-9060(2)	\$2,890.00
			Dual return	\$1,999.00
	Sebastopol	Reconfigure in building update		
	Sonoma Valley	None required		
	Windsor	Dual return on front/close current drop	30-6060(2) 30-6055(2)	\$2,890.00
	Occidental	Maybe a small exterior bin	Dual return	\$1,999.00
		This item is not from Kingsley	Return & cart shipping	\$2,805.00
			Hole cutting	\$200.00
			Recommended Contingency of 10%	\$4,800.00
			Taxable total	\$4,500.00
			Total	\$52,531.00
			Tax 8.5%	\$4,448.14
			Total	\$56,979.14
			shipping	\$841.36
			Cost of Centrals carts	\$2,998.00
			Central shipping	\$187.30
			Grand Total	\$61,005.80

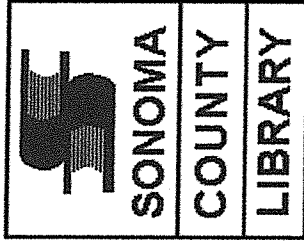
Going with the duraSteel carts will save about 40% vs the durallight carts.

6	duraSteel 38-6060	\$1,999.00
6	duraSteel 30-6060	\$795.00
4	duraSteel 30-6050	\$650.00
5	Dual return	\$1,999.00
2	single return	\$1,399.00
23	shipping	\$176.00 per unit for carts or see quote 1028_3

Note: Central Library was recently retrofitted with 2 slots. Two additional carts will allow them to be switched out.



**SONOMA COUNTY LIBRARY**  
**Performance Management Program Work Plan**



Employee \_\_\_\_\_ Position \_\_\_\_\_ Library Director \_\_\_\_\_  
Evaluator \_\_\_\_\_ Position \_\_\_\_\_ Commissioners \_\_\_\_\_

Date of Work Planning Meeting \_\_\_\_\_  
Date of Interim Meeting \_\_\_\_\_  
Date of Annual Performance Evaluation \_\_\_\_\_  
Work plan is for period of \_\_\_\_\_ through \_\_\_\_\_

*(Original of signed form to: Director and Commission Chair; Copy to Commission)*

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Interaction with others	<p>Treats everyone with respect</p> <p>Pays attention, listens carefully and asks questions to determine the person's needs</p> <p>Willingly handles problems, complaints, and special requests</p> <p>Responds appropriately</p> <p>Negotiates issues calmly and professionally, provides options when possible, and explains rationale positively when denials are required</p> <p>Follows through</p>			
Practices Continuous Learning	<p>Looks for opportunities to use and expand knowledge, skills and experience</p> <p>Takes advantage of continuing education opportunities</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Practices Continuous Learning (continued)	<p>Keeps current and embraces changes</p> <p>Readily uses and becomes proficient in new technology – both hardware and software</p> <p>Uses the Internet, Intranet, and appropriate software applications including e-mail, wikis, Microsoft Word and Excel as necessary to perform duties of position</p>			
Models Self-Management	<p>Takes responsibility for own actions and mistakes</p> <p>Exercises accountability and dependability with job tasks</p> <p>Remains open to constructive feedback</p> <p>Models courteous and professional behavior</p> <p>Handles stress effectively and calmly</p> <p>Expresses concern appropriately</p> <p>Effectively plans and manages time</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Civil and Ethical Behavior	<p>Is truthful and honest in actions and communications</p> <p>Respects patron and staff's rights to privacy</p> <p>Separates personal views and professional duties</p> <p>Follows Library's policies and procedures consistently</p>			
Leadership and Teamwork	<p>Respects the opinions, actions and ideas of others</p> <p>Is flexible</p> <p>Participates productively with staff</p> <p>Encourages staff to develop skills and take more responsibility</p> <p>Approaches issues with a problem-solving attitude</p> <p>Engages in creative problem solving</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
<p>Effective Communication</p>	<p>Presents ideas in a clear, concise and organized manner</p> <p>Chooses appropriate form of communication</p> <p>Chooses appropriate words</p> <p>Communicates to the appropriate parties</p> <p>Reads communications</p> <p>Listens attentively</p> <p>Asks clarifying questions</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Plan and review library services			
Oversee day to day operations			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Formulate budget			
Administer budget			
Oversee the hiring and development of staff			
Oversee the development of library collections			
Oversee the maintenance of library facilities			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Oversee the maintenance of library facilities			
Oversee the development and integration of new technology			
Oversee the preparation of library statistics and related reports			



ATTACHMENT D

PERFORMANCE MANAGEMENT PROGRAM  
DEVELOPMENT PLAN

Development planning is an opportunity to select activities and / or training, which will enhance an employee's knowledge, skills, and / or abilities. Indicate below the activities and / or training to be completed during this review period (*Optional*).

Activities and / or Training	Completion Date

WORK PLANNING MEETING SUMMARY AND COMMENTS:					
Director's Signature <i>(Acknowledges that a discussion has taken place regarding your Work Plan and Development Plan)</i>	Date	Commissioner's Signature	Date	Commissioner's Signature	Date

ATTACHMENT D

PERFORMANCE MANAGEMENT PROGRAM  
INTERIM MEETING

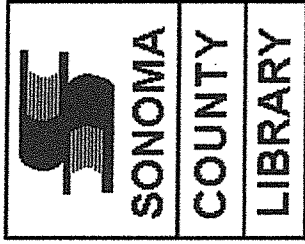
<p><b>INTERIM MEETING SUMMARY AND COMMENTS:</b></p>				
<p><b>Director's Comments:</b></p>				
<p><b>Director's Signature</b> <i>(Acknowledges that a discussion has taken place regarding your progress to date)</i></p>	<p><b>Date</b></p>	<p><b>Commissioner's Signature</b></p>	<p><b>Date</b></p>	<p><b>Commissioner's Signature</b></p>

ATTACHMENT D

PERFORMANCE MANAGEMENT PROGRAM  
ANNUAL PERFORMANCE EVALUATION

ANNUAL PERFORMANCE EVALUATION SUMMARY AND COMMENTS:			
Director's performance: <input type="checkbox"/> Meets expectations <input type="checkbox"/> Does not meet expectations			
Director's Comments:			
Director's Signature <i>(Does not mean you agree but that your performance has been reviewed with you)</i>	Date	Commissioner's Signature	Date

**SONOMA COUNTY LIBRARY**  
Performance Management Program Work Plan



Employee \_\_\_\_\_ Director \_\_\_\_\_ Position \_\_\_\_\_ Library Director \_\_\_\_\_  
Evaluator \_\_\_\_\_ Commissioners \_\_\_\_\_ Position \_\_\_\_\_ Commissioners \_\_\_\_\_  
Date of Work Planning Meeting \_\_\_\_\_  
Date of Interim Meeting \_\_\_\_\_  
Date of Annual Performance Evaluation \_\_\_\_\_  
Evaluation is for period of \_\_\_\_\_ through \_\_\_\_\_

*(Original of signed form to: Director and Commission Chair; Copy to Commission)*

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Interaction with others	<p>Treats everyone with respect</p> <p>Pays attention, listens carefully and asks questions to determine the person's needs</p> <p>Willingly handles problems, complaints, and special requests</p> <p>Responds appropriately</p> <p>Negotiates issues calmly and professionally, provides options when possible, and explains rationale positively when denials are required</p> <p>Follows through</p>			
Practices Continuous Learning	<p>Looks for opportunities to use and expand knowledge, skills and experience</p> <p>Takes advantage of continuing education opportunities</p> <p>Keeps current and embraces changes</p> <p>Readily uses and becomes proficient in new technology – both hardware and software</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Practices Continuous Learning (continued)	Uses the Internet, Intranet, and appropriate software applications including e-mail, wikis, Microsoft Word and Excel as necessary to perform duties of position			
Models Self-Management	<ul style="list-style-type: none"> <li>Takes responsibility for own actions and mistakes</li> <li>Exercises accountability and dependability with job tasks</li> <li>Remains open to constructive feedback</li> <li>Models courteous and professional behavior</li> <li>Handles stress effectively and calmly</li> <li>Expresses concern appropriately</li> <li>Effectively plans and manages time</li> </ul>			
Civil and Ethical Behavior	Treats all with respect, fairness and good faith			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Civil and Ethical Behavior (continued)	<p>Is truthful and honest in actions and communications</p> <p>Respects patron and staff's rights to privacy</p> <p>Separates personal views and professional duties</p> <p>Follows Library's policies and procedures consistently</p>			
Leadership and Teamwork	<p>Respects the opinions, actions and ideas of others</p> <p>Is flexible</p> <p>Participates productively with staff</p> <p>Encourages staff to develop skills and take more responsibility</p> <p>Approaches issues with a problem-solving attitude</p> <p>Engages in creative problem solving</p>			
Effective Communication	<p>Presents ideas in a clear, concise and organized manner</p> <p>Chooses appropriate form of communication</p> <p>Chooses appropriate words</p>			

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
CORE COMPETENCIES

Core Competencies	Results / Expectations	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Effective Communication (continued)	<ul style="list-style-type: none"> <li>Communicates to the appropriate parties</li> <li>Reads communications</li> <li>Listens attentively</li> <li>Asks clarifying questions</li> </ul>			



ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Plan and review library services	<p>Move forward with self-check as budget allows</p> <p>Move forward with e-books providing opportunity for commission and public to comment</p> <p>Review various programs and services with Commission throughout the year</p>		
Oversee day to day operations	Effectively provide services to patrons		
Formulate budget	Direct the allocation of the library resources to maximize continued services to the public		
Administer budget	Month to month tracking of financials		

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Administer budget (continued)			
Oversee the hiring and development of staff	Implement system wide employee evaluations on an annual basis		
Oversee the development of library collections	Continue to develop e-books program		

ATTACHMENT D

PERFORMANCE MANAGEMENT WORK PLAN  
KEY RESPONSIBILITIES

Key Responsibilities	Goals / Additional Expectations	How Monitored Source / Frequency	Actual Results
Oversee the maintenance of library facilities	Work with the cities and counties to provide safe, clean, inviting facilities for the public and for staff		
Oversee the development and integration of new technology	Keep current with technology available to increase services to public and to decrease workload on staff		
Oversee the preparation of library statistics and related reports	Implement annual report with stats to post on State of the Library.		

# ATTACHMENT D

## PERFORMANCE MANAGEMENT PROGRAM DEVELOPMENT PLAN

Development planning is an opportunity to select activities and / or training, which will enhance an employee's knowledge, skills, and / or abilities. Indicate below the activities and / or training to be completed during this review period (*Optional*).

Activities and / or Training	Completion Date

### WORK PLANNING MEETING SUMMARY AND COMMENTS:

Director's Signature <i>(Acknowledges that a discussion has taken place regarding your Work Plan and Development Plan)</i>	Date	Commissioner's Signature	Date

ATTACHMENT D

PERFORMANCE MANAGEMENT PROGRAM  
INTERIM MEETING

<p><b>INTERIM MEETING SUMMARY AND COMMENTS:</b></p>				
<p><b>Director's Comments:</b></p>				
<p><b>Director's Signature</b> <i>(Acknowledges that a discussion has taken place regarding your progress to date)</i></p>	<p><b>Date</b></p>	<p><b>Commissioner's Signature</b></p>	<p><b>Date</b></p>	<p><b>Commissioner's Signature</b></p>

ATTACHMENT D

PERFORMANCE MANAGEMENT PROGRAM  
ANNUAL PERFORMANCE EVALUATION

ANNUAL PERFORMANCE EVALUATION SUMMARY AND COMMENTS:

Director's performance:  Meets expectations  Does not meet expectations

Director's Comments:

Director's Signature

*(Does not mean you agree but that your performance has been reviewed with you)*

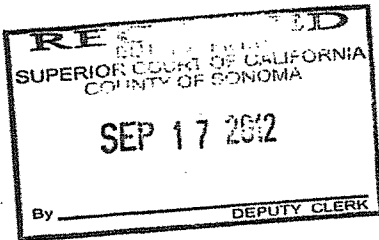
Date


Commissioner's Signature

Date

Commissioner's Signature

Date



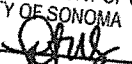
Approved:   
Superior Court Judge  
Date: SEP 17 2012

September 13, 2012

The Honorable Rene Auguste Chouteau  
Presiding Superior Court Judge  
Hall of Justice  
600 Administration Drive  
Santa Rosa, CA 95403

**FILED**

SEP 17 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY  DEPUTY CLERK

Re: Sonoma County Civil Grand Jury  
*Was Justice Served?*  
Report Date: June 28, 2012

Dear Judge Chouteau:

This is a response to the Sonoma County Civil Grand Jury report dated June 28, 2012, "*Was Justice Served?*" ("the Report") and is provided in accordance with the requirements of California Penal Code § 933 (c), and § 933.05 (a).

At its meeting on September 12, 2012, the Cloverdale City Council reviewed and approved the factual responses below to Findings F1, F2 and F3 of the Report, as requested on or about June 28, 2012 by the Grand Jury of Mark D. Tuma, City of Cloverdale Chief of Police. The responses are set forth below. No recommendations were made in the Report as to actions or procedures of the City of Cloverdale or its Police Department; therefore, no response is made to any of the Report's recommendations.

The City would like to express its appreciation to the Civil Grand Jury for its careful review of this matter, particularly as to Findings F1, that the Cloverdale Police Department did not show favoritism to the juvenile involved in the incident under review or to his family; and to F3, that the Cloverdale Police Department followed all appropriate procedures to arrest and detain the juvenile, and that proper documentation was submitted to the Sonoma County District Attorney within the prescribed time allotted for filing.

Chief Tuma's response to Findings F1 through F3, which the City Council has reviewed and with which it agrees, is as follows:

F1: The City agrees that neither it nor its Police Department showed favoritism toward the juvenile or the juvenile's family. As the Report indicates, the juvenile was arrested and taken to Juvenile Hall, and the arrest records sent promptly to the District Attorney.

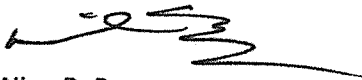
F2: The City agrees that based on notification to the City by the Office of the District Attorney, the case was adjudicated before the Cloverdale Police Department completed its investigation. The City had no knowledge of the adjudication until after it occurred.

F3: The City agrees that its Police Department followed appropriate procedures. The Report summary notes that the Police Department did not tow the vehicle or seize the juvenile's cell phone, but did not

make any recommendations to the Cloverdale Police Department regarding this note or any of the Findings. The Cloverdale Police Sergeant on the scene viewed and photographed the vehicle damage and had obtained an admission from the juvenile. As to the cell phone, messages and texts can be erased from the phone and the more reliable means of obtaining information is to get the information directly from the cell provider, if necessary. The Police Sergeant made judgment calls as to the vehicle and the cell phone that did not affect the outcome of the case.

Please let me know if you have any questions.

Sincerely,



Nina D. Regor  
City Manager

1942987.1





**SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE  
RESPONSE TO THE 2011-2012 GRAND JURY REPORT**

**WAS JUSTICE SERVED**

**Finding F2, Page 5:**

*The case was adjudicated before the investigation was completed.*

**Response:** The respondent disagrees partially with this finding.

The juvenile case was filed based upon the information available in order to accommodate the unique calendaring in juvenile court. The juvenile's case was adjudicated within three days of the incident, prior to the death of the victim. The subsequent event triggered the filing of an additional charge. As the Grand Jury notes in its report, the nature of the case changed after the death of the victim. The District Attorney does agree that communication with the Cloverdale Police Department could be improved with regard to completing an investigation throughout the pendency of the case.

**Finding F5, Page 5:**

*The District Attorney's Office failed to comply with Marsy's Law as it relates to the complainant.*

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

The Victims' Bill of Rights Act of 2008 (Marsy's Law) amended the California Constitution to add Article I, Section 28(b), enumerating protections for victims of crime. The crux of the law is that victims are entitled to reasonable notice of criminal proceedings, an opportunity to participate in and/or comment upon the proceedings, restitution, protection from the defendant or anyone acting on his/her behalf. It is codified in California Penal Code section 679 et seq.

At the time the case in question was received and filed by the District Attorney's Office, there were policies in effect regarding victim notification, recommending contact at the earliest reasonable time, and prior to a disposition, as required by law. However, at the time the case was filed, the District Attorney's Office did not have a specific policy regarding personal contact with victims or survivors prior to the filing of a petition in juvenile court. The procedure in place was that upon filing a petition, a letter would be sent to the victim at the address given in the police report entitled Restitution Request Form. It noted that a victim of crime who would like assistance could contact the Victim Assistance Center. A second Victim Impact statement was sent as well. If the victim contacted the office, a victim witness advocate would follow up with a phone call. Thus, the tenets of Marsy's Law were adhered to by virtue of letter notification. Because of

the subsequent death of the victim and the rapid resolution of the case, the notification was faulty. When the new administration took office on January 3, 2011, a written policy was enacted. In a Memorandum dated July, 17, 2011, the district attorney outlined required contact with victims at the earliest stage in the proceedings. Personal contact is now made with survivors in a homicide case once notification is made by the Coroner's Office. A letter continues to issue in all cases, and a phone call is placed by the victim witness staff to the victim or survivor in most cases involving victims, and all cases involving violence or death. Some property crime victims do not receive a personal call in addition to the letter. With each letter, a brochure is enclosed, that includes an insert enumerating Marsy's Law.

**Recommendation 1, Page 5:**

*The Sonoma County District Attorney's Office ensure strict adherence to Marsy's Law.*

**Response:** The Recommendation was already implemented.

The District Attorney issued a Memorandum on January 17, 2011 entitled Ensuring Victims' Rights. A copy was provided to the Grand Jury. Subsequently, a policy was developed and published to the office enumerating responsibilities with regard to notification to victims and the provision of services. The Victim Services division of the District Attorney's office has received training on Marsy's Law, and has provided training to the attorneys with regard to services that are offered to victims and witnesses. In addition, the attorneys have been trained on Marsy's Law. We have printed up copies of Marsy's Law which are included in a revised Victim Services brochure that is mailed out to all victims when a complaint issues.

**Recommendation 2, Page 5:**

*The District Attorney implement procedures to improve communication with all Sonoma County law enforcement agencies.*

**Response:** The Recommendation was already implemented.


Upon taking office on January 3, 2011, the district attorney assigned a chief deputy district attorney to act as liaison between this office and the law enforcement agencies in the county. The chief DDA has met informally with management members of each agency, and the district attorney has informed the Chiefs of all the agencies that this individual is available should any questions or problems arise. Additionally, the district attorney, and Chief Investigator, attend monthly Sonoma County Law Enforcement Chiefs' Association (SCLECA) meetings, and meet regularly with law enforcement officials to discuss matters of mutual concern. The lines of communication are addressed on a regular basis to ensure they are working well.

Approved:   
Superior Court Judge

Date: OCT 01 2012  
SONOMA COUNTY BOARD OF SUPERVISORS  
RESPONSE TO GRAND JURY REPORT

**FILED**

SEP 24 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY  DEPUTY CLERK

Report Title: Vote Green, Save Green – Vote by Mail

Report Date: June 28, 2012

Response by: Sonoma County Board of Supervisors

#### RECOMMENDATIONS

**R1 The Sonoma County Board of Supervisors support the Registrar of Voters in attempts to bolster the number of county residents who wish to vote by mail by assisting the Registrar to find funding to promote vote-by-mail participation.**

**Board of Supervisors' Response:** This recommendation has not yet been implemented, but will be implemented in the future as funds become available.

The Board is committed to ensuring that the voters of Sonoma County have every opportunity to participate in the democratic process. Sonoma County has historically had high voter turnout and a robust Vote by Mail program. The Registrar of Voters' Office intends to increase outreach efforts encouraging voters to request Permanent Vote by Mail status using existing funds by redesigning mailers sent to all registered voters. More can be done to educate voters as to the advantages of participating in the Vote by Mail program. As funds become available for this purpose the Board will work with the Registrar to promote the Vote by Mail process.

**R2 The Sonoma County Board of Supervisors support the Registrar of Voters need to replace the outdated elections management ballot counting system.**

**Board of Supervisors' Response:** This recommendation will not be implemented because it is not warranted.

Computer and voting systems in California have required certification by the Secretary of State since the early 1960's. Following the Presidential Election of 2000, "punchcard" voting systems were decertified in California. Numerous counties were forced to procure new voting systems, at significant cost. The DFM Mark-a-Vote voting system, which continues to be used in Sonoma, Lake and Madera counties, was grandfathered into the certification process due to its longevity in California and its proven accuracy and transparency.

It should also be noted that Sonoma County uses the Hart eSlate Disabled Access Units (DAU's) for voters with disabilities, to allow unassisted voting at the polls. Votes cast on the DAU's are printed out and duplicated on Mark-A-vote duplicate ballot cards and tallied by the BC Win vote counting system with all other ballots cast. This combination of systems is necessary for Sonoma County to be in compliance with the Help America Vote Act.

Voting and ballot counting systems are very expensive, running in the millions of dollars. In the event a new voting system were to be approved for use in California that was proven to be accurate, transparent and more cost effective than the current Mark-A-Vote system, the Board would certainly consider a recommendation from the Registrar of Voters and the County Administrator to invest in a new system, taking into consideration available funding.

**R3 The Sonoma County Board of Supervisors support the legal liaison to the state legislature to promote changing the law allowing Sonoma County to require 100% vote-by-mail.**

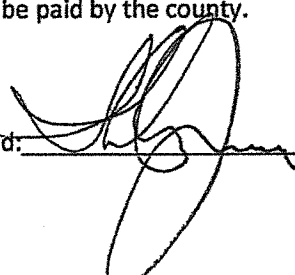
**Board of Supervisors' Response:** This recommendation has not yet been implemented, but will be implemented in the 2013 Sonoma County Legislative Program.

Annually the Board of Supervisors puts forth Sonoma County's State and Federal Legislative Program identifying those legislative proposals which the Board wishes to advance. In the 2013 Program the Board will include support of legislative efforts to allow counties to voluntarily convert to all Vote by Mail elections, if the percentage of Permanent Vote by Mail voters equals or exceeds a certain percentage of the number of registered voters in a county, providing drop off locations established on election day and that return postage need not be paid by the county.

Date:

9-21-12

Signed:

A handwritten signature in black ink, appearing to be "John", written over a horizontal line.

Approved:   
AUG 27 2012 Superior Court Judge

Date: \_\_\_\_\_



# SONOMA COUNTY

Clerk-Recorder-Assessor

www.sonoma-county.org/cra

**FILED**

## ADMINISTRATION

### JANICE ATKINSON CLERK-RECORDER- ASSESSOR

585 Fiscal Dr., Rm. 104F  
Santa Rosa, CA 95403  
Tel: (707) 565-1877  
Fax: (707) 565-1364

**CELIA PETERSON**  
Accounting Manager  
585 Fiscal Dr., Rm. 103F  
Santa Rosa, CA 95403  
Tel: (707) 565-3245  
Fax: (707) 565-3388

**RAY LEONARD**  
Admin. Services Officer  
585 Fiscal Dr., Rm. 104F  
Santa Rosa, CA 95403  
Tel: (707) 565-1880  
Fax: (707) 565-1364

## ASSESSOR DIVISION

**WILLIAM F. ROUSSEAU**  
Chief Deputy Assessor  
585 Fiscal Dr., Rm. 104F  
Santa Rosa, CA 95403  
Tel: (707) 565-1883  
Fax: (707) 565-1364

## COUNTY CLERK DIVISION

2300 County Ctr. Dr. Ste B177  
Santa Rosa, CA 95403  
Tel: (707) 565-3800  
Fax: (707) 565-3957

## RECORDER DIVISION

P.O. Box 1709  
585 Fiscal Dr., Rm. 103F  
Santa Rosa, CA 95402  
Tel: (707) 565-2651  
Fax: (707) 565-3388

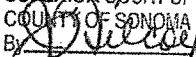
## REGISTRAR OF VOTERS DIVISION

**GLORIA COLTER**  
Asst. Registrar of Voters  
P.O. Box 11485  
435 Fiscal Dr.  
Santa Rosa, CA 95406  
Tel: (707) 565-6800  
Toll Free (CA only):  
(800) 750-VOTE  
Fax: (707) 565-6843

August 8, 2012

The Honorable Rene Chouteau ✓  
Presiding Judge of the Superior Court  
600 Administration Dr.  
Santa Rosa, CA 95402

AUG 27 2012

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
By  DEPUTY CLERK

Re: Response to Grand Jury Report: "Vote Green, Save Green – Vote by Mail"  
Registrar of Voters Division, County Clerk-Recorder-Assessor Department

Dear Judge Chouteau:

Following is the Registrar of Voters' required response to recommendations R4 in regard to the 2011-12 Grand Jury Report investigation titled "Vote Green, Save Green – Vote by Mail." I would like to thank all members of the Grand Jury for the research conducted on vote by mail in Sonoma County. We share the Grand Jury's enthusiasm for the cost effectiveness and efficiencies associated with expanding the Permanent Vote by Mail Program in Sonoma County and hopefully eventually converting to all Vote by Mail elections through changes in State Law.

### Response to Recommendation: (2011-2012 Grand Jury Report - Pages 8-11)

**R4 The office of the Registrar of Voters develop some way(s) to communicate to the voters of Sonoma County the qualifications and benefits of voting by mail.**

**Registrar of Voters' Response:** *This recommendation been partially implemented, but will be expanded in the future.*

The recommendation has been minimally implemented in the past, and will be fully implemented in the future. Since state law was changed in 2002, allowing any voter to apply for Permanent Vote by Mail status, the Registrar of Voters has provided numerous opportunities for voters to do so. Prior to each election voters who are not Permanent Vote by Mail voters receive Sample Ballot booklets that include Vote by Mail applications, with check boxes allowing voters to opt for Permanent Vote by Mail status. Further, in all but two regular statewide elections those voters who are not Permanent Vote by Mail voters have also been sent a separate postcard well in advance of the election providing an opportunity to apply for a Vote by Mail ballot and/or Permanent Vote by Mail status.

To date, when providing opportunities to apply for Vote by Mail ballots or Permanent Vote by Mail status, communications have been passive, maintaining a neutral tone, and have not explained the cost benefits or other advantages of voting by mail. Beginning with the postcard Vote by Mail application that will be sent sixty days prior to the November 6, 2012, General Election, future opportunities to apply for Vote by Mail ballots will include information regarding the benefits of becoming a Permanent Vote by Mail voter. In addition, a series of filler pages will be developed for the Sample Ballot booklet, which is sent to voters who are not already Permanent Vote by Mail voters. These pages will describe the qualifications to become a Permanent Vote by Mail voter and the benefits of doing so. The pages will also explain the importance of returning Vote by Mail ballots in a timely manner, and the necessity of having a recent signature on file for verification purposes. These pages will have priority placement, whenever filler pages are needed in the booklet.

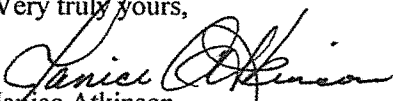
As time and resources allow, the Division will provide articles to local media and organizations regarding voting by mail and conduct Vote by Mail informational meetings for campaigns interested in promoting Vote by Mail as part of their political efforts.

As Registrar of Voters I regularly discuss the benefits of voting by mail at speaking engagements and will continue to do so. I will also advise the incoming Registrar of Voters, to assume office upon my retirement as to the importance of the Permanent Vote by Mail program, and recommend that he/she champion this program and work towards legislation allowing for all Vote by Mail elections.

#### **Registrar of Voters' Conclusion**

Again, I would like to thank the 2011-12 Grand Jury for the time and effort that went into the investigation of Sonoma County's voting process. Elections have become exceedingly complex and the ability to sort through and digest the information requested and provided was no simple task. I would like to clarify that the statement in the report that signatures on Vote by Mail ballot envelopes are verified by machine – in actuality the signatures are captured by machine and are uploaded to the Election Information Management System where they are visually compared with the signatures on file from the voters' registration cards. Signatures in question are reviewed by management and referred back to the voters for remedy.

Very truly yours,

  
Janice Atkinson  
Sonoma County Clerk-Recorder-Assessor

- c. Sonoma County Board of Supervisors  
Superior Court Executive Officer  
Veronica Ferguson, Sonoma County Administrator  
Gloria Colter, Assistant Registrar of Voters

**FILED**

**AUG 27 2012**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
By: [Signature] DEPUTY CLERK

Approved: [Signature]  
Superior Court Judge  
Date: AUG 27 2012

**RESPONSE TO GRAND JURY REPORT FORM**

**Report Title:** 2011/2012 Sonoma County Civil Grand Jury Final Report

**Report Date:** June 27, 2012

**Response by:** Robert M. Ochs **Title:** Chief Probation Officer

**FINDINGS**

- I (we) agree with the findings numbered: F1-F6
  - I (we) disagree wholly or partially with the findings numbered: \_\_\_\_\_
- (Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered \_\_\_\_\_ have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach 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.)
- Recommendations numbered R1 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 8/22/12 Signed: [Signature]

Number of pages attached 1



# SONOMA COUNTY

## PROBATION DEPARTMENT

Robert M. Ochs  
Chief Probation Officer



August 23, 2012

Honorable Rene Chouteau  
Presiding Judge of the Superior Court  
600 Administration Drive, Courtroom 15  
Santa Rosa, CA 95403

RE: Grand Jury Inspection of the Sonoma County Juvenile Hall

### REQUIRED RESPONSE(S)

R1. The Juvenile Hall administrative staff continues to collect and to analyze data to determine the program's effectiveness on the recidivism rate.

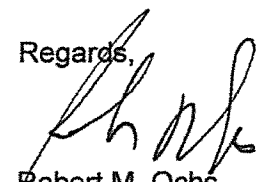
### RESPONSE

The recommendation will not be implemented. However, very similar and more meaningful data will be calculated during this Fiscal Year.

While a major goal of the juvenile justice system is to rehabilitate youthful offenders, the Juvenile Hall is only a small part of the system, and is designed primarily for short-term detention. Therefore, the Juvenile Hall by itself cannot be expected to have a significant impact on recidivism. The more important measure is the effect that the entire juvenile justice system has on recidivism.

The Chief Probation Officers of California have recently agreed on a definition of recidivism, which is, "A subsequent criminal adjudication while on probation." Sonoma County Probation will be using this and other definitions in its efforts to calculate and describe recidivism in the juvenile justice system. This information will become part of ongoing assessments of the functioning of the juvenile system, and will be helpful in evaluating program effectiveness. The Probation Department has been increasingly incorporating programs that have been shown to reduce recidivism, and it is hoped that data supports these recent local efforts.

Regards,

  
Robert M. Ochs  
Chief Probation Officer

**Adult Probation Services**  
600 Administration Dr. 104J  
Santa Rosa, CA 95403  
(707) 565-2149  
FAX (707) 565-2503

**Juvenile Probation Services**  
7425 Rancho Los Guillicos Rd  
Dept. B  
Santa Rosa, CA 95409-6595  
(707) 565-6229  
FAX (707) 565-6329

**Juvenile Hall**  
7425 Rancho Los Guillicos Rd  
Dept A  
Santa Rosa, CA 95409-6595  
(707) 565-6300  
FAX (707) 565-6393

**Supervised Adult Crews**  
300 Fiscal Drive  
Santa Rosa, CA 95403  
(707) 565-1175  
Fax (707) 565-1185

**Probation Camp**  
7400 Steve Olson Lane  
Forestville, CA 95436  
(707) 565-8900  
FAX (707) 565-8903

**Administrative Services**  
600 Administration Dr, 104J  
Santa Rosa, CA 95403  
(707) 565-2149  
FAX (707) 565-2878

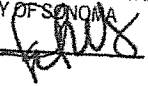
**Sierra Youth Center  
Juvenile Weekend Crew**  
538 Eliza Way  
Santa Rosa, CA 95409  
(707) 565-6306  
FAX (707) 565-6296

Approved:   
Superior Court Judge

Date: OCT 01 2012 SONOMA COUNTY BOARD OF SUPERVISORS  
RESPONSE TO GRAND JURY REPORT

**FILED**

SEP 24 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY  DEPUTY CLERK

Report Title: Sonoma County Pension Increases in 2002 – Legal or Not?

Report Date: June 28, 2012

Response by: Sonoma County Board of Supervisors

**FINDINGS**

**F1. The California Employees Retirement Law requirements for approving the county pension in 2002 do not appear to have been followed.**

**Board of Supervisors response:** The County agrees in part and disagrees in part with the finding. Many of the procedural requirements in the Grand Jury Report did not apply. It appears that the Grand Jury may have been referring to a later version of a statute and to requirements that were not in place in 2003 when the enhanced retirement benefits were adopted. Based on a review of historical documents, it appears that the County substantially complied with the procedural requirements, with the exception of one procedural notice requirement. Documents could not be located to clearly demonstrate that the County made the actuarial cost impacts public at a public meeting at least two weeks prior to the adoption of the enhanced retirement benefits. Going forward, the Board of Supervisors shall ensure that actuarial cost estimates are made available to the public in a timely manner.

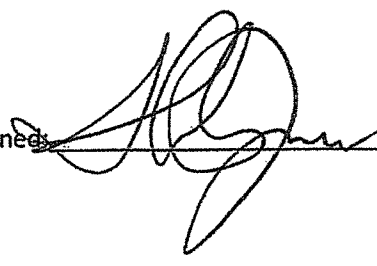
**RECOMMENDATIONS**

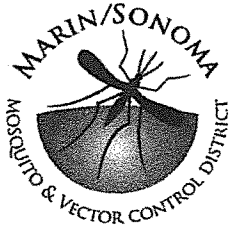
**R1 The Board of Supervisors examine the procedures and actions taken when the pension increase was approved in 2002 to determine if the required procedures were followed.**

**Board of Supervisors' Response:** The recommendation has been implemented. The Office of County Counsel has examined historical documents and the procedures and actions taken when the enhanced retirement benefits were adopted to determine compliance with the required procedures. That information was provided to the Board of Supervisors in a report.

**R2 The Board of Supervisors obtain legal advice on how to proceed regarding current pensions if legal procedures were not followed in 2002.**

**Board of Supervisors' Response:** This recommendation has been implemented. The Office of County Counsel determined there was substantial compliance with the applicable statutes and provided the Board of Supervisors with a report. The report includes a legal analysis. The County also engaged an outside law firm – Steptoe & Johnson LLP – to independently review County Counsel's analysis. Its conclusions were also provided to the Board of Supervisors.

Date: 9-21-12 Signed: 



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Philip D. Smith  
District Manager

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William Ring  
*Sausalito*

Nancy Barnard  
*Corte Madera*

Approved: \_\_\_\_\_

Superior Court Judge

DEC 18 2012

Date: \_\_\_\_\_

November 21, 2012

The Honorable Rene Auguste Chouteau  
Presiding Superior Court Judge  
Foreperson Steve Larsen  
Sonoma County Grand Jury  
P.O. Box 5109  
Santa Rosa, CA 95402

Re: The Marin/Sonoma Mosquito & Vector Control District – Under the  
Microscope

2011/12 Grand Jury Report Date: June 27, 2012: Second Response

Dear Judge Chouteau & Foreperson Larsen:

The District sent a letter to you dated August 14, 2012, in which the District  
Manager (Manager) and Board of Trustees (Board) separately provided responses  
to the above named Grand Jury report.

In this letter, the Manager advised the Grand Jury that further study was required  
of Recommendation R3: "Expand the Educational Staff."

The Manager and staff examined the feasibility of various options for increasing  
the scope of its education and outreach programs. An analysis of the alternatives  
proposed by staff was presented to the Board at its regular, noticed public  
meeting on November 14, 2012.

As this meeting the Board directed the Manager to exercise two of the options,  
which are described below.

Firstly, the Board recognized the substantially increased outreach and education  
efforts that the District staff has made, particularly in the field of tick-borne  
disease awareness and prevention since the Grand Jury conducted its  
investigation of the District's activities. This increased level of effort will  
continue, and include new signage at Regional Parks, a new information packet  
for leaders of school and adult field trips, and enhanced school curricula. The  
District's newly updated web site offers much more information on these topics  
than the original site and also contains links to other resources and agencies.  
Displays and brochures have been enhanced and additional outreach is provided  
during the District's participation in fairs, festivals and other public events.

Further, as stated in the District's original response to the Grand Jury, very few mosquito & vector control districts employ a full-time education specialist and/or achieve the widespread level of education and outreach accomplished by this district.

Secondly, the Board directed the Manager to draft a three-year cooperative agreement with Sonoma County Regional Parks to increase education regarding vector issues. This contract will provide educational exhibits and staff interpretation at the Environmental Education Center, tick borne disease avoidance advice on hikes led by Parks staff, and other services. Parks staff anticipates a visitorship of approximately 20,000 children at the Environmental Education Center and another 16,800 would be reached on the hikes and other activities.

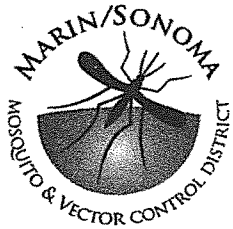
With respect to adding staff, the Manager presented an analysis of the likely costs of adding a full-time or part-time staff member. The Board agreed with the staff recommendation that the District's present income and expenditure forecasts do not support the anticipated financial, structural and administrative costs of adding a staff member.

Therefore the District will implement Recommendation R3 by the means described above, but does not plan to add staff.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Smith", written over a horizontal line.

Philip D. Smith  
District Manager



**FILED**

**AUG 21 2012**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
By: *[Signature]* DEPUTY CLERK

Approved:  
Approve: *[Signature]*

Superior Court Judge

**AUG 21 2012**

Date:  
Date:

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Philip D. Smith  
District Manager

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August 14, 2012

The Honorable Rene Auguste Chouteau  
Presiding Superior Court Judge  
Foreperson Steve Larsen  
Sonoma County Grand Jury  
P.O. Box 5109  
Santa Rosa, CA 95402

Re: The Marin/Sonoma Mosquito & Vector Control District – Under the  
Microscope  
Grand Jury Report Date: June 27, 2012

Dear Judge Chouteau & Foreperson Larsen:

As the new District Manager of the Marin/Sonoma Mosquito and Vector Control District, I appreciate the Grand Jury's work on the above-named Grand Jury Report and the opportunity to respond to the Findings and Recommendations 1, 2, 4, 5, 6 and 7.

The District's prior Manager retired on December 31, 2011 and I was not contacted by the Grand Jury until just before the publication of the report in June 2012. That being the case, I do not have direct knowledge of some of the instances referred to in the Grand Jury's report. Nevertheless, I have tried to respond in as full a way as possible using the sources of information available to me.

Please contact me if I can supply any further information.

Sincerely,

*[Signature]*

Philip D. Smith  
District Manager

## RESPONSE TO GRAND JURY REPORT FORM

Report Title: The Marin/Sonoma Mosquito and Vector Control District – Under the Microscope

Report Date: June 29, 2012

Response by: Philip D. Smith. Title: District Manager

Agency/Department Name: Marin/Sonoma Mosquito and Vector Control District

### FINDINGS:

I agree with the findings numbered: F1, F2, and F6

I disagree wholly or partially with the findings numbered: F3, F4, and F5

(See attached statement specifying portions of the findings that are disputed and an explanation of the reasons therefor).


### RECOMMENDATIONS:

Recommendations numbered R1, R4, R5, R6, & R7 have been implemented.

(See attached summary describing the implemented actions.)

Recommendation R2 requires further analysis.

(Attached is 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.)

Date: August 14, 2012 Signed: 

Number of pages attached: 2

**FINDINGS:**

*F3 MSMVCD puts minimal emphasis on vectors other than mosquitoes and yellowjackets in its educational outreach.*

**Response:**

The current Manager began employment with the District at the end of 2011. The prior Manager retired on December 31, 2011. Based on staff testimony, the current Manager agrees that at the time of the Grand Jury's investigation, the main emphases of the educational program were mosquitoes and yellowjackets. Since the curriculum is science-based and time in the classroom is limited by various factors, there are sound educational reasons for teaching the mosquito life-cycle. It is relatively straightforward and illustrative of the principles of insect reproduction, development and metamorphosis while clearly demonstrating the potential for transmission of diseases to humans and animals.

The educational program has been revised and now includes age-appropriate information on ticks and rodents as well as mosquitoes and yellowjackets. A tick education packet for use by parents and teachers is currently under development. The packet will help the organizers of field and camping trips protect children from tick-borne diseases.

*F4. Although MSMVCD appears financially sound, at times transparency is lacking.*

**Response:**

The current Manager entered employment with the District at the end of 2011 and therefore does not have direct knowledge concerning this issue. However, based on discussions with the prior Manager, Board Members, staff and a review of the Board minutes and press articles it is reasonable to conclude that during the time of the Grand Jury's investigation, there were isolated instances where the transparency of financial information could have been improved.

For fiscal year 2012/13, a new budget narrative presents an overview, explanation and analysis of the approved budget, including a review of the District's income, operational expenditures, capital projects, reserves and balances. The approved budget now depicts three years of income and expenditure for comparison purposes. To enhance the clarity and transparency of the annual budget, staff extensively revised the budget format and provided simpler and clearer nomenclature for many of the categories. This format will be continued and expanded upon in future budget years.

*F5. There is at times a lack of professionalism in dealing with the public.*

**Response:**

The current Manager began employment with the District at the end of 2011 and therefore does not have the first-hand knowledge necessary to form a judgment concerning this issue. See response to Recommendation 7 for an explanation of the organizational changes that may have a bearing on this Finding.

**RECOMMENDATIONS:**

*R1. Maintain up-to-date tick information on the District's web site.*

**Response:**

This recommendation has been implemented. The District's web site has been completely redesigned and now contains current information on ticks and tick-borne diseases. Topics covered include: tick identification, life cycle & habitats, impacts to human health, tick control measures, exposure prevention measures and links to authoritative resources such as the CA Department of Public Health and the Centers for Disease Control.

*R2. Expand the educational staff.*

**Response:**

This recommendation requires further analysis. The Manager agrees that, in principle, it would be desirable to enhance the Educational Outreach and Public Relations programs. It is noteworthy that the Marin/Sonoma District is one of only a handful of similar Districts in the state to operate a full-time education program in K-12 school classrooms. Each year, as part of its educational efforts, the District maintains a booth stocked with educational materials and exhibits at dozens of public events such as fairs, festivals and farmer's markets. At these events, staff members provide information and education to tens of thousands of visitors each year.

Additionally, all the District's technicians incorporate an educational approach when providing vector control services to the public, especially in residential settings.

District staff is in the process of examining the feasibility of adding a part-time position to assist the Education Specialist and Public Relations Director.

Factors under examination include the current and forecast demand for classroom presentations, the cost of employing an additional staff member, the level of supervision required of such an employee and the capacity of existing staff to supervise and direct the work of an additional employee. The approved budget for fiscal year 2012/13 does not anticipate an excess of income over expenditures sufficient to



support a full-time employee. Following analysis, staff will make a recommendation to the Board of Trustees for their consideration. The analysis will be presented to the Board at, or before its scheduled meeting on November 14, 2012.

*R4. Provide copies of budgets to anyone who requests them.*

**Response:**

This recommendation has been implemented. The Manager agrees that transparency with respect to the District's financial documents is imperative.

District staff has been instructed to provide a printed or electronic copy of the Budget upon request to anyone. The Approved Budget for FY 2012/13 is posted on the District's enhanced web site and was provided to Board members and the public at meetings of the Board of Trustees. A new, explanatory Budget Narrative section provides a detailed discussion of the overall budget, including a retrospective look at the accomplishments and spending patterns of the prior Fiscal Year. At the Board President's request, side by side comparisons showing three years of income and expenditure patterns are now provided.

*R5. Educate the MSMVCD Board on the way the various taxes are assessed*

This Recommendation has been partially implemented and further measures will be taken.

Missing from the Grand Jury's report was any mention of the two Engineer's reports that are prepared and presented to the Board each year prior to the Board's ordering of the levy for the coming fiscal year. These reports contain detailed information concerning the assessment of benefits accruing to property owners as a result of the District's provision of vector control services. These reports form a key part of the District's annual budget and also refer to the District's yearly share of the ad valorem property taxes. The Assessment Engineer and his staff made several visits to the Board of Trustees meetings during 2012. A presentation summarized the District's income from property taxes and invited questions from Board members.

The Manager is working with the Board's Vice-President to prepare a Policy Manual for the Board of Trustees that will include detailed information on how the District receives its income. Supplementing this document is a recently-released and informative Trustee Reference Manual prepared by the Mosquito and Vector Control Association of California. During 2012, the Board President and a member of the Budget Committee attended specialized training entitled "The Board's Role in Finance and Fiscal Accountability." This training module will be offered again in 2012 in Northern California by the California Special Districts Association.

**R6. Schedule the MSMVCD Board Members to spend time in the field with a technician during each term of office.**

**Response:**

This recommendation has been implemented. A memorandum has been issued to Board Members inviting them to spend time in the field with a Vector Technician. To date, several Trustees have availed themselves of this opportunity.

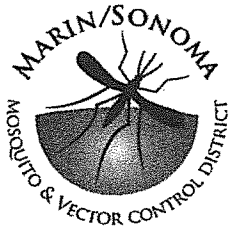
**R7. Foster professionalism in being open and responsive to the public.**

**Response:**

This recommendation has been implemented. The Manager agrees that professionalism, openness to public comment and responsiveness are key tenets of good governance. The Board has formed a Public Outreach Committee, whose charge is to examine new ideas and concepts from the public and interest groups; be attentive to public comment at meetings and to follow-up and make recommendations to the full Board of Trustees.

Additionally, at the beginning of 2012, the Board and staff worked together to retain the services of a General Counsel, who now attends all meetings of the Board. The General Counsel is immediately available to advise on matters of a legal nature, and to ensure compliance with applicable statutes such as the Ralph M. Brown Act.

The District Manager and the Scientific Programs Director have attended public meetings of tick-borne disease support groups in Sebastopol and Santa Rosa. The tick advisory group referred to on the second page of the Grand Jury Report now meets quarterly and has been renamed the Tick-borne Disease Advisory group. It is comprised of three Trustees, certain community advocates and District staff. From time to time, staff from other agencies such as the Sonoma County Public Health Department participates in the meetings.



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Philip D. Smith  
District Manager

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**FILED**

**AUG 27 2012**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
By *Ed Schulze* DEPUTY CLERK

Approved: *Rene Chouteau*  
Superior Court Judge

Date: ~~AUG 27 2012~~

August 15, 2012

The Honorable Rene Auguste Chouteau  
Presiding Superior Court Judge  
Foreperson Steve Larsen  
Sonoma County Grand Jury  
P.O. Box 5109  
Santa Rosa, CA 95402

Re: The Marin/Sonoma Mosquito & Vector Control District – Under the  
Microscope  
Grand Jury Report Date: June 27, 2012

Dear Judge Chouteau & Foreperson Larsen:

The Board of Trustees of the Marin/Sonoma Mosquito and Vector Control District appreciate the Grand Jury's work on the above-named Grand Jury Report and the opportunity to respond to the Findings and Recommendations 2, 3, 4 & 7.

The enclosed responses were prepared by the Board's Executive Committee and subsequently reviewed and approved by the full Board of Trustees at the regular meeting on August 8, 2012.

Please contact us if we can supply any further information.

Sincerely,

*E.R. Schulze*  
Ed Schulze, President  
MSMVCD Board of Trustees

## RESPONSE TO GRAND JURY REPORT FORM

Report Title: The Marin/Sonoma Mosquito and Vector Control District – Under the Microscope

Report Date: June 29, 2012

Response by: Ed Schulze on behalf of Board of Trustees. Title: President, MSMVCD Board of Trustees

Agency/Department Name: Marin/Sonoma Mosquito and Vector Control District

### FINDINGS:

I/We agree with the findings numbered: F1, F2, and F6

I/We disagree wholly or partially with the findings numbered: F3, F4, and F5

(See attached statement specifying portions of the findings that are disputed and an explanation of the reasons therefor).

### RECOMMENDATIONS:

Recommendations numbered R4, R7 have been implemented.

(See attached summary describing the implemented actions.)

Recommendation number R3 has not yet been implemented, but will be implemented in the future.

Recommendation R2 requires further analysis.

(Attached is 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.)

Date: 8-15-2012 Signed: E.R. Schulze

Number of pages attached: 2

**FINDINGS:**

*F3 MSMVCD puts minimal emphasis on vectors other than mosquitoes and yellowjackets in its educational outreach.*

**Response:**

The Board agrees that at the time of the Grand Jury's investigation, the main emphasis of the educational program was on mosquitoes and yellowjackets. Since the curriculum is science-based and time in the classroom is limited by various factors, there are sound educational reasons for teaching the mosquito life-cycle. It is relatively straightforward and illustrative of the principles of insect reproduction, development and metamorphosis while clearly demonstrating the potential for transmission of diseases to humans and animals.

The educational program has been revised and now includes age-appropriate information on ticks and rodents as well as mosquitoes and yellowjackets. A tick education packet for use by parents and teachers is currently under development. The packet will help the organizers of field and camping trips protect children from tick-borne diseases.

*F4. Although MSMVCD appears financially sound, at times transparency is lacking.*

**Response:**

The Board agrees that at the time of the Grand Jury's investigation, there were isolated instances where the transparency of financial information could have been improved.

For Fiscal Year 2012/13, a new budget narrative presents an overview, explanation and analysis of the approved budget, including a review of the District's income, operational expenditures, capital projects, reserves and balances. The approved budget now depicts three years of income and expenditure for comparison purposes. To enhance the clarity and transparency of the annual budget, staff extensively revised the budget format and provided simpler and clearer nomenclature for many of the categories. This format will be continued and expanded upon in future budget years.

*F5. There is at times a lack of professionalism in dealing with the public.*

**Response:**

The Board agrees that in the past, there were occasions where there could have been more professionalism in dealing with members of the public during Board meetings. See response to Recommendation 7 for an explanation of the changes that have subsequently been implemented.

## RECOMMENDATIONS:

### **R2. *Expand the educational staff.***

#### **Response:**

This recommendation requires further analysis. The Board and the Manager agree that, in principle, it would be desirable to enhance the Educational Outreach and Public Relations programs. It is noteworthy that the Marin/Sonoma District is one of only a handful of similar Districts in the state to operate a full-time education program in K-12 school classrooms. Each year, as part of its educational efforts, the District maintains a booth stocked with educational materials and exhibits at dozens of public events such as fairs, festivals and farmer's markets. At these events, staff members provide information and education to tens of thousands of visitors each year.

Additionally, all the District's technicians incorporate an educational approach when providing vector control services to the public, especially in residential settings.

District staff is in the process of examining the feasibility of adding a part-time position to assist the Education Specialist and Public Relations Director.

Factors under examination include the current and forecast demand for classroom presentations, the cost of employing an additional staff member, the level of supervision required of such an employee and the capacity of existing staff to supervise and direct the work of an additional employee. The approved budget for Fiscal Year 2012/13 does not anticipate an excess of income over expenditures sufficient to support a full-time employee. Following analysis, staff will make a recommendation to the Board of Trustees for their consideration. The analysis will be presented to the Board at, or before its scheduled meeting on November 14, 2012.

### **R3. *Change auditors this fiscal year and consider doing so every five years.***

#### **Response:**

This Recommendation has not been implemented but will be implemented in the future.

Prior to the issuance of the Grand Jury Report, the Board had directed the Manager to prepare a Request for Proposals (RFP) for Auditing Services. The draft RFP has now been completed and following its approval by the Board and subsequent issuance, the responses received will be reviewed and a recommendation concerning the selection of new auditor will be made by the Board's Audit Committee and forwarded to the Board. Staff plans to present the RFP to the Board for consideration at or before the regular meeting planned for September 12, 2012.

In keeping with the Grand Jury's recommendation, the Budget Committee and the Board will consider the merits of changing Auditors every five years.

**R4. *Provide copies of budgets to anyone who requests them.***

**Response:**

This recommendation has been implemented. The Board agrees that transparency with respect to the District's financial documents is imperative.

District staff has been instructed to provide a printed or electronic copy of the Budget upon request to anyone. The Approved Budget for FY 2012/13 is posted on the District's enhanced web site and was provided to Board members and the public at meetings of the Board of Trustees. An explanatory Budget Narrative section provides a detailed discussion of the overall budget, including a retrospective look at the accomplishments and spending patterns of the prior Fiscal Year. At the Board President's request, side by side comparisons showing three years of income and expenditure patterns are now provided.

**R7. *Foster professionalism in being open and responsive to the public.***

**Response:**

This recommendation has been implemented. The Board agrees that professionalism, openness to public comment and responsiveness are key tenets of good governance. The Board has formed a Public Outreach Committee, whose charge is to examine new ideas and concepts from the public and interest groups; be attentive to public comment at meetings and to follow-up and make recommendations to the full Board of Trustees.

Additionally, at the beginning of 2012, the Board and staff worked together to retain the services of a General Counsel, who now attends all meetings of the Board. The General Counsel is immediately available to advise on matters of a legal nature, and to ensure compliance with applicable statutes such as the Ralph M. Brown Act.

**FILED**  
AUG 20 2012

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
BY Ch. How DEPUTY CLERK

Approved: [Signature]  
Superior Court Judge  
Date: AUG 20 2012

**RESPONSE TO GRAND JURY REPORT FORM**

Disclosing a Sonoma County Main Adult Detention Facility Inmate Recorded  
**Report Title:** Telephone Conversation  
**Report Date:** 06/27/12  
**Response by:** Steve Freitas **Title:** Sheriff-Coroner

**FINDINGS**

- I (we) agree with the findings numbered: \_\_\_\_\_
- I (we) disagree wholly or partially with the findings numbered: F-1, F-2, F-3  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered R-1 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach 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.)
- Recommendations numbered R-2, R-5 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 8/14/12 Signed: [Signature]

Number of pages attached 13



SONOMA COUNTY SHERIFF'S OFFICE  
RESPONSE TO THE 2011-2012 GRAND JURY REPORT

**Disclosing a Sonoma County Main Adult Detention Facility  
Inmate Recorded Telephone Conversation (Pages 24 - 29)**

**FINDINGS, Page 27**

**F-1 Sheriff's Office personnel and District Attorney staff were unable to produce a relevant statute or a written policy when asked if the disclosure of recorded inmate conversations to third parties was legal.**

**RESPONSE:** The respondent disagrees with this finding.

The Sheriff's Office does not have a written policy regarding the disclosure of recorded inmate conversations to third parties. Sheriff's Office deputies are required to be up to date on current case law and other statutes that affect their daily law enforcement practices. In the event that they are not up to date with certain penal statutes or case law interpretations, they have the opportunity to discuss their cases with Sheriff's Office supervisors or managers in order to locate a valid resource to assist them in understanding the law. Some of those resources include: County Counsel, the District Attorney's Office, and local law enforcement experts.

With regard to this particular case, according to the District Attorney's Office and the investigating detective they were in "constant contact" with one another because of the complex nature of this case. There were detailed discussions related to disclosure of the recorded information made by the inmate as they were concerned that one of the parties intimately involved with the suspect was potentially an additional victim. Furthermore, the third party that was allowed to listen to the recorded conversation was subsequently identified as an unwitting co-conspirator (suspect) involved in several attempts to smuggle illegal drugs into the Main Adult Detention Facility.

Penal Code Section 637, and the Grand Jury's report that referenced the private attorney's opinion, indicate that there needs to be "legitimate law enforcement concerns (e.g. to prevent the commission of a crime, dissuading a witness, etc.)," and "legitimate jail security concerns (e.g. smuggling contraband into the facility, escape plans, etc.)," in order to disclose recorded conversations to a third party. Both of these criteria were present in this case. Because of the detectives resourceful approach, the deputy district attorney and investigating detective in this case were able to identify additional victims, prevent a felony from being committed, and prevent an unwitting victim from being arrested for violation of Penal Code Section 4573.5. Therefore, the disclosure of the recorded inmate conversation to the third party in question was legal.

**F-2 The citizen's complaint (CC) investigation done by Sheriff's Office personnel in this case was lacking in that only the detective involved was interviewed.**

RESPONSE: The respondent disagrees with this finding.

After further review of the abovementioned citizen's complaint investigation, the Sheriff believes it is clearly documented in the citizen's complaint report that the Sheriff's Office investigator did contact an additional involved party who had relevant information related to this investigation. This information, combined with a review of the criminal investigation, all other documents and materials related to this case, and a thorough interview of the detective associated with this complaint, establishes that a comprehensive investigation was completed.

The focus of this citizen's complaint investigation was to determine if the complainant's civil rights were violated, and if the investigating detective, "unethically" defamed the complainant's character. Based on the findings that were a result of a thorough investigation, the statement "This case was lacking in that only the detective involved was interviewed" is incorrect. In fact, there was an additional involved party interviewed, and additional information that was reviewed to determine the validity of the complaint received.

**F-3 There appears to be a lack of methodology (i.e. recorded documentation of discussions and results of discussions) when deputies seek advice from the deputy district attorneys.**

RESPONSE: The respondent disagrees with this finding.

During the course of criminal investigations, the investigative process can often be complicated and very fluid. As law enforcement investigators develop new leads and/or evidence it is not uncommon to discover that suspects involved in certain cases are also identified or involved in other criminal activity. Many of those criminal acts involve similar crimes; however, some suspects are very sophisticated and can be involved in a multitude of criminal behaviors. Based on the complexity of these investigations, detectives, investigators, and law enforcement officers are constantly interviewing, contacting, and arresting additional suspects involved in various crimes. There are times when the investigative process does not include detective contact with individual deputy district attorneys until the case has actually been reviewed and/or filed. Once a case has been filed or reviewed, additional information or investigative requests may be made by a representative of the District Attorney's Office (such as a district attorney investigator) in order to assist with the prosecution of each case. Additionally, it is not uncommon for certain cases to be transferred from one deputy district attorney to another based on workload and/or assignment. Investigative follow-up may be documented in a supplemental report or discussed with the deputy district attorney to determine if there is any evidentiary value related to the case.

The most common method used by Sheriff's Office deputies and detectives to document any information they believe to be relevant to the case is by completing a written supplemental report or inner office memorandum. Based on the complexity of some cases, it would be inefficient, complicated, and unrealistic to record every telephone conversation that took place between the

district attorney's office and the investigating detectives or deputies. Based on training, experience, professional judgment, and consultation with peers and supervisors, Sheriff's deputies and detectives determine what details to document.

### **RECOMMENDATIONS (Pages 27, 28)**

#### **R-1 The Sheriff's Office consult with its counsel regarding the legal ramifications of disclosing recorded inmate conversations to third parties**

**RESPONSE:** This recommendation has been implemented.

County Counsel has been consulted. They have reviewed the incident and have responded orally as well as in writing to the Sheriff (see attachment). In summary, County Counsel states in their conclusion as a response to R-1, "There are no legal ramifications implicated in the Sheriff's Office's disclosure of inmate recordings to a third party witness under the circumstances presented in the Grand Jury report."

#### **R-2 The Sheriff's Office develop and implement a policy on disclosing recorded inmate telephone conversations to third parties (including informing the inmates – via inmate handbooks and postings near telephones – that telephone conversations could be recorded, monitored, AND disclosed, if legal to do so).**

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

The Sheriff's Office is a policy, law, and rules driven organization. As indicated in County Counsel's attached memorandum, Penal Code Section 637 does not prevent a deputy from disclosing a recorded inmate telephone call to a potential witness as part of a criminal investigation and prosecution. Providing information to witnesses in a criminal investigation to secure their cooperation and consent to testify at trial falls within a legitimate purpose and function of the Sheriff's Office. As a result, the Sheriff's Office may lawfully disclose inmate recordings to a third party witness for such purposes.

Based on there being no legal or practical requirement to develop or implement a policy on disclosing recorded inmate phone conversations to third parties, and in light of the discretion provided to law enforcement officers within constitutional and statutory limitations, as well as County Counsel's opinion that disclosure in this situation was lawful and making a policy change is not implicated by the issues presented in the Grand Jury report, the Sheriff will not develop or implement such a policy.

**R-5 Sheriff's Office interview all parties involved in a CC.**

RESPONSE: The recommendation will not be implemented because it is not reasonable.

Due to the variety of complaints and concerns that are brought to the attention of the Sheriff's Office throughout the year, it is impractical to require all parties involved in a citizen's complaint to be interviewed. Because of the nature of these investigations, many of the parties involved have already submitted written reports or it is determined that no valuable information relevant to the complaint being investigated will be produced from additional interviews. In order for the citizen's complaint process to be completed efficiently and thoroughly, it is imperative that the investigator have full autonomy related to the investigative process and the decision on who should be interviewed. The CC process is a multi-step process with several levels of review and scrutiny.

However, after review of this particular incident, the Sheriff's Office does agree that the deputy district attorney and an additional party in this case should have been interviewed in order to glean additional information that would have corroborated the written reports and statements that were involved in this case.

**MEMORANDUM**

*This Memorandum has been approved for public distribution;  
however, it is not intended to be relied upon by any  
person or entity other than its named recipient.*

DATE: July 25, 2012

TO: Sheriff Steve Freitas

FROM: Office of the Sonoma County Counsel

RE: Response to 2012 Grand Jury Report regarding Penal Code § 637

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This is in response to your request for an opinion relating to the 2012 Grand Jury report entitled "Disclosing a Sonoma County Main Adult Detention Facility Inmate Recorded Telephone Conversation," and a proposed response to its first two Recommendations. This memorandum opinion addresses the legal and policy conclusions set out in that report; it does not address any factual statements contained therein.

As a general matter, it is the opinion of this office that the Grand Jury's conclusions regarding applicable law and Sheriff's Office policies surrounding release of recorded inmate telephone calls are incorrect: (a) Penal Code Section 637 does not prevent a deputy from disclosing a recorded inmate telephone call to a potential witness as part of a criminal investigation and prosecution; and (b) the Sheriff's Office's general policy precludes release of inmate recordings in response to requests initiated by third parties, but does not prevent release to the public pursuant to a legitimate law enforcement purpose. Providing information to witnesses in a criminal investigation to secure their cooperation and consent to testify at trial falls within a legitimate purpose and function of the Sheriff's Office; accordingly, the Sheriff's Office may lawfully disclose inmate recordings to a third party witness for such purposes.

**A. Response to Recommendation 1** (*"The Sheriff's Office consult with its counsel regarding the legal ramifications of disclosing recorded inmate conversations to third parties."*)

Conclusion: There are no legal ramifications implicated in the Sheriff's Office's disclosure of inmate recordings to a third party witness under the circumstances presented in the Grand Jury report.

Discussion:

The Grand Jury's report concluded that a Sheriff's Deputy possibly violated Penal Code Section 637 ("Section 637") by sharing a pre-trial inmate's recorded telephone conversation with a potential witness in the criminal case to secure her cooperation with the investigation and

Sheriff Steve Freitas  
July 25, 2012  
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prosecution. The Grand Jury's report stated that the recording contained a sexually explicit discussion not directly related to the criminal case, but recognized that both the inmate and the person he telephoned were provided with notification that the call was subject to monitoring and recording by the jail. Under these circumstances, both the recording and its disclosure were proper under state and federal law.

The current version of Section 637 provides as follows:

Every person not a party to a telegraphic or telephonic communication who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of that person, unless directed so to do by the lawful order of a court, is punishable by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both that fine and imprisonment.

(Pen. Code § 637.)

If read in a vacuum, Section 637 would prohibit the party recording a jail inmate's telephone conversation (in our case, PCS) from disclosing the recordings to the Sheriff's Office; it would preclude the Sheriff's Office from disclosing the recordings to anyone, including the District Attorney's Office; and it would preclude the District Attorney's Office from presenting the recordings as evidence to the jury in a criminal prosecution. This interpretation is contradicted by the history and Legislative intent behind Section 637, as well as relevant case law, which demonstrate that it does not apply to the use of inmate recordings by law enforcement.

**1. Former Penal Code Section 619, Adopted 1872**

Section 637 was originally adopted by the Legislature in 1872 as Penal Code Section 619 ("Former Section 619").<sup>1</sup> Former Section 619 was later amended twice – in 1880 and in 1905 –

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<sup>1</sup>As originally enacted in 1872, Former Section 619 provided as follows:

Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, is punishable by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

Sheriff Steve Freitas  
July 25, 2012  
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and then remained unchanged for the next 62 years.<sup>2</sup>

In 1912, a California Appellate Court ruled that Former Section 619 applied only to people engaged in the dispatch, transmission, and delivery of telephone and telegraph communications – meaning telegraph and telephone operators, and others involved in the delivery process. (*People v. Earl* (1912) 19 Cal.App. 69, 70-71.)

In rendering its decision, the Court held that Former Section 619 could not be given its literal interpretation, as doing so would result in absurd consequences and would “have the effect of prohibiting otherwise necessary and useful acts.” (*Id.*, at 71-72.) The Court found that the intent of the Legislature was key to interpreting Former Section 619, which demonstrated that its application was very limited:

If section 619 is to be given the effect which its language literally imports, then the sender of the message who discloses its contents, either before or after sending, and every person to whom he so discloses it, might in turn be guilty and subject to punishment by fine or imprisonment, or both. Taking the three sections to which we have referred alone, and considering the sense of the expressions used by the legislature there in context, it appears very clear to us that **the intent was, by the enactment of section 619, to preserve secrecy as to telegraphic messages only among all those who have a duty to perform with respect to the dispatch, transmission or delivery thereof.** Any other interpretation placed upon the provisions of that section would cause it to embrace every person who might obtain knowledge of the contents of any message, no matter how such contents might have been learned, or through however so many persons such information may have been communicated, as well as to include the sender of the message and the persons whom he might have informed of its contents. To so

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(Former Penal Code § 619, adopted 1872, repealed 1967).

<sup>2</sup>As amended in 1905, Former Section 619 provided as follows:

Every person who willfully discloses the contents of a telegraphic or telephonic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

(Former Penal Code § 619, as amended 1905, repealed 1967).

hold, in our opinion, would be to give to the statute an unreasonable and absurd meaning. The history of the legislation upon the subject, as well as other sections of the code, which we need not further refer to, support the view we have taken in our construction of the statute.

(*Id.*, at 73-74 (emphasis added).)

A search of statutory and case law has revealed that the *Earl* Court's interpretation of the Former Section 619 (applying it only to people who are engaged in the telephone or telegraph transmission process) has never been challenged or changed.<sup>3</sup>

## 2. **Current Penal Code 637, Adopted as Part of the Invasion of Privacy Act of 1967**

In 1967, Assembly Speaker Jesse Unruh authored Assembly Bill 860, otherwise known as the Invasion of Privacy Act of 1967 (Penal Code Sections 630, *et seq.*, the "Act"). The primary "purpose of the act was to protect the right of privacy by, among other things, requiring that all parties consent to a recording of their conversation." (*Flanagan v. Flanagan*, 27 Cal.4th 766, 769.)

Former Section 619 was incorporated into the Act unchanged as Section 637. (*Digest of Assembly Bill 860*, Assembly Committee on Criminal Procedure, April 25, 1967, at pp. 3-4 ("[Section 637] is adapted without change from the existing section 619," and section 619 is repealed).) The stated purpose in re-numbering the statute was to consolidate all statutes regarding invasions of privacy into a single chapter per the Act. (*Digest of Assembly Bill 860* (as amended April 20, 1967), by Assembly Speaker Jesse M. Unruh, April 25, 1967, at p. 7 ("The bill also recodifies the many widely separated sections of the Penal Code relating to invasions of privacy, and places them in a single chapter of the Code on that subject.")) The Act thus created

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<sup>3</sup>A similar federal statute provides,

[With limited exceptions], a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(18 U.S.C. § 2511(3)(a).) Like its state counterpart, this statute does not apply to law enforcement's use of recordings.



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July 25, 2012  
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a “coherent statutory scheme ... [which] protects against intentional, nonconsensual recording of telephone conversations regardless of the content of the conversation....” (*Flanagan*, 27 Cal.4th at 776.)

Significantly, the Act was not intended to affect the pre-existing law regarding the actions of law enforcement officers in any way.<sup>4</sup> The Legislature codified its intent to exclude law enforcement actions from the scope of the Act in its statutory findings:

The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter.

(Pen. Code § 630; see also Pen. Code § 633.)<sup>5</sup>

In addition, a review of the Act and interpreting case law demonstrates that its provisions address eavesdropping or recording of conversations – not their dissemination. (*Knight v. Cashcall, Inc.* (2011) 200 Cal.App.4th 1377, 1390 (The focus of the Act is on “simultaneous dissemination,” not “secondhand repetition.”); see also *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 775-776 (The amendment to Section 632.6 “indicates ... that the Legislature’s ongoing concern is with eavesdropping or recording of conversations, not later dissemination.”); see also *Comment*, Cal. Law Review (1969) Vol. 57, p. 1182, at 1192 (“The California Privacy Act does not even mention the subject of police use of lawfully intercepted communications”).)

Accordingly, Section 637 has been in effect for 140 years, but has never been applied to actions taken by law enforcement officers in any fashion. The statute was originally enacted to affect only those persons who had a duty to transmit, receive or deliver telegraph messages and telephone calls – to ensure that the messages and calls reached only their intended audience. Neither the Act nor subsequent case law has altered such a purpose. For these reasons, Section

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<sup>4</sup>As the author of AB 860 stated, “[t]he bill carries a section of legislative intent which clearly declares that ... there is no intention to change present law in this area as it relates to law enforcement agencies or officers, acting in the course of their employment.” (*Digest of Assembly Bill 860* (as amended June 5, 1967), by Speaker Jesse M. Unruh, June 8, 1967, at p. 7.)

<sup>5</sup>“The statement of purpose in § 630 indicates that § 633 was intended solely to permit law enforcement officers to continue to use electronic devices in criminal investigations.” (*Rattay v. City of National City* (9<sup>th</sup> Cir. 1994) 51 F.3d 793, 797.)

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July 25, 2012  
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637 does not proscribe the Sheriff's Office's use of inmate recordings in any way, since its actions do not fall within the scope of conduct Section 637 seeks to address.

### 3. Law Enforcement Use of Inmate Tape Recorded Conversations

A wealth of case law, both pre- and post- the 1967 Act, demonstrates that law enforcement may lawfully use and disclose inmate tape recorded conversations for any purpose related to their law enforcement or security functions. (See e.g., *People v. Loyd* (2002) 27 Cal.4th 997, 1003-1004.) As stated in the Act, the law applicable to law enforcement's use of listening devices and techniques that "existed prior to the effective date of this chapter" remained valid and enforceable after the effective date of the Act on November 8, 1967. (See Pen. Code § 630.)

Before 1967, jail staff could tape record conversations between inmates and outsiders without warning either party of the taping, disclose the recording to the District Attorney, and the District Attorney could disclose the recording to the jury – all of which was authorized by law so long as the communication was not privileged. (*People v. Apodaca* (1967) 252 Cal.App.2d 656, 658-659. (Tape recorded conversation properly admitted at trial even though neither defendant nor his visiting friend knew their visit at the jail was tape recorded).) In addition, a sheriff could lawfully record a conversation between an accused and outside parties even though the accused did not know the conversation was being recorded, and the District Attorney could disclose such recording to the jury at trial to secure a conviction. (See *People v. Hughes* (1962) 203 Cal.App.2d 598, 601 (Wife and daughter knew their conversation with the accused was being recorded, though accused did not know; recording and use by the District Attorney at trial was lawful.) The Act was not intended to change, nor did it change, the legality of this practice of recording and use of statements against an accused.

Likewise, state law in this area post-1967 remains virtually unchanged to date. (*People v. Loyd* (2002) 27 Cal.4th 997, 1003-1004.) However, for a short time, there was a shift in the law regarding the purpose for which inmate telephone recordings could be made and used. In 1982, the California Supreme Court held that jail officials could record and use inmate conversations only to preserve institutional security based on former Penal Code § 2600 (amended 1994). (*De Lancie v. Superior Court* (1982) 31 Cal.3d 865.) However, subsequent Legislative amendments and Supreme Court decisions now demonstrate that the particular purpose and use of inmate telephone recordings made by the jail – whether to protect institutional security or to gather evidence and otherwise assist the prosecution – makes no difference. (*People v. Loyd* (2002) 27 Cal.4th 997, 1003-1004, 1008-1009; see also *People v. Davis* (2005) 36 Cal.4th 510, (Inmate recordings made at request of a prosecutor "to gather information" are lawful; the purpose of the search is irrelevant because jail inmates have no expectation of privacy.)

The circumstances at hand are much more circumscribed than is generally permitted. Specifically, Sonoma County jail inmates are provided with both oral and written notification

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July 25, 2012

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that their conversations are monitored and recorded, and the persons to whom they place telephone calls are provided with the same oral notification. Under such a scenario, neither party to the communication can have an expectation that their conversation will remain secret – as they have been informed that their conversation is both recorded and being monitored by the government. (*People v. Santos* (1972) 26 Cal.App.3d 397, 402 (When a jail inmate and the called party know their conversation was being overheard and recorded, “but choose to converse nonetheless,” neither party can have an expectation of privacy.); *People v. Canard* (1967) 257 Cal.App.2d 444, 464 (“The laws on eavesdropping and the recording of telephone communications do not apply where one of the parties to the conversation consents to or directs its overhearing or recording.”).)

Further, Courts have determined that under these types of circumstances, parties impliedly consent to the recording and use of their conversation, and cannot object to its dissemination for criminal investigatory or prosecution purposes.<sup>6</sup> (*People v. Windham* (2006) 145 Cal.App.4th 881, 887 (An inmate who uses jail or prison telephones with knowledge that his conversation may be recorded and proceeds with his conversation impliedly consents to the monitoring and recording of these calls, and impliedly consents to the telephone company divulging the contents of the calls to jail officials.); see also *United States v. Van Poyck* (9th Cir. 1996) 77 F.3d 285, 291-92 (Rejecting Fourth Amendment claim because prisoner had no expectation of privacy in his outbound phone calls, and because he was deemed to have consented to the taping of his calls based on prior warnings of recording.).)

Similarly, a law enforcement officer’s disclosure of an inmate recording to a potential witness before trial is permissible under federal law. (See the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. § 2510, *et seq.* (“Title III”).) Under Title III, such an action is lawful for at least two reasons: (a) the routine taping of inmate calls is not an “interception” within the meaning of Title III (*Greenfield v. Kootenai County* (9<sup>th</sup> Cir. 1985) 752 F.2d 1387); and (b) the law enforcement exception in Title III provides an officer with the ability to take lawful recordings and “use such contents to the extent such use is appropriate to the proper performance of his official duties.” (18 U.S.C. § 2517(2).) Accordingly, Title III “clearly permits dissemination of wiretapped conversations to the public for certain purposes (*Liffiton v. Keuker* (W.D.N.Y. May 20, 1991) 1991 U.S. Dist. LEXIS 7546, 37-38)” including release of

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<sup>6</sup>In addition, under such circumstances, the provisions of the Act do not apply, as the Act preserves the secrecy of telephone communications only where the parties have an expectation of privacy. (See *Steele v. County of San Bernadino* (Central Dist. Cal., 2009) 2009 U.S. Dist. LEXIS 125000, at 43-45 (Jail inmate fails to state a claim under Penal Code Sections 632(a) and 636 against jail officials for recording his telephone conversations with his attorney, because inmate had no expectation of privacy and the pre-recording clearly advised him that his conversation was being monitored and recorded.)

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contents of intercepted telephone calls to business associates of the accused (*Id.*); to establish probable cause to search or to arrest (*United States v. Donlan* (2d Cir. 1987) 825 F.2d 653, 655); to prepare witnesses for trial (*United States v. Ricco* (2d Cir. 1977) 566 F.2d 433, 435, *cert. denied*, 436 U.S. 926 (1978)); or to play the tapes to various persons for the purpose of obtaining voice identifications (*United States v. Rabstein* (5th Cir. 1977) 554 F.2d 190, 193). (See also *United States v. Canon*, 404 F. Supp. 841, 848-49 (N.D. Ala. 1975) (Congressional report on Title III expressly envisioned use of contents of wiretaps “to develop witnesses”).)

Thus, whether the issue is analyzed under state or federal law, the result is the same: nothing restricts the ability of the jail to record inmate conversations made with notice to inmates, nor to disseminate such recordings for purposes related to criminal investigation or prosecution – including disclosure to third party witnesses. (See e.g., *Windham*, 145 Cal.App.4th at 890-893.)<sup>7</sup> Accordingly, the Sheriff Deputy’s act in disclosing the inmate recording to a witness, for the purpose of convincing her to cooperate with the investigation and securing her testimony for trial, was a lawful use of law enforcement powers.

- B. Response to Recommendation 2** (“*The Sheriff’s Office develop and implement a policy on disclosing recorded inmate telephone conversations to third parties (including informing the inmates - via inmate handbooks and postings near telephones - that telephone conversations could be recorded, monitored, AND disclosed, if legal to do so.*”)

Conclusion: There is no legal or practical requirement to develop or implement a policy regarding the disclosure of recorded inmate conversations to third parties, nor modifying inmate handbooks and postings near telephones in the jail, though the Sheriff’s Office has the discretion to do so.

Discussion:

The mere act of incarcerating an inmate in jail “brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” (*Jones v. North Carolina Prisoners’ Labor Union, Inc.* (1977) 433 U.S. 119, 123 (citations omitted).) Although jail inmates may preserve confidentiality of their communications with counsel and certain other confidential advisors (e.g., religious advisors),

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<sup>7</sup>The purpose in disseminating inmate jail recordings should be for legitimate governmental purposes, and not for personal vendettas or sensationalism. (See e.g., *Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 884 (“[T]he CHP and its officers must refrain from exploiting gruesome death images by disseminating them to friends and family members or others with no involvement in official CHP activities.”).)

Sheriff Steve Freitas  
July 25, 2012  
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the general rule is that “[inmates and their visitors] can have no reasonable expectation that their jailhouse conversations will be private.” (*People v. Lloyd* (2002) 27 Cal.4th 997, 1003; see also *People v. Davis* (2005) 36 Cal.4th 510, 527 (Persons held pretrial in a jail have no general expectation of privacy when conversing with their visitors.).)

To satisfy constitutional and statutory duties, the Sheriff is accorded wide deference in managing and administrating county jails. (*Jones*, 433 U.S. at p. 126; Government Code §26605 (“[T]he sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it.”).) Accordingly, whether to adopt policies relating to the recording and dissemination of inmate conversations rests in the sound discretion of the Office of the Sheriff.

Current policies and procedures of the Sheriff’s Office preclude release of inmate recordings in response to requests from third parties absent a compulsory process (such as a court order or subpoena). Such policies and procedures, however, do not address the use of inmate recordings by the Sheriff’s Office for law enforcement, prosecution, or security purposes. Investigators’ use of such recordings is proscribed by applicable state and federal laws – on which they are trained annually.

The recommendation provided by the Grand Jury to develop a policy on disclosure of inmate recordings appears based on the premise that the actions of the Sheriff’s Deputy in disclosing the inmate recording to a potential witness was unlawful. As that premise is incorrect, and in light of the discretion provided to law enforcement officers within constitutional and statutory limitations, it is not necessary to develop a policy addressing the issue.

Further, there is no legal authority which requires or even recommends giving inmates notice that their recordings may be disclosed in the course of a criminal investigation and can be used against them. Such dissemination is implicit in the warnings already provided. (See *Windham*, 145 Cal.App.4th at 892 (Court rejected defendant’s argument that, while he may have impliedly consented to the recording of his calls by AT&T, he did not consent to recording of his calls by jail officials, nor their release to the prosecutor.).)

For these reasons, while the Sheriff has the authority to make policy and programmatic changes as recommended by the Grand Jury, such changes are neither required nor implicated by the issues presented in the report.

*Anne L. Keck /s/*

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Anne L. Keck  
Deputy County Counsel

Rec. 8/10/12  
Scanned 8/14/12

**FILED**  
AUG 10 2012

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
BY Chel Hoe DEPUTY CLERK

Approved: [Signature]  
Superior Court Judge  
Date: AUG 10 2012

**RESPONSE TO GRAND JURY REPORT FORM**

Report Title: Disclosing a Sonoma County Main Adult Detention Facility Inmate Recorded Telephone Conversation  
Report Date: August 9, 2012  
Response by: Jill Ravitch Title: District Attorney

**FINDINGS**

- I (we) agree with the findings numbered: \_\_\_\_\_
- I (we) disagree wholly or partially with the findings numbered: 1, 3  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- Recommendations numbered 3 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach 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.)
- Recommendations numbered 4 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Number of pages attached 3

**SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE  
RESPONSE TO THE 2011-2012 GRAND JURY REPORT**

**DISCLOSING A SONOMA COUNTY MAIN ADULT DETENTION FACILITY INMATE  
RECORDED TELEPHONE CONVERSATION**

**Finding 1, page 27:**

*Sheriff's Office personnel and District Attorney staff were unable to produce a relevant statute or written policy when asked if the disclosure of recorded inmate telephone conversations to third parties was legal.*

**Response:** The respondent disagrees with the Grand Jury's finding regarding the District Attorney staff, and cannot respond with regard to Sheriff's Office personnel.

The deputy district attorney assigned to the case in question had been working closely with the detective on a financial abuse case regarding the inmate whose call was at issue. The inmate was on parole from a prior financial abuse case that was very similar factually to the case currently under investigation. The detective and the deputy district attorney discussed the disclosure of a monitored call from the inmate to the inmate's girlfriend as an investigative tool, since the girlfriend was considered a potential witness in the case. The prosecutor told the detective that she believed the inmate's expectation of privacy was negated by his incarceration and the advisement given when the call was made. She counseled him to check with County Counsel, who provides advice to the Sheriff's Office with regard to policy matters.

If the finding is with regard to statements by the prosecutor to members of the Grand Jury, then the District Attorney respectfully disagrees. The prosecutor explained to the jurors that the inmate had no expectation of privacy under a Fourth/Fourteenth Amendment analysis and endeavored to educate the juror about caselaw and its application to the situation. The prosecutor also noted that she could not remark upon any policies in the Sheriff's Office regarding use of phone calls, that she had referred the detective back to County Counsel and even provided the jurors with the name of the deputy county counsel who handled matters such as this.

**Finding 3, page 27:**

*There appears to be a lack of methodology (ie. recorded documentation of discussions and results of discussions) when deputies seek advice from the deputy district attorneys.*

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

The District Attorney's Office works closely with members of all law enforcement and regulatory agencies. Police officers, deputies, and other agents from law enforcement

agencies can be seen in the DA's office on any given day, whether in response to a subpoena, or just to meet with a lawyer regarding an investigation or upcoming case. Additionally, lawyers are available to review and sign off on search warrants, and are called to the scene when a homicide or suspicious death occurs. They are also available to meet with members of law enforcement and attend forensic interviews of victims and suspects. These responsibilities extend throughout 24 hours each day. It is impossible to document these in person meetings, or the myriad of telephone conversations and emails that occur. The current district attorney has made a point of reaching out to the law enforcement community to offer support and advice whenever requested. When an important conversation takes that produces evidence to be discovered in a case, or otherwise substantially impacts a case, notes are made in the case file, and when necessary, a memorandum is produced.

**Recommendation 3, page 27:**

*The District Attorney review Penal Code Section 637 with the District Attorney's staff and its counsel.*

**Response:** This Recommendation has been implemented.

The District Attorney's office conducts training for the attorneys on a monthly basis. In addition, weekly meetings occur among the various teams in the office. The attorneys and investigators are familiar with the California Invasion of Privacy Act (CIPA) as enumerated in Penal Code section 630 et seq. because we constantly address the monitoring of conversations through a variety of means in the course of investigations that are reviewed. The deputy district attorneys are aware of the recording capability in the jail, and it has been a powerful tool in the investigation and prosecution of criminal cases. We will continue to educate ourselves on the right to monitor those calls, as well as other telephonic, electronic and other means of recording communication between parties.

**Recommendation 4, page 28:**

*The District Attorney review this case for possible criminal wrongdoing pursuant to Penal Code Section 637.*

**Response:** This Recommendation will not be implemented.

The District Attorney has reviewed the Grand Jury report, as well as The California Invasion of Privacy Act (Penal Code section 630 et seq.) Additionally, the deputy district attorney who is the subject of the report provided a factual recitation of the case and the interactions with law enforcement regarding the use of a jail call for purposes of investigation and subsequent prosecution. No criminal wrongdoing can be found. While Penal Code section 637 prohibits the disclosure of telephonic communication without consent of the participants, such a restrictive reading of the code would frustrate the purpose of Penal Code section 633, which permits the monitoring and recording of



communication for law enforcement purposes. It would frustrate the purpose of section 633 to read section 637 so narrowly; to do so would suggest that an investigator could not share the contents with another investigator, prosecutor evaluating the case, or jury if introduced as evidence at trial. The recorded conversation at issue here was played for an individual already identified as a party of interest in an ongoing investigation. It was done for investigative purposes, and not disseminated to the public.

Approved: \_\_\_\_\_

Superior Court Judge

Date: \_\_\_\_\_

~~OCT 0 1~~

SONOMA COUNTY BOARD OF SUPERVISORS  
RESPONSE TO GRAND JURY REPORT

**FILED**

SEP 24 2012

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA  
BY [Signature] DEPUTY CLERK

Report Title: 2011 Disbanding of the Human Services Commission

Report Date: June 28, 2012

Response by: Sonoma County Board of Supervisors

**RECOMMENDATION**

**Recommendation R1:** The Sonoma County Board of Supervisors continue its review of the Community Development Commission grant fund process to the Community Services Funding grantees.

**Board of Supervisors' Response:** This recommendation has been, and will continue to be, implemented as described below.

Community Services Funding (CSF) is now distributed through the Sonoma County Community Development Commission (CDC) in conjunction with Community Development Block Grant and Emergency Solutions Grant funding from the U.S. Department of Housing and Urban Development (HUD). The Board of Supervisors exercises review and formal approval authority over the CDC grant funding policies and final funding decisions for CSF and all other grantees. Each year in September or October, the Community Development Committee holds a public hearing regarding proposed policies for distribution of these funds for the following fiscal year. The Committee's recommendations are forwarded to the Board of Supervisors, which approves the final funding policies governing the Request for Proposals that is issued in November of each year.

Similarly, each year in February and/or March, the Community Development Committee holds public hearings to consider proposals for HUD and CSF funding received in response to the annual Request for Proposals issued pursuant to the policies as adopted by the Board. The Committee develops its recommendations for funding, which are published for a 45-day public comment period and subsequently submitted to the Board of Supervisors to make the final funding decisions by the beginning of May each year. The Board of Supervisors will continue to follow this process in the future, and will thereby continue to review the CDC's grant funding process as it applies to CSF and all other grantees.

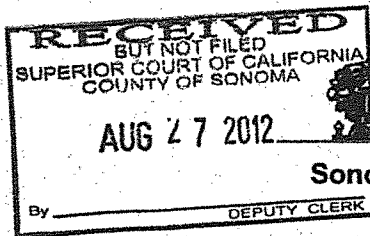
Date: \_\_\_\_\_

9-21-12

Signed: \_\_\_\_\_

[Signature]

No attachments.



Approved:   
Superior Court Judge  
AUG 28 2012



**Sonoma County Community Development Commission**  
Sonoma County Housing Authority  
1440 Guerneville Road, Santa Rosa, CA 95403-4107

Members of the Commission

Shirlee Zane  
Chair

David Rabbitt  
Vice Chair

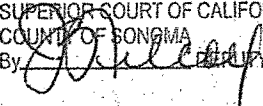
Valerie Brown  
Mike McGuire  
Efren Carrillo

Kathleen H. Kane  
Executive Director

August 23, 2012

**FILED**

AUG 28 2012

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA  
By  DEPUTY CLERK

Honorable Rene Auguste Chouteau  
Presiding Superior Court Judge  
Hall of Justice  
600 Administration Drive  
Santa Rosa, CA. 95403

Re: Civil Grand Jury Report - Human Services Commission

Dear Judge Choteau:

This letter responds to the June 28, 2012 Sonoma County Civil Grand Jury Final Report section entitled "2011 Disbanding of the Human Services Commission". The report includes four findings and three recommendations, and requires me, as the Executive Director of the Sonoma County Community Development Commission, to respond specifically to Recommendations R2 and R3 on page 32.

Findings:

I agree with all findings, which are numbered F1, F2, F3, and F4, without reservation. The language of finding F2 leaves a conclusion open to further analysis and determination, as discussed further below under Recommendation R2.

Recommendations:

**Recommendation R2:** *The Executive Director of the Sonoma County Community Development Commission consider expanding the CDC committee to eight or nine members.*

- This recommendation is being considered for implementation as discussed below.

State Health & Safety Code Sections 34100 *et seq.* govern the formation and composition of community development commissions such as the Sonoma County Community Development Commission (CDC), which are established to operate community development functions along with a redevelopment agency and/or a housing authority under a single operating entity and board. The Sonoma County Board of Supervisors, by Ordinance No. 3257, created and declared itself to be the governing board of the Sonoma County CDC, and established the Community Development (CD) Committee to review and make recommendations on matters to come before the Commission prior to Commission action. While Health & Safety code allows community development committees to have up to nine members, County Ordinance No. 3257 stipulates that the Sonoma County CD Committee is comprised of seven



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members. Per the Ordinance, each member of the Board of Supervisors nominates one Committee member to represent his or her supervisorial district. Vacancies for these five district seats are posted publically and interested people may apply through the Board of Supervisors' office.

For agencies like the CDC, which combine their housing authority with their community development commission, the law requires that the Committee include two members who are tenants of the housing authority, at least one of whom must be at least 62 years of age. Federal law governing funding that the CDC receives from the U.S. Department of Housing and Urban Development (HUD) further requires that at least one member of the CD Committee must be homeless or formerly homeless. Typically, this is met by one of the tenant representatives having been homeless prior to receiving Housing Authority assistance. When vacancies for these two tenant seats occur, CDC staff sends notices to Sonoma County Housing Authority assisted households to solicit interested volunteers. Per the County Ordinance, the five Committee members in district seats nominate the two tenant representatives and recommend their appointment by vote of the Board.

Additionally, the Director of the Human Services Department, or their designee, sits with the Committee as an *ex-officio* member with no voting privileges. This *ex-officio*, non-voting seat was added by the Board in 1993, with no Ordinance amendment required, to help ensure effective coordination between the funding functions of the CDC and the Human Services Department.

We agree with the Grand Jury report's assertion that it would be beneficial for the Committee to include "individual(s) with prior community partner and/or local safety net funding experience"; however, it does not necessarily follow that the number of Committee members needs to be increased to meet this goal. In fact, the CD Committee's work with the HUD-funded Community Development Block Grant and Emergency Solutions Grant programs and grantees overlaps significantly with the programs and grantees funded by the former Human Services Commission (HSC). Thus, the current CD Committee members already possess this experience. Future CD Committee members will continue to come from a broad range of backgrounds, bringing a diversity of experience and knowledge to the Committee. The qualifications of the members will vary and change over time as appointees change. We believe that the selection process for the current seats has and will continue to result in the appointment of members who meet this criterion. Former HSC members and others with similar qualifications can apply for appointment to one of the district seats as vacancies occur.

Regardless of prior experience with human services programs prior to being appointed to the CD Committee, all members are volunteers who apply for appointment to the Committee; all are interested in and have an affinity for helping to address and resolve the needs of the low-income residents of the County. CDC staff works with the Committee members throughout the year to help them prepare for their grant proposal review and recommendation functions. This preparation includes an annual tour during which Committee members visit the sites of existing and potential grantees to become more familiar with their operations and the way in which they conduct their programs. In addition, because the Committee cannot visit all sites each year and travels to different parts of the County on a rotational basis, a portion of their monthly Committee meetings is set aside for nonprofit agency and other educational presentations. Through these means, Committee members gain the knowledge needed to aid their funding recommendation processes during their annual public hearings.

As noted above, the Board of Supervisors could amend the County's Ordinance to increase the Committee's voting membership by one or two seats, in compliance with State law and federal regulation. Any such additional seats could be designated specifically to represent the interest of human services/local safety net program experience. The CD Committee discussed this issue during their meetings on July 10 and August 14, 2012. Following their discussions, the Committee voted to recommend revisions to County Ordinance to include the *ex-officio* Human Services Department Director or designee as an eighth voting member of the Committee. This would help to ensure that knowledge of, and experience working with, local safety net programs is consistently and effectively represented during Committee discussions and actions. The Committee's recommendation will be forwarded to the Board of Supervisors for their consideration during October or November 2012.

**Recommendation R3:** *The Executive Director of the Sonoma County Community Development Commission annually provide to the Grand Jury the CSF funding recommendations once they have been approved by the Board of Supervisors.*

- This recommendation will be implemented in the future, beginning in May 2013 when the Board of Supervisors is scheduled to approve CSF and other funding recommendations for FY 2013-14. These reports are always made public and readily available to all public and the Grand Jury, online and in hard copy.

**Commendations:** *The Grand Jury commends both the HSC and CDC for ensuring that CSF grantees continue to receive funding in Sonoma County to assist at-risk and in-need members of the community despite the economic downturn.*

- I would like to take this opportunity to express my appreciation for the commendations included in the Grand Jury's report. The CD Committee members and CDC staff have strived to ensure that CSF grantees will be smoothly integrated into the agency's annual grant funding process so that these County funds can continue to help those most in need in our community.

Please feel free to contact me at 707-565-7505, or [kathleen.kane@sonoma-county.org](mailto:kathleen.kane@sonoma-county.org), if you have questions or would like to further discuss the information presented in this response.

Sincerely,



Kathleen H. Kane, Executive Director

- c: Foreperson, Grand Jury, PO Box 5109, Santa Rosa, CA 95402  
Sonoma County Board of Supervisors  
Sonoma County Community Development Committee  
Veronica A. Ferguson, Sonoma County Administrator  
Janice Atkinson, Sonoma County Clerk  
Jerry Dunn, Interim Director, Human Services Dept.  
Don Schwartz & Jennifer Rogers, County Administrator's Office