MONTEREY COUNTY CIVIL GRAND JURY

2014-2015 FINAL REPORT

JUNE 30,2015

MONTEREY COUNTY
CIVIL GRAND JURY

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Front cover:
'Mountain' by David Ligare, oil on canvas, 60" x 90", 2013
Image Courtesy of Winfield Gallery

Back cover:
"Moss Landing Sunset," by 2014-2015 Grand Juror Michael Berube

Background:
Sections from the 1877 St. John Cox map of Monterey County.
Courtesy of the Monterey County Historical Society.

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June 30, 2015

The Honorable Marla O. Anderson
Presiding Judge, Superior Court of California
County of Monterey
240 Church Street
Salinas, CA 93901

Dear Judge Anderson:

On behalf of the 2014-2015 Monterey County Civil Grand Jury, I am pleased to submit its Final Report. The Report reflects the efforts of dedicated Monterey County citizens. The Report is the result of many hours that included interviews, research, drafting and collaboration.

The 2014-2015 Monterey County Civil Grand Jury is hopeful that its efforts will benefit the citizens of Monterey County, as well as the public agencies which are the subject of its efforts. However, I would be remiss if I did not observe that much, if not most, of the benefit of the Jury's efforts came not from its formal Reports, but from the interaction between the Jury's investigative Committees and the public employees they interviewed. The showing of interest in a matter often led to changes and improvements in public entity matters not foreseen by the Jury nor reflected in Reports.

The ability of the 2014-2015 Monterey County Civil Grand Jury to accomplish its duties is in no small manner reflective of the support provided by Your Honor, Leslie Girard and Sandra Ontiveros of the Office of County Counsel. That support made all the difference.

Our service as Civil Grand Jurors has been rewarding and educational. It was absolutely worth the time and effort. We thank you for the opportunity to serve our fellow citizens.

Respectfully,

Brandon Hill

Brandon Hill
Foreperson

2014-2015 Monterey County Civil Grand Jury

From left to right, front row: Barbara Mejia, Sol Gonzalvo, Jeane Errea, Roger Powers. Middle row: Vicki Nohrden, Judee Timm, Louis Panetta, Presiding Judge Marla O. Anderson, Kathleen Wall, Olivia Yates, Gary Breschini. Back row: Robert Barry, Brandon Hill, Tim Blomgren, Bill Harris, Francis Small, and Patrick Healey. Not pictured: Michael Berube, Alis Gumbiner, and Peter Hiller.

2014-2015 MONTEREY COUNTY CIVIL GRAND JURY ROSTER

OFFICERS

Foreperson	Brandon Hill	November 2014 – June 2015
	Francis Small	July 2014 – November 2014
Foreperson Pro Tem	Lou Panetta	November 2014 – June 2015
	Brandon Hill	July 2014 – November 2014
Recording Secretary	Jeane Errea	
Corresponding Secretary	Tim Blomgren	February 2015 – June 2015
	Louise Goetzelt	July 2014 – December 2014
Sargent-at-Arms	Robert Barry	

JURORS

Robert Barry	Prunedale
Michael Berube	Carmel Valley
Tim Blomgren	Carmel-by-the-Sea (joined January 2015)
Gary Breschini	Salinas
John Byrne	Monterey (resigned January 2015)
Jeane Errea	San Ardo
Louise Goetzelt	Del Rey Oaks (resigned December 2014)
Sol Gonzalvo	Salinas
Alis Gumbiner	Monterey (joined September 2014)
Bill Harris	Carmel
Patrick Healey	Carmel-by-the-Sea
Brandon Hill	Salinas
Peter Hiller	Carmel (joined October 2014)
Barbara Mejia	Salinas
Vicki Nohrden	Monterey
Louis Panetta	Monterey
Roger Powers	Salinas (joined December 2014)
Francis Small	Carmel
Judee Timm	Carmel
Kathleen Wall	Monterey
Phil Ward	Carmel (resigned August 2014)
Olivia Yates	Pebble Beach
Maury Vasquez	Seaside (resigned October 2014)

2014-2015 Monterey County Civil Grand Jury

Mission Statement

The mission of the Monterey County Civil Grand Jury is to conduct independent inquiries and to respond to citizen complaints concerning any non-State or Federal government agency, municipality, or special district within Monterey County. The reports of the Civil Grand Jury will provide a clear picture of the functioning of the organizations. Recommendations for improvement will be made, and commendations will be offered when effectiveness, efficiency, or excellence is found.

CIVIL GRAND JURY MISSION AND RESPONSE REQUIREMENTS

The primary mission of a civil grand jury in the State of California is to examine county and city governments, as well as districts and other offices, in order to ensure that the responsibilities of these entities are conducted lawfully and efficiently. The civil grand jury is also responsible for recommending measures for improving the functioning and accountability of these organizations, which are intended to serve the public interest.

Jury Selection

Each year, citizens of the county who apply for civil grand jury service are invited to an orientation session for an overview of the process. The court then interviews them, and approximately 40 names are forwarded for inclusion in the annual civil grand jury lottery. During the lottery, 19 panel members are selected, with the remaining to serve as alternates. Those selected to serve are sworn in and instructed to their charge by the presiding judge. Civil grand jurors take an oath of confidentiality regarding any civil grand jury matters for the rest of their lives.

Investigations

Each civil grand jury sets its own rules of procedures and creates committees to investigate and create reports. California Penal Code section 925 states:

> The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving ex-officio capacity as officers of the districts.

Additionally, Section 919 prescribes that:

> The grand jury shall inquire into the condition and management of the public prisons within the county, including inquiring into willful or corrupt misconduct in office of public officers of every description within the county.

The public may submit directly to the Monterey County Civil Grand Jury complaints requesting that it investigate issues of concern regarding public agencies or official in Monterey County. The public may request complaint forms by contacting the office of the Monterey County Civil Grand Jury at (831) 883-7553 or through the Grand Jury's website address at:

www.monterey.courts.ca.gov/grandjury/ or
http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury

Grand juries conduct proceedings behind closed doors, as required by law, primarily for the protection of people who file complaints or who testify during investigations. All who appear as witnesses or communicate in writing with a grand jury are protected by strict rules of confidentiality, for which violators are subject to legal sanction.

Reports

Section 933(a) of California Penal Code declares:

> Each grand jury shall submit…a final report of its finding and recommendations that pertain to county government matters during the fiscal or calendar year.

The civil grand jury summarizes its findings and makes recommendations in a public report, completed at the end of its yearlong term. Each report is presented to the appropriate department or agency.

Section 933(b) declares:

> One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

Each report is distributed to public officials, libraries, the news media and any entity that is the subject of any of the reports. The public may also view each year's final report through the Monterey County Civil Grand Jury's website at:

http://www.monterey.courts.ca.gov/grandjury/Reports.aspx or
http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury

Content of Responses

Section 933.05 of the California Penal Code declares:

> (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
>
> 1. The respondent agrees with the finding.
> 2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
>
> (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
>
> 1. The recommendation has been implemented, with a summary regarding the implemented action.
> 2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
> 3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of 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.

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Timeline of Responses

Section 933(c) states:

> No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendation pertaining to matter under the control of that county officer or agency head any and agency or agencies which that officer or agency head supervises or controls…All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.

Address for Delivery of Responses
The Honorable Marla O. Anderson
Presiding Judge of the Superior Court
County of Monterey
240 Church Street
Salinas, CA 93901

CALLING ALL RESIDENTS
THE ALERTMONTEREYCOUNTY SYSTEM

CALLING ALL RESIDENTS
THE ALERTMONTEREYCOUNTY SYSTEM

SUMMARY

In the event of an emergency, the County of Monterey is currently only able to reach less than 40% of all residents via landlines and wireless telephones. This is despite the fact that the county has a system capable of reaching every single resident with a wireless telephone, provided these residents have registered their phones with the county's emergency alerting system, known as AlertMontereyCounty.

Due to the importance of being able to notify as many residents as possible in the event of an emergency, the Monterey County Civil Grand Jury (MCCGJ) conducted an investigation to determine how effectively Monterey County residents without landlines are being notified of the need to register wireless telephones. We found that despite an initial publicity push in 2009 and a second attempt to promote registration in 2014, the county has not allocated sufficient resources or effort to effectively register residents.

METHODOLOGY

In conducting this investigation, the MCCGJ interviewed personnel from the County's Department of Emergency Communications, Office of Emergency Services (OES), and the County Administrative Office (CAO). Members also toured the County's Emergency Services Center, witnessed a demonstration of the AlertMontereyCounty system, and reviewed published statistics and documents, including:

- Press clippings, internal communications, and external newsletters;
- The AlertMontereyCounty website, http://www.alertmontereycounty.org;
- Promotional materials prepared by the Office of Emergency Services;
- Metrics pertaining to the number of residents the system is currently able to contact;
- Data regarding use of wireless vs. landline telephones;
- 2010 Census Data.

DISCUSSION

Emergencies that require notification of residents may be countywide or limited to a specific geographic area. The types of emergencies requiring notification include such events as a lost child or adult, a tsunami warning, flooding, hazardous materials (HAZMAT) incidents, wildfires, power outages, train crashes, major traffic accidents, or law enforcement incidents requiring residents to stay in place. In any of these cases, it is vital that affected residents are contacted quickly with accurate and consistent information.

Notification Methods in Monterey County

The system for alerting residents in most communities is commonly referred to as a "reverse 911 system" whereby emergency managers can dial out to the telephones of residents. This type of system is based entirely on landlines and other data received from the local telephone company (published and unpublished numbers). The County of Monterey has the capability to make reverse 911 calls to landlines in most of the county, with the exception of people living in the City of Carmel,which maintains its own 911 dispatch system. California Department of Forestry and Fire Protection (CalFire) also maintain a separate reverse 911 system for notification of residents in the Carmel Highlands and Pebble Beach.

As the use of cellular and other wireless devices increases, the effectiveness of reverse 911 systems is more and more limited. According to the Pew Research Center, in an article published in July, 2014, it is estimated that more than 42% of all households nationwide are wireless only. Wireless includes both cell phones and Voice Over Internet Protocol or VOIP phones, such as those offered by Vonage, Comcast, AT&T, etc. In Monterey County, the Emergency Communications Department estimates the number of wireless-only households is closer to 70%. Even those residents with a landline may be more accessible via a cellular telephone.

Wireless-only residents can be contacted through the Federal Emergency Management Agency's Wireless Emergency Alerting (WEA), which accesses cell towers to send messages. This system presents a number of limitations, however: it relies entirely on text messages, can only send to smart phones, sends messages in English only, and must broadcast to the entire county with no specific geolocating. capability.

Many institutions of higher education within the county—specifically Monterey Peninsula College, California State University Monterey Bay (CSUMB), Hartnell College, and the Naval Postgraduate School—currently have their own systems for sending notifications to students, faculty, and staff. CSUMB is planning to switch over to the AlertMontereyCounty system for this purpose.

AlertMontereyCounty

First introduced in 2009, the AlertMontereyCounty system utilizes software that can relay information in both emergency and non-emergency situations via text or voice recording. This information can be sent to a wireless telephone, a landline, or a computer, with preference specified by the registered resident. Messages can be sent in either English or Spanish, again based on the preference specified by the resident. Recipients of messages can be targeted by neighborhood, city, or any specified geographic area based on physical address.

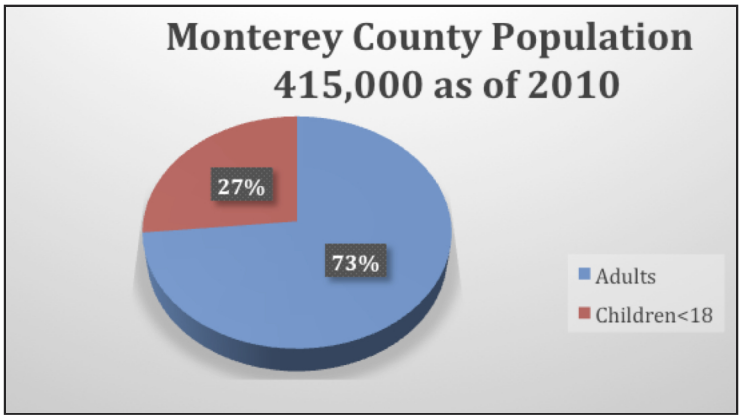
In 2013, the county changed to a newer, more flexible software system. The company now under contract with the county is Everbridge, a national company that owns and runs the software platform, at a cost of $76,000 per year. This fee is paid by the county's Emergency Communications Department and incorporated cities within Monterey County. In addition to geolocating, the Everbridge platform can specify a number of variables in delivering messages, including:

- How an individual is contacted (home phone, mobile, or email);

- Duration of the message broadcast/how often to repeat the message (1 hour, 2 hours, etc.);
- Number of times the message cycles;
- Interval between delivery methods;
- Voice mail preference (i.e., whether or not to leave a message);
- Sender's request for confirmation of message receipt.

All published landlines, business and residential, are automatically downloaded into the system. Unpublished landlines can be acquired from the Emergency Communications 911 dispatch center in the event of an emergency. However, wireless telephones must be individually registered via the AlertMontereyCounty website (http://www.alertmontereycounty.org). Monterey County runs the front-end of this website (the introductory section), which is available in both English and Spanish. Everbridge runs the back-end where the actual registration takes place. Everbridge does not confirm registration and the registration process is currently available in English only.

Cities and the county can also use the system to communicate with employees. In the case of the county's 4,500 employees—all designated as disaster relief workers by means of their employment—this internal communication ability is particularly important. Not all of these employees have registered their wireless telephones with AlertMontereyCounty, although the Monterey County OES is currently promoting the system internally to county employees and department heads. The OES is also working with city governments within the county, training their designated representatives on the use of the system and how to access AlertMontereyCounty to reach both employees and residents.

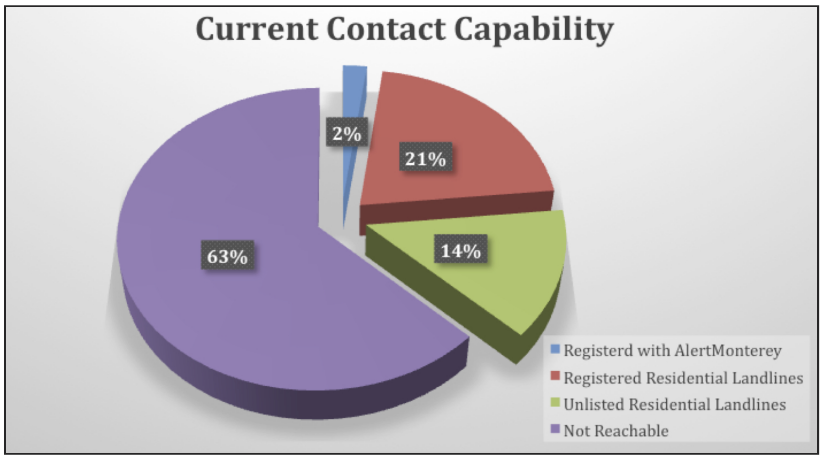


Participation in AlertMontereyCounty

The need for residents to register wireless telephones with AlertMontereyCounty has been publicized in various ways over the past six years. The OES contacts the general public on an ongoing basis at such gathering places as preparedness fairs,senior centers, and through periodic press releases issued by the communications arm of the CAO. Social media—including a blog and twitter feeds—are also used by OES. Individual city governments have sent periodic notices to residents and some are promoting the system in other ways such as street banners. Community groups have also issued notices to members.

In 2009, a promotion of the initial system launch was sponsored by AT&T and publicized through printed materials and local media. Materials were distributed to the public through public events and the Monterey County Free Library system, where individuals were offered assistance in completing the online registration process. As of February 2015, although some promotions continue, local libraries are not consistently offering information and registration assistance despite the fact that residents who do not have computers are encouraged in AlertMontereyCounty promotional materials to go to the library to register.

A second phase of the 2009 promotion, led by cities and OES, was planned but did not occur because no funds were available. In September 2014 OES announced a planned test of the system, publicized through four press releases, which generated coverage in local media. This publicity effort appears to have been successful; of the 1,800 individuals who registered in 2014, 60% registered in September.



According to the 2010 U.S. Census, Monterey County has a total of 415,057 residents, 305,600 over the age of 18 years. The AlertMontereyCounty database includes 40,410 residential landlines. In the event of an emergency, the system can access an additional 27,149 unlisted residential landlines from the 911 databases. Assuming 60% of landline households contain two adults and 40% contain a single adult,[1] this means emergency contact via landlines may reach as many as 108,000 adults—if they are at home when an emergency occurs. As of March 15, 2015 a total of 6,508 individuals had registered wireless telephones with AlertMontereyCounty. This means that, in an emergency, the county may be able to contact 114,508 individuals at their residences or on their wireless telephones—less than 38% of the adult population. With the addition of business landlines that number could increase slightly, given that some individuals may have wireless telephones for personal use and landlines at their place of work.[2]

There are a number of possible reasons why more people are not registering their wireless telephones with AlertMontereyCounty:

- They agree to sign up once they hear about it but don't get around to actually doing so;
- Many individuals take preparedness action—such as registering their wireless telephones—only in the wake of a disaster;
- The registration process on the website is somewhat confusing to those who are not experienced computer users (i.e., requires a password to proceed);
- Having the registration form in English-only presents a language barrier for non-English speakers; and
- Registration requires both an e-mail address and a computer; those people who turn to the libraries for assistance in registering might not have an e-mail address.

The goal of the county is to have *all* wireless telephones registered, including Carmel, Pebble Beach, and Carmel Highlands.

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[1] According to the U.S. Census Bureau, 27% of U.S. households are comprised of single adults living alone and 13% of households are headed by a single parent.

[2] There are 13,682 business landlines in the AlertMontereyCounty database. This means individuals who have not registered their wireless telephones may receive alerts through their place of business, provided that business has a landline.

FINDINGS

F1. AlertMontereyCounty is potentially the most effective method of reaching all citizens with both emergency and non-emergency notifications, in English and Spanish.

F2. Despite maintaining a sophisticated and flexible alerting system, the County of Monterey cannot reach the majority of residents in an emergency using AlertMontereyCounty.

F3. Reaching all citizens in the event of an emergency is critical.

F4. Individuals can register for AlertMontereyCounty only through the website, making registration difficult for those who are not experienced with computers or do not own a computer.

F5. It is difficult for residents who do not speak or read English to register.

F6. As disaster relief workers it is important that all county employees can be contacted in the event of an emergency.

F7. Adequate funding has not been allocated for advertising and promoting the need for individuals to register wireless telephones with AlertMontereyCounty.

F8. Having all residents of the county registered with AlertMontereyCounty will allow for consistency of messaging in the event of an emergency.

F9. Because the Everbridge software does not include a follow-up component, residents who attempt to register get no confirmation that registration has been successful. If the registration has not been accepted for some reason, they may not know and have a false sense of security with the notification process.

F10. Libraries are an important access point for many residents. As of February 2015, printed materials regarding AlertMontereyCounty were not available at many local libraries, and library staff, when questioned, were not fully briefed on the registration process.

RECOMMENDATIONS

R1. OES continues training city personnel in the application and use of AlertMontereyCounty.

R2. OES reaches all agencies operating within the county—including Highway Patrol, Sheriff, and CalFire—for training in the use of AlertMontereyCounty.

R3. CAO immediately commits resources (financial and personnel) needed to publicize AlertMontereyCounty with the goal of registering all wireless telephones by a specified target date.

R4. OES works with local libraries throughout the county to distribute information about AlertMontereyCounty and to assist patrons in registering wireless telephones. All libraries should be participating by the end of 2015.

R5. County and municipal governments require all county and municipal employees to register their wireless telephones by the end of 2015.

R6. OES seeks the assistance of Everbridge in developing alternatives, by the end of 2015, for residents to register for AlertMontereyCounty. These alternatives may include but not be limited to:
a) Telephone
b) Printed application that can be mailed to the OES.

R7. OES requests Everbridge to provide a Spanish language registration form by September 30, 2015.

R8. OES asks those institutions or agencies currently using their own notification systems (the City of Carmel, CalFire, Monterey Peninsula College, Hartnell College, and the Naval Postgraduate School) to encourage constituents to register with AlertMontereyCounty by June 30, 2016.

R9. OES works with senior centers, assisted living facilities, and medical facilities to educate and register staff, members, and residents.

R10. CAO convenes a working group of emergency services personnel and interested parties to promote registration with AlertMontereyCounty.

R11. As a supplemental funding mechanism, partnerships be formed whereby local businesses pay for the cost of printed materials promoting registration in exchange for printing their name and logo on the materials.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests Responses to all Findings and Recommendations as follows:

- Monterey County Board of Supervisors

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OVER-MILITARIZATION OF LOCAL POLICE DEPARTMENTS: MYTH OR FACT?

Del Rey Oaks Police Department's MRAP vehicle, February 24, 2015

OVER-MILITARIZATION OF LOCAL POLICE DEPARTMENTS: MYTH OR FACT?

SUMMARY

The over-militarization of local police departments, particularly the use of surplus equipment from the Federal Department of Defense's 1033 Program, does not appear to pose a problem among the local police departments that the Monterey County Civil Grand Jury (MCCGJ) reviewed.

The MCCGJ does find, however, that Del Rey Oaks, one of only two local police departments to receive a Mine-Resistant Ambush Protected vehicle (MRAP), has not joined with other departments in regional organizations and that its MRAP vehicle would be better employed if it did so.

BACKGROUND

Increased militarization of local police departments has been an emerging issue. Concern has been driven, in part, by the increased use of Special Weapons and Tactics (SWAT) teams and military-style weapons, equipment, and tactics by police departments. The issue has recently been brought to the national forefront following a number of high-profile articles in the national media, including the events in Ferguson, Missouri in August of 2014. In Monterey County, two large armored MRAP vehicles have been obtained from the Department of Defense by local police departments.

A study of the militarization of police departments was published by the American Civil Liberties Union (2014). It was titled *War Comes Home: The Excessive Militarization of American Policing*, and the executive summary includes the following:

> American policing has become unnecessarily and dangerously militarized, in large part through federal programs that have armed state and local law enforcement agencies with the weapons and tactics of war, with almost no public discussion or oversight. [p. 2]

The issue of militarization of local police departments has recently been focused on two Monterey County cities, Salinas and Del Rey Oaks, following their police departments' acquisitions of MRAP vehicles from the Department of Defense under that department's 1033 Program. Area media outlets have devoted extensive coverage to these acquisitions.

Based on this information, the MCCGJ reviewed the 1033 Program acquisitions, as well as the activities and procedures of several local police departments to: (1) determine to what extent they are acquiring military-style weapons and equipment; (2) learn of their use of force policies, as well as procedures and policies for the use of military-style weapons and equipment (primarily by SWAT teams); and (3) identify any issues which might represent a growing problem for our

local communities and indicate whether these local police departments are becoming overly militarized.

INVESTIGATIVE METHODS

The MCCGJ reviewed a number of Monterey Peninsula area police departments to determine their degree of militarization.

- The MCCGJ interviewed officials from Salinas and Del Rey Oaks. As noted above, the police departments of these two cities have each acquired MRAP vehicles from the Department of Defense and support a SWAT team (Salinas) or a Special Response Team (SRT) (Del Rey Oaks).
- The MCCGJ also interviewed officials from the cities of Monterey, Seaside, Marina, and Pacific Grove. The police departments of these cities have not acquired MRAP vehicles, but each contributes officers to the Monterey Peninsula Regional Special Response Unit (Monterey Peninsula Regional SRU), a regional SWAT team that has acquired a light armored vehicle. The MCCGJ also interviewed an official with the Monterey Peninsula Regional SRU.

In our review the MCCGJ also examined a variety of documents, including use of force policies, SWAT/SRU team deployment summaries, and, for Del Rey Oaks, its police department's policy regarding use and deployment of its new MRAP vehicle.

DISCUSSION

The increased militarization of local police departments is often attributed to two primary causes: the war on drugs and the ability of local police departments to acquire surplus military equipment from the Department of Defense. Together these have led to an increase in the number of SWAT teams nationwide, as well as a significant increase in their use. This is detailed in the above-cited American Civil Liberties Union report, which states:

> Even though paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations, the use of SWAT to execute search warrants in drug investigations has become commonplace and made up the overwhelming majority of incidents the ACLU reviewed—79 percent of the incidents the ACLU studied involved the use of a SWAT team to search a person's home, and more than 60 percent of the cases involved searches for drugs. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people's homes. [p. 3]

According to the Defense Logistics Agency website, the 1033 Program was created within the Department of Defense by the National Defense Authorization Act for Fiscal Year 1997. The goal of the program was to transfer excess military equipment to local law enforcement agencies, with preference to be given to counter-drug and counter-terrorism requests. Although this program has been in existence for well over a decade, the relatively recent addition of large armored vehicles (MRAPs) has focused considerable attention to the practice of providing surplus military equipment to local police departments.

Salinas Police Department's MRAP vehicle, April 15, 2015

Armored Vehicles

MRAPs are large armored vehicles that were specifically designed to withstand improvised explosive device attacks and ambushes, and more than 12,000 were used in the Iraq and Afghanistan wars. These vehicles were added to the Department of Defense 1033 Program in 2013, making them available to local police departments and other agencies (http://en.wikipedia.org/wiki/MRAP).

The deployment of MRAP vehicles to many local police departments around the country, as well as to two school districts in southern California, resulted in considerable media attention and serious public objections in some areas. These objections have resulted in the return of a number of these vehicles, including the two that were acquired by the southern California school districts. Locally, according to an article on the *San Jose Mercury News* website (August 28, 2014), the two vehicles acquired by the cities of San Jose and Davis are being returned, while those acquired by Redwood City, South San Francisco, and Antioch will be kept.

Since MRAP vehicles became available, the cities of Salinas and Del Rey Oaks have each acquired one from the Department of Defense under the 1033 Program. During the course of our review, members of the MCCGJ inspected both of these vehicles and learned of the policies regarding their deployment.

Salinas Police Department's MRAP

The City of Salinas, with a population of approximately 154,000, acquired its MRAP from the Department of Defense late in 2013. This vehicle is a two-axle 4x4 built by International, and weighs approximately 37,000 pounds. It has a turret, but has no weapons or weapons ports installed. The turret is used as an observation platform. The vehicle has a front-mounted battering

ram and winch, lights, siren, and a public address system, as well as a number of hand-operated SWAT tools for forcing entry to structures.

This vehicle is being used as a part of SWAT team operations and is designated as an "Armored Rescue Vehicle." At present, there is a directive in place that the vehicle can be used only during SWAT operations or during an emergency in which the MRAP could help to provide a safe resolution.

The Salinas Police Department's MRAP was deployed on all SWAT operations during 2014, as well as for bi-monthly training sessions. The number of SWAT operations in that year was nine, all of which were described as, "High risk search warrant/surround and call out." There were no uses in hostage or barricade situations nor was the vehicle used as part of a rescue operation during that period.

Del Rey Oaks Police Department's MRAP

The City of Del Rey Oaks, with a population of approximately 1,700, acquired its MRAP vehicle in May of 2014. It is described as a 2013 Caiman three-axle 6x6 built by BAE Systems. This vehicle is larger than the Salinas Police Department's MRAP, weighing between 66,000 and 69,000 pounds, and is the ambulance configuration of that series. Since its acquisition, the vehicle has been undergoing extensive upgrading, refurbishing and painting, all paid for by a private donor. The estimated cost for these improvements is $200,000. The MRAP is being outfitted and signed as a "Regional Rescue Vehicle," and reportedly will become operational in late May, 2015.

The Del Rey Oaks Police Department's MRAP has no turret, weapons ports, or weapons installed, nor does it have a battering ram. It does have a front-mounted winch with extra tow cables, extensive lighting and camera systems, two portable generators, a public address system, provisions for carrying four gurneys, trauma packs, oxygen, and other equipment related to its intended use as a rescue vehicle.

The Del Rey Oaks Police Department has a written Use and Deployment policy for its MRAP. This became effective in January of 2015 and was approved by the Chief of Police, City Manager, and City Attorney. This policy requires the direction or consent of the Chief of Police for the MRAP to be deployed.

When operational, the MRAP may be deployed to outside jurisdictions if requested under mutual aid agreements, and may be used by the Del Rey Oaks Special Response Team (Del Rey Oaks SRT).

The Del Rey Oaks SRT is made up of three full-time officers and five reservists. Capabilities described to the MCCGJ include a precision rifle team (snipers) and a bomb-sniffing canine unit. There have been no deployments of this team during the past four years, but the precision rifle team provided support to the US Secret Service during a visit to the area by Vice President Joe Biden.

To date, Del Rey Oaks has no admitted gang activity and no major crime problems that would seem to justify the use of such a vehicle within the city limits. The primary use of its MRAP may be in support of other local police departments or the Monterey Peninsula Regional SRU for a rescue or for a prolonged active shooter situation. However, the Del Rey Oaks Police Depart-

Monterey Peninsula Regional SRU's light armored vehicle

ment's MRAP has been described to the MCCGJ by several regional officials as being too hard to maneuver and too large to be driven on some local streets to be practical.

There are other limitations that may affect the local utilization of Del Rey Oaks Police Department's MRAP. These include its operation, in part, by reserve officers. More than one local official stated that reserve officers are not able to participate in the Monterey Peninsula Regional SRU. Another limitation is the failure of the Del Rey Oaks Police Department to join with other departments in regional organizations such as the Monterey Peninsula Regional SRU.[1] In addition to these limitations, several local officials told the MCCGJ that without coordinated training and cooperation with the Monterey Peninsula Regional SRU, they would be reluctant to call up the Del Rey Oaks Police Department's MRAP for anything but a rare prolonged active shooter situation or a catastrophic natural disaster.

Monterey Peninsula Regional SRU's Light Armored Vehicle

The City of Seaside's Police Department acquired a light armored vehicle from the Department of Defense for use by the Monterey Peninsula Regional SRU. This vehicle is much smaller than the MRAPs, and is considered inadequate because it carries too few officers. Efforts are underway to acquire a BearCat armored personnel carrier to replace it.[2]

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[1] Del Rey Oaks cites liability concerns as the reason for not joining the Regional SRU. Del Rey Oaks is also not a member of other local police organizations such as the Peninsula Regional Violence Narcotics Team (PRVNT) [which deals with gang and narcotics trafficking operations], Strategic Traffic Observation and Prevention Program (STOPP) [a traffic program], and the Monterey County's Mobile Field Force [a crowd-control organization].

[2] The BearCat is an armored personnel carrier built by Lenco Armored Vehicles in a variety of configurations for use by law enforcement and military organizations.

The Monterey Peninsula Regional SRU is made up of police officers from Seaside, Marina, Monterey, Pacific Grove, Sand City, Carmel, and California State University, Monterey Bay. It has subunits trained as tactical emergency medical and crisis negotiation teams. (The City of Del Rey Oaks is not a member of this organization.)

An operation log shows that the Monterey Peninsula Regional SRU was deployed four times during 2014, and 16 times since activation of the unit in January of 2010. These 16 deployments consisted of 10 search warrants, three arrest warrants, two barricaded subjects, and one hostage rescue. The number of deployments will likely increase in the future because the Monterey Peninsula Regional SRU will begin handling high-risk situations for the Peninsula Regional Violence Narcotics Team (PRVNT).

Military Equipment Acquired by Local Departments

The California Office of Emergency Services maintains a list of equipment obtained by California agencies and entities under the Department of Defense's 1033 Program. This list is current as of June 24, 2014. Acquisitions by Monterey Peninsula area police departments to that date are as follows:

Carmel – no acquisitions
Del Rey Oaks – one mine resistant vehicle (MRAP)
Marina – no acquisitions
Monterey – no acquisitions
Pacific Grove – no acquisitions
Salinas – one mine resistant vehicle (MRAP) and 30 M-16 rifles
Sand City – two M-16 rifles
Seaside – one light armored vehicle[3] and 20 M-16 rifles

Use of Force and SWAT Deployment Policies

Each of the departments that the MCCGJ interviewed provided a written use of force policy. The MCCGJ also received a copy of the "threat matrix" that must be completed before the Salinas SWAT or Monterey Peninsula Regional SRU teams may be deployed.

The use of force policies reviewed by the MCCGJ are almost all based on the Lexipol template, which is the "industry standard." The Lexipol website (http://www.lexipol.com/) notes that:

> Lexipol is America's leading provider of risk management policies and resources for organizations, delivering our services through a unique, web-based development system. Lexipol offers state-specific policy manuals that are integrated with scenario-based daily training on high-risk, low-frequency events.
>
> Lexipol provides more than 150 policies based on federal and state statutes, case law, regulations and best practices.

[3] As noted above, the light armored vehicle acquired by the Seaside Police Department was in support of the Monterey Peninsula Regional SRU.

> The Lexipol policy manual is written by legal and public safety professionals who constantly monitor major court decisions, legislation and emerging trends affecting your industry. Lexipol provides regular updates in response to legislative mandates, case law and the evolution of best practices.

The City of Del Rey Oaks Police Department has developed its own use of force policy. Although detailed, it is not based on the Lexipol template used by other local police departments to develop their policies.

FINDINGS

F1. The Salinas Police Department currently deploys its MRAP vehicle on all SWAT operations, and during 2014 it was not used for any rescue, barricade, or hostage situations.

F2. The deployments of the Salinas Police Department's SWAT team and the Monterey Peninsula Regional SRU appear reasonably limited to potentially dangerous situations.

F3. Monterey Peninsula area and Salinas police departments have received only small numbers of military surplus weapons or equipment from the Department of Defense.

F4. The Del Rey Oaks Police Department has a written policy governing the use and deployment of its MRAP. All deployments will require prior approval by the Chief of Police.

F5. The Del Rey Oaks Police Department is not a member of the Monterey Peninsula Regional SRU, PRVNT, STOPP, or the County's Mobile Field Force.

F6. The Del Rey Oaks Police Department's MRAP is not likely to be requested by other local agencies for anything but a rare prolonged active shooter situation or a catastrophic natural disaster.

F7. Despite its limitations, the Del Rey Oaks Police Department's MRAP would be more useful if Del Rey Oaks joins the Monterey Peninsula Regional SRU and participates in joint training exercises.

F8. The problems noted in the American Civil Liberties Union's 2014 report, in which they concluded that American policing has become "unnecessarily and dangerously militarized," do not appear to be present in the Monterey area police departments reviewed by the MCCGJ or in the Salinas Police Department.

RECOMMENDATION

R1. The MCCGJ recommends that the Del Rey Oaks Police Department become a member of the Monterey Peninsula Regional SRU.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the Grand Jury requests a response as indicated below from the following governing bodies:

Salinas City Council:

- Findings F1, F2, F3, and F8

Del Rey Oaks City Council:

- Findings F4, F5, F6, F7, F8; Recommendation R1

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INQUIRY INTO MOSS LANDING INFRASTRUCTURE FUND

INQUIRY INTO MOSS LANDING INFRASTRUCTURE FUND

SUMMARY/BACKGROUND

In August and September 2014, the Monterey County Civil Grand Jury (MCCGJ) performed an inquiry into the Moss Landing Infrastructure Fund, focusing on the 2001 Agreement between Moss Landing Chamber of Commerce (the Chamber) and Duke Energy Moss Landing, LLC (Duke Energy).[1] The Agreement stipulated that Duke Energy would pay $3.4 million in installments over 30 years into the Moss Landing Infrastructure Fund to cover utility upgrades and other improvement projects in the community of Moss Landing. Since 2002 local activists and media have continued to question three issues:

- The money that should be in the Fund;
- The assignment of the Fund's management by the Moss Landing Chamber of Commerce to Monterey County Public Works Department, and the question of whether the Department is providing adequate oversight of the Fund and the projects; and
- The fact that despite assurances from the Public Works Department, none of the projects have been completed to date

The MCCGJ determined that the Chamber acted within its rights in assigning the management of the Fund to the Public Works Department, that the Department is exercising appropriate oversight of the funds and the projects involved, and that the money is being received and allocated in a reasonable sequence. However, this information is not being effectively communicated to the public.

INVESTIGATIVE METHODOLOGY

Members of the MCCGJ interviewed officials of the Monterey County Public Works Department. Members also reviewed published County information and various historic documents, including:

- The March 23, 2001 Agreement between the Chamber and Duke Energy
- The August 24, 2004 Amendment to the 2001 Agreement
- The 2002 Moss Landing Fund Assignment to Monterey County
- Monterey County Resource Management Agency (RMA) Documents
- The current RMA Public Works Active Capital Project List by Fund
- The July 24, 2014 Moss Landing Community Meeting Report, Plans and Schematics

[1] The 2001 Agreement was part of Duke Energy's negotiations with local environmentalists concerned about the environmental impact of the proposed expansion of the Moss Landing Power Plant. Settlement included payments to Monterey Bay nonprofit, conservation and environmental groups as well as the infrastructure improvement agreement with Moss Landing.

DISCUSSION

The 2001 Agreement called for Duke Energy to pay $3,410,000 in annual payments over 30 years for placing power, cable and phone lines underground and implementing the County's storm water run-off plan for Moss Landing and Sandholdt Roads, and/or installing street lights on Moss Landing and Sandholdt Roads. In 2004, the Agreement was modified (with no increase in funds) to include underground utilities for four additional streets: Pieri Court, Allen Street, Portrero Road, and Laguna Place.

On September 24, 2002, the Chamber relinquished control of the Fund and its oversight to the Monterey County Public Works Department. By 2015, Duke Energy and its successor, Dynegy, which purchased the power plant in 2006, had paid a total of $2.05 million of the $3.4 million agreed on into the Infrastructure Fund. The Public Works Department continues to provide oversight and management of the Fund and the projects outlined in the two Agreements as follows:

In overseeing the use of the Dynegy funds, the Public Works Department is obliged by reason of California Public Utilities Commission (PUC) Rules covering the undergrounding of utilities to split the use of the funds into two categories: Rule 20A funds and Rule 20B funds.

- Projects qualifying for PG&E surcharges to cover the actual cost of undergrounding the utilities are in the "Rule 20A funds" category. The project to underground utilities on Moss Landing and Sandholdt Roads is in this category and qualifies for these funds.
- Projects not qualifying for PG&E surcharges to cover the actual cost of undergrounding the utilities are in the "Rule 20B funds" category. The project to underground utilities on Pieri Court, Allen Street, Portrero Road, and Laguna Place is in this category and does not qualify for these funds.
- The installation of storm drains along Moss Landing Road and related work to enhance storm water runoff is entirely outside the jurisdiction of the PUC.

Within the costing process for these areas of activity, the Public Works Department must separate the project design, expense of permits, environmental reviews, and the acquisition of easements, rights of entry or rights of way (all considered part of the "design process") from the cost of the actual undergrounding or storm drain work. This is necessary because in the case of Rule 20A work, PG&E surcharge funds may not be used for activities that are part of the "design process."

By March 2015, the Public Works Department had spent approximately $802,400 of the $2.05 million on the project design process, as described below. After these expenditures, the Fund had approximately $1.25 million remaining as of March 2015. An additional $1,360,000 will be paid through annual installments by 2031.

- **Underground Utilities on Moss Landing and Sandholdt Roads: Project cost = $3.6 million. Project design is approximately 95% complete**. Under Rule 20A, utility surcharges from PG&E funded $3.1 million. Project design costs – approximately $463K – are being paid by Dynegy funds. The project had been delayed because of the unexpected level of permitting required. As of February 2015 the Monterey County Zoning Administrator has approved the California Environmental Quality Act (CEQA) Mitigated Negative Declaration, as well as the Combined Development Permit. This has allowed the Public Works Department to move forward with obtaining easements for the trenching

and transformer pads needed to underground the power lines. Over half of these easements are finished. PG&E and AT&T are moving ahead with obtaining bids to complete the construction of the project once all the remaining easements have been approved and recorded.

- **Underground utilities on Pieri Court, Allen Street, Portrero Road, and Laguna Place: Project cost = $1.6 million. Project design is almost 100% complete and ready for bid.** These residential development streets are not eligible for 20A funds, so the project is on hold, waiting for additional annual funds from Dynegy to move forward. Most of the design work has been paid by Dynegy funds. The Monterey County Board of Supervisors has not budgeted any of the remaining funds toward the completion of this project.
- **The Moss Landing storm drain project (installation of storm drains along Moss Landing Road and reconstruction of the road to provide adequate drainage for runoff): Project Cost = $3.4 million. Project design is approximately 30% complete.** Most of the design work completed to date has been paid by Dynegy funds. The project is on hold for lack of funds; however it was felt that completing the design to this level would increase chances for receiving grant funding.

FINDINGS

F1. The total $3.4 million funding agreed on is not sufficient to fully fund the projects listed in the Agreement. It is the conclusion of the MCCGJ that it was never sufficient for the scope of the planned projects.

F2. Because Moss Landing is not an incorporated city, the Chamber acted properly to make an agreement with Monterey County to manage the funds and the projects. The August 24, 2004 Amendment to the 2001 Agreement with Duke Energy expressly acknowledges this reassignment of management oversight.

F3. The County appears to have been responsible stewards of the funds and has been pursuing the necessary designs, permits, easements and rights of way.

F4. The County has completed a portion of the design for the storm drain project in order that the project may be potentially competitive in seeking grant funding.

F5. The RMA-Public Works Department website (www.co.monterey.ca.us/publicworks/) contains FAQs about the Moss Landing Improvement Projects but the page can be found only by using the "search" bar or a search engine, and it may be lacking the most current information.

RECOMMENDATIONS

R1. Monterey County seek grants and other outside sources of funding for the projects that are on hold due to lack of funding

R2. The Public Works Department ensure that its website is an accurate source of information for the public about these Moss Landing projects by maintaining updated project information and financial data

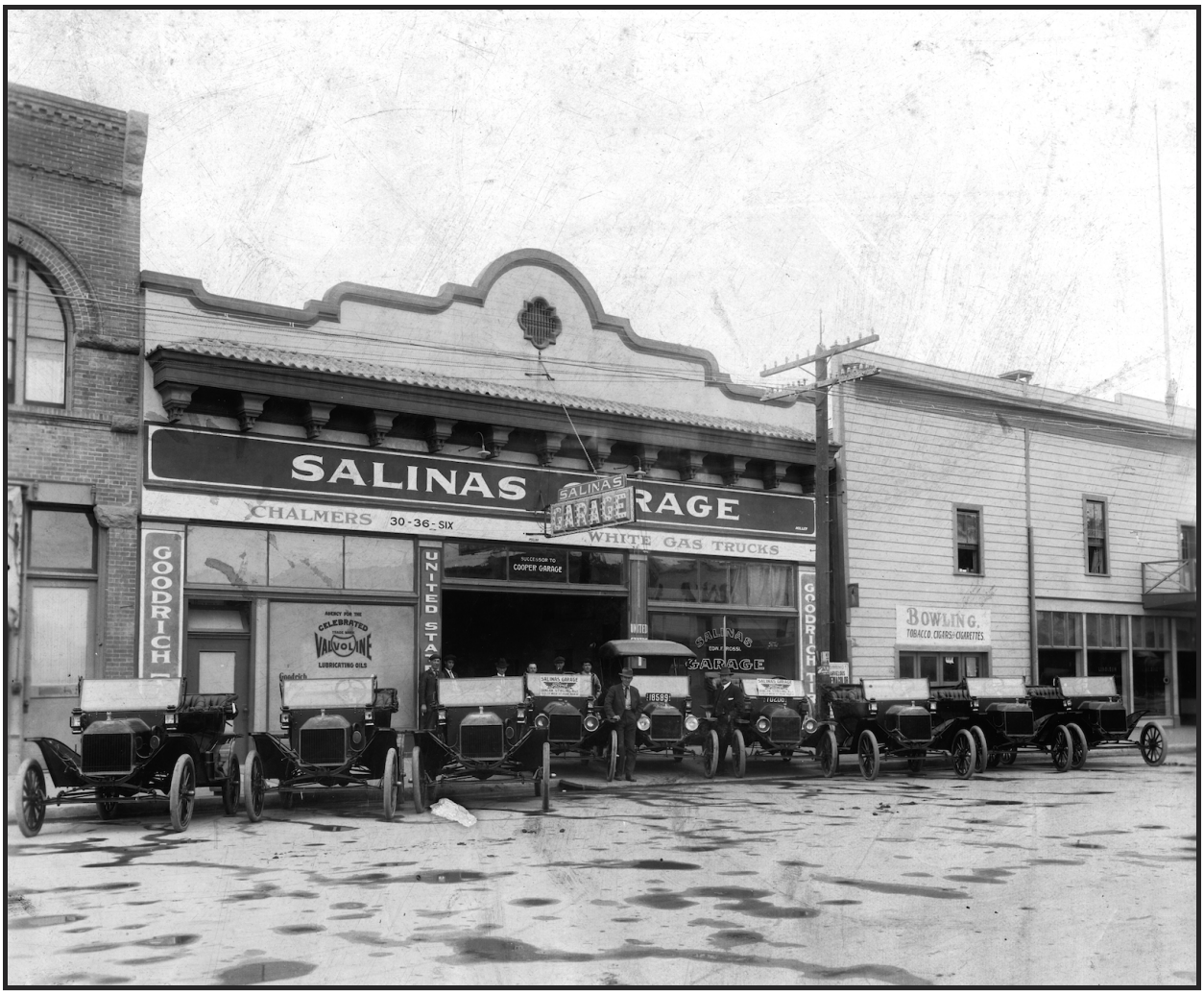
R3. The Public Works Department add a category to the FAQ or Special Announcements pages to improve accessibility to information about these projects

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests Responses to all Findings and Recommendations as follows:

- Monterey County Board of Supervisors

WEB SITE BUSINESS LICENSE APPLICATIONS, CITY OF SALINAS



The Salinas Garage, at 320 Main Street, about 1914. Courtesy of the Monterey County Historical Society.

WEB SITE BUSINESS LICENSE APPLICATIONS, CITY OF SALINAS

SUMMARY

All businesses operating within the city limits of the City of Salinas (hereinafter "City") must pay a business license fee annually (Salinas Municipal Code §19-40). Business license fees collected by Salinas are a significant source of revenue for the City. However, currently the Salinas web site is not user friendly to new business license applicants, and cannot be used to pay license fees. The City has had problems with numerous new businesses failing to apply for a business license and some existing businesses failing to pay their license renewal fees. The web site also does not include a data base of currently licensed businesses. The City is in the process of updating its information technology systems, including its web site, and updates to the Business License web pages could easily be built into the new web site.

BACKGROUND

One of the members of the Monterey County Civil Grand Jury (MCCGJ) was considering doing business in Salinas and accessed the City's web site to review the process of applying for a business license. It was found that there are only two ways to apply for a business license as a new business: by mail or in-person. If an applicant wants to mail a completed form to the City, he must telephone the Finance Department to determine the license fee for his specific business. Finally, it was discovered that there is no database on the site that contains the identification of business licensees.

INVESTIGATIVE METHODOLOGY

Members of the MCCGJ accessed the City's web site through computers with Internet access. The "Business" page and the "Business Licenses" sub-page instructions concerning applying for a business license were found and reviewed, as well as the blank PDF business license form (Attachment 1). We also accessed the link to the Salinas Municipal Code, Chapter 19, concerning the subject of business licenses.

Members of the MCCGJ met at Salinas City Hall on two separate occasions and interviewed a number of City employees. The questions focused on the business license content of the City's current web site, the past collection of license fees, and whether there were any planned changes to the site.

FACTS

After reaching the Home page of the City's web site, the "Business" portal of the site is easily accessed by a tab at the top of the Home page. Once on the business page, there is another tab on the left side entitled "Business Licenses." The content of that page begins with the statement, "Any business (unless excluded under Salinas Municipal Code-Chapter 19) operating in the City

limits of Salinas are required to have a business license, including businesses which operate from the home. The business license tax is one of the primary sources of revenue for the City: '*...It shall be unlawful to conduct business in the City of Salinas without first procuring a license.*'" The page continues to state in the second section that a license application form must contain an original signature and may be mailed to the address given for the Finance Department or filed in person. The paragraph concludes with a PDF link to a blank Business License Application form (Attachment 1). This form is easy to understand but must be first downloaded and filled in using Adobe Pro or printed and then completed by hand.

Concerning the fee to be paid with the form, at the bottom of the form there is a box with the heading: "The business license and processing fee are to be submitted with this application." The first fee line in the box is entitled "License Fee" and it is a blank with a line to fill in the amount. Below that there are two fixed fees: one is a "processing fee" in the sum of $39, and the other is a "State ADA" fee in the sum of $1. Below these fees is a blank for a total of "License fee due."

The Business Licenses web page in the next section of the Business Licenses page states that the business license ordinance is in Chapter 19 of the Salinas Municipal Code. There is a link to the "Salinas Municipal Code." When this link is accessed, it goes to the entire Salinas Municipal Code, not just Chapter 19. There is a "Search" box at the top left of the Municipal Code start page. When the term "chapter 19" is entered for a search, the beginning of that chapter of the Code appears on the page with a table of contents just above. To find the license fee for a particular type of business, it is necessary to either scroll down for a number of pages or use the index above Chapter 19 to locate the sections on license fees contained in "Article II License Tax Rates." In Chapter 19-23 to 19-35, the various types of businesses are defined and their license fees are stated. However, there is no way of knowing whether or not the license fees stated in these sections of the Municipal Code are current or have been amended over time. The correct amount can only be determined by telephoning the City's Finance Office at the telephone number listed on the Business Licenses start page.

The web site does not have a business license application form that can be completed on-line nor is there a method to pay the fee other than by a check, either hand-delivered or mailed to the City.

The business license tax revenue for the City in fiscal year 2014-2015 is estimated as 4% of the General Fund or $4.7 million. In the past, the City has hired an outside collection firm to audit and collect delinquent license fees from unregistered and existing licensees. These collection efforts revealed a serious problem in that the City has failed to collect hundreds of thousands of dollars in unpaid license fees.

Currently, the City is in the process of completely redesigning its web site and has the opportunity to streamline the application process for new business licenses at a relatively low cost.

FINDINGS

F1. The business portal of the City's web site does not permit a new business license applicant to apply for a business license on-line by using a fillable PDF form.

F2. The City of Salinas has hired outside contractors to collect delinquent business license fees.

F3. The business portal of the City's web site does not contain a secure page for the payment of all license fees (initial and subsequent) by debit/credit card.

F4. The City's web site is incomplete in that it lacks a link to the definitions of all business types and a schedule of the current license fees for each type of business.

F5. The City is losing revenue and failing to protect the public because its web site does not list the current business licensees and the dates each license expires.

RECOMMENDATIONS

R1. Add to the Business Portal of the City's web site the current business license application as a type-in fillable PDF form that can be sent to the City's Finance Department via the City's web site without an actual signature but with a checked verification of the information under penalty of perjury.

R2. The City of Salinas hire or assign an employee to track and collect delinquent business license fees.

R3. Add a secure credit/debit card page so that license fees, new as well as renewal, may be paid on-line.

R4. Create a link to a page on the City's web site that explains clearly to the public how to calculate the business license fees for all categories of businesses and include step-by-step examples of how to calculate the fees for the most common businesses.

R5. Create and maintain on a periodic basis (at least annually), a data base on the web site that includes the names, addresses and telephone numbers of all of the City's business licensees and when each license expires.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests Responses to all Findings and Recommendations as follows:

- Salinas City Council

Attachment 1. Business License Form.

CITY OF SALINAS
Finance Department
200 Lincoln Avenue, Salinas CA 93901-2639
(831) 758-7211 8:00 a.m. – 5:30 p.m. M-Thr
www.ci.salinas.ca.us

Business License Number

_____

Business License Application

NOTICE: Issuance of a business license does not allow you to engage in business where your operation would be in violation of other city ordinances. Chapter 19-3 of the Salinas City Code provides that licenses are subject to all city regulations, including those pertaining to health and safety, use of property and zoning. You are urged to check with the appropriate city departments for further information about these regulations prior to paying your licenses.

Print or type all applicable information

☐ Corporation Corporate Name: _____

☐ Sole Proprietorship ☐ Husband & Wife Sole Proprietorship ☐ Partnership ☐ Non-Profit Org. (Exempt) ☐ LLC

Business Name (doing business as) _____

Business Description (detailed summary) _____

Business Address (address, city, state, zip code) ☐ Home based business? - Home Occupation Permit required

_____

Mailing Address if different from above (address, city, state, zip code)

_____

Estimated Gross Receipts (12 months) _____ Sales Tax No. _____
(Section 19-23 Sales Tax No. is required)

Opening Date _____ Business Phone _____ Fax No. _____

No. of employees _____ (SSN, FEIN) _____ State Contractors No. _____

E-Mail Address: _____

Owner or Officer Name(s)/Title:

_____
Name Address (City, State, Zip code) Phone

_____
Name Address (City, State, Zip code) Phone

_____
Applicant Signature Print (Signature Name) Date

The business license and processing fee are to be submitted with this application.

For Internal use only:

License fee: _____ Ord. Section. _____ License expiration date _____

Processing fee: 39.00 Bus. Type _____

ADA State fee: 1.00

License Fee due: _____ Date fee paid _____ Processed by _____

A GLASS HALF FULL?
THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND THE MARINA COAST WATER DISTRICT

A GLASS HALF FULL?
THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AND THE MARINA COAST WATER DISTRICT

And it never failed that during the dry years the people forgot about the rich years, and during the wet years they lost all memory of the dry years. It was always that way.

John Steinbeck—1952

SUMMARY/BACKGROUND

The need for an adequate water supply on the Monterey Peninsula has been a subject of public debate for more than sixty years. Dams have been proposed and voted down or failed due to lack of funding; desalination projects have been proposed—even approved—and never completed for a variety of reasons. Twelve different Monterey County Civil Grand Juries (MCCGJ) have investigated various water issues over the past 16 years. Meanwhile, the county has faced recurring droughts and now faces several pieces of legislation that will restrict water use even further. The State Water Control Board's Order 95-10 calls for reducing the amount of water pumped from the Carmel River by 2017 and the state's Sustainable Groundwater Act (passed in 2014) may lead to adjudication of the groundwater basins that supply much of the county's water (meaning the courts would intervene to assign specific water rights to water users).

A number of public and private agencies are involved in the county's water supply (see Table 1, next page). Four Community Services Districts are charged with supplying potable water to their covered areas (Castroville, Ocean View, Pajaro-Sunny Mesa, and Santa Lucia Community Services Districts). Six special water districts are charged with protecting and managing water resources for the benefit of the community and the environment. Two of these districts are led by counties other than Monterey: the Pajaro Valley Water Management Agency is led by Santa Cruz County and the Aromas Water District is led by San Benito County. Two of the remaining four districts (San Lucas and San Ardo) service relatively small populations in the southern part of Monterey County.[1]

The 2014-2015 MCCGJ chose to investigate the final two water districts, which service the coastal area of the county: the Monterey Peninsula Water Management District (MPWMD) and the Marina Coast Water District (MCWD). These two districts are responsible for much of the residential and commercial water use in the county, given that approximately 25% of county residents reside within the boundaries of these two districts and much of the county's tourism trade is focused along the coastal areas of the county. In past years there has been a significant amount of controversy, involving both districts, with regard to managing existing resources and generat-

[1] The City of Salinas' potable water is provided by two public utilities within the City [Alco Water Service (Alco) and California Water Service Corporation (Cal Water)] and the Hitchcock Road Water Utility.

ing new supplies of water. (For a brief history of water development on the Monterey coast, see the Appendix.)

The goal of this investigation was to evaluate the role and plans of the two coastal water districts in managing and providing water along the Monterey coast. As a result of this investigation, the MCCGJ concluded that while both districts have fulfilled their missions with regard to conserving the existing supply of water, the issue of sustaining and increasing that supply for the future benefit of the community is a lingering concern.

Table 1: Public Water Agencies.

A number of public and private agencies—in addition to the special water districts—are involved in the use and monitoring of water in Monterey County.

Monterey County Water Resources Agency (MCWRA) was formed in 1955 to manage, protect, and enhance the quality and quantity of water in the County and to provide flood control services.

Monterey Regional Water Pollution Control Agency (MRWPCA) was formed in 1979 as a Joint Powers Agency to manage the treatment of wastewater.

Monterey Peninsula Water Resources Authority ("Mayors Authority") was formed in 2012 to take the lead on projects to increase the water supply.

Monterey County Groundwater Legislative Committee (name to be finalized) was created in January 2015 to address requirements of California's new Sustainable Groundwater Management Act and implement a legislative platform to address the County's water needs.

METHODOLOGY

In conducting this investigation, the MCCGJ employed the following methods:

- Interviews with staff and directors of the Monterey Peninsula Water Management District (MPWMD), the Marina Coast Water District (MCWD), and the Monterey County Water Resources Agency (MCWRA)
- Review and analysis of the published strategic plans of MPWMD and MCWD
- Review and analysis of the results of conservation programs run by both districts
- Research into the history and current status of water issues facing coastal Monterey, including but not limited to published articles, reports, and position papers by concerned community groups (see Bibliography).

DISCUSSION

Although both the Marina Coast Water Management District (MCWD) and the Monterey Peninsula Water Management District (MPWMD) are special districts under jurisdiction of the Local Agency Formation Commission, they are different in one very important way: MCWD manages,

Table 2: Water Agency Acronyms.

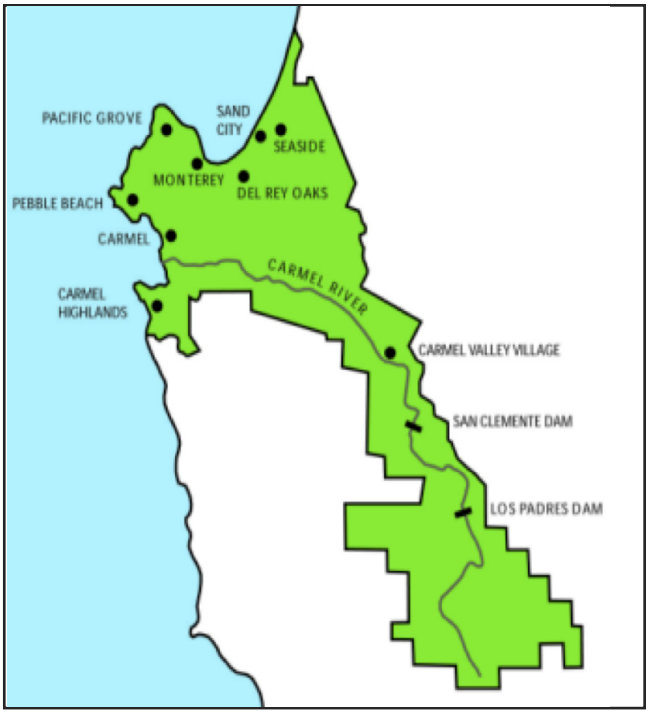
MCWD—Marina Coast Water District (special district)
MPWMD—Monterey Peninsula Water Management District (special district)
MRWPCA—Monterey Regional Water Pollution Control Agency
MCWRA—Monterey County Water Resources Agency ("The Mayors' Authority")
FORA—Fort Ord Reuse Authority
CPUC—California Public Utilities Commission
SWRCB—State Water Resources Control Board
MPRWA—Monterey Peninsula Regional Water Authority

controls and delivers water to its customers (the communities of Marina and Fort Ord) while the MPWMD manages and controls—but does not deliver—water to the residents and businesses of the Monterey Peninsula, Seaside, and portions of Carmel Valley. Most of the communities served by MPWMD receive their water through a system privately owned and operated by California American Water (Cal Am).[2] Those not served by California American Water are on private wells.

Both districts have signed a Memo of Understanding (MOU) with the Monterey County Water Resources Agency, the Monterey County Regional Water Pollution Control Agency, and the City of Salinas to work on more efficient and equitable uses of treated and reclaimed wastewater (including storm water and agricultural wash water). This MOU will support the Groundwater Replenishment Project.

Monterey Peninsula Water Management District (MPWMD)

The MPWMD was created under the Mello Bill in 1978 to solve the over-pumping of the Carmel River and—potentially—to have an agency in place in case the public decided to acquire the Cal Am water system. A seven-member Board of Directors governs the District. Five directors are elected from voter divisions; one is a member of the Monterey County Board of Supervisors; and one member represents mayors from jurisdictions within the District boundaries. Incoming directors receive basic orientation from departmental managers and are offered the opportunity to attend professional board training workshops. All directors attend mandatory ethics training every two years. A



[2] As a private utility subject to California Public Utilities Commission (CPUC) oversight, Cal Am is required to show a profit from its operations.

general manager oversees a staff of twenty-five, plus interns. The District's annual budget for 2014/1015 was $11.7 million. These monies are drawn from property taxes, a water supply charge, state grants, and payments from California American Water (Cal Am) for the District's rebate programs.

The MPWMD boundaries run north through Seaside to a portion of Marina, south to the Carmel Highlands, east into Carmel Valley to Cachagua, and back over the Laureles Grade to Laguna Seca. Within these boundaries, customers are split into two vocal camps: growth and no growth. These factions have influenced many decisions regarding water, defeating measures to build a desalination plant, to build a new dam on the Carmel River, and to explore the option of public ownership of the Peninsula's water delivery system.

Cal Am purchased the Monterey Peninsula's water delivery system—and historical rights to draw limited water from the Carmel River—in 1965. This purchase included the two dams then in existence on the Carmel River (San Clemente and Los Padres). In the ensuing 30 years, the company proposed various projects to increase the community's water supply, but none came to fruition. In 1995, the State Water Resources Control Board (SWRCB) issued Order 95-10, which determined that 69% of the community's water supply was being taken from the Carmel River without a valid right and ordered Cal Am to replace 10,730 acre-feet per year with an alternate water source.[3] In 2009, the SWRCB issued a cease-and-desist order, demanding that Cal Am reduce pumping by December 31, 2016. The current plan for meeting this directive is to build a desalination plant, but such plant will not be operational until 2019.

The MPWMD advises Cal Am on rate policy, issues water permits for new construction and remodels, monitors water extraction, and attends the California Public Utilities Commission (CPUC) rate hearings, held every three years to approve rates charged to consumers and businesses. Cal Am reimburses the MPWMD for rebate programs aimed at conservation through a conservation fee billed to customers.

In 2014, Cal Am announced its Monterey Peninsula Water Project, which includes building a desalination plant capable of producing 9,750 acre-feet of water per year. The Monterey Peninsula Water Resources Authority and the MPWMD support this plan. The District has agreed to assist Cal Am in obtaining low-cost financing for the one quarter of the cost of this project ($70-90 million) in return for Cal Am's promise to decrease its profit percentage.

While the need for a desalination plant on the Monterey Coast has been under discussion for more than twenty years, only one small plant (in Sand City) is currently in operation. The apparent inability to construct a desalination plant of significant size has less to do with a lack of technology and more to do with a lack of consensus.

MPWMD Conservation Efforts

While supporting the Cal Am plan to build a desalination plant—and working to develop a comprehensive strategy to address Order 95-10—the near-term goals of the District focus on the preservation and replenishment of the existing water supply, which is drawn from the Carmel

[3] An acre-foot is the standard measure used defining the volume of water consumed. One acre-foot is equivalent to the volume of water that would cover one acre to a depth of one foot (approximately 326,000 gallons).

Basin Aquifer (the Carmel River), and the Seaside Groundwater Basin. To this end, the District maintains an extensive conservation program that involves reducing the amount of water used, reclaiming and recycling wastewater, and recharging the aquifers.

Water Use Reduction: The MPWMD has one of the most stringent conservation programs in the state of California. MPWMD customers have reduced water use to an average of 55-60 gallons per person per day; the average across the state is 200 gallons per day. Conservation programs include the following:

- *Mandatory conservation/retrofit requirements*: when a residential property is transferred, remodeled or built, the MPWMD requires the installation of low-flow toilets and showerheads, instant hot water systems, and landscape restrictions aimed at conserving water (including rain sensors). As of 2013, all businesses within the District are mandated to go to high-efficiency toilets, install aerators on faucets, retrofit inefficient ice machines, and replace inefficient washing machines.
- *Voluntary conservation/retrofit requirements*: the District offers rebates to residential customers who voluntarily install water efficient devices, including low-flow toilets, washing machines, and dishwashers. A file of more than 30,000 properties on the Peninsula allows the District to check the validity of rebate claims. Rebates are funded through a charge billed to Cal Am customers. For the past three years, the budget for this program has been $2.3 million; this is being reduced to $1.6 million for the next three years.
- *Rationing and "best practice" rates*: since 1988, Cal Am has conducted an annual survey of households to determine the number of residents and estimate water usage. Residential rates are divided into five tiers to encourage customers to use less water (a practice that has raised some concerns). A "best practices" rate structure (with four different divisions of water charges) was put in place in 2013 to reward commercial users for conserving water and penalize those who are not in compliance.
- *Workshops and demonstrations*: the District regularly offers workshops on converting laundry water to landscape use, designing and installing irrigation systems, and building and installing cisterns.
- *Public awareness campaigns*: In October 2014, the District launched the "Save Water—Go Blue" initiative as a means of encouraging consumers to be more water conscious. The initiative includes free distribution of simple water-saving devices.

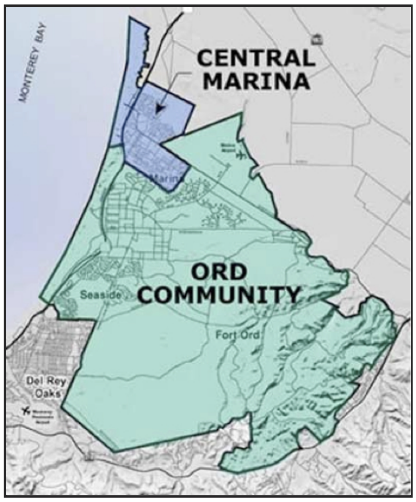
Future MPWMD plans for conservation may be able to conserve an additional 500 acre-feet per year and could include:

- Direct installation of water saving devices in low-income housing;
- Increased outreach to high-use commercial water customers (medical sector, food service and restaurants);
- Retrofitting of washing machines in multi-family laundry facilities;
- Installation of pressure reducers on all water supply lines.

Reclamation, Recycling, and Aquifer Replenishment: A number of recycling and reclamation programs are currently in place.

- The Carmel area plant provides treated wastewater to irrigate golf courses in Pebble Beach.[4]
- The Aquifer Storage and Recovery (ASR) program uses excess surface water from the Carmel River (when it reaches a specified level) to recharge the Seaside Basin.
- Beginning in 2016, the Monterey Pure Water Groundwater Replenishment Project (GWR Project) proposes to recharge the Seaside Groundwater Basin with treated wastewater through injection wells. Recharging the aquifers serves two purposes: (1) it supplements the water supply for the community and (2) decreases the impact of groundwater overdraft and the associated risks of seawater intrusion. It is predicted that this project will produce 3,500 acre-feet per year of potable water drawn from the aquifers and decrease the amount of water needed from the proposed desalination plant.

Marina Coast Water District (MCWD)



The Marina Coast Water District (MCWD) was formed in 1960 to provide water to the residents of Marina, California. A board of five elected directors oversees the District. According to our investigation, these directors are not required to undergo formal training upon taking office although they are offered the opportunity to attend training provided by the League of California Cities. A general manager is in charge of operations with a staff of 36. The district's budget ($10 million in 2014) allows for a staff of 42. According to the bylaws of the district, all interaction between staff and directors goes through the general manager, a position that has been held by an interim general manager for the past two years. This, and the fact that no one is currently serving as District Engineer, has led to instability within the organization.

MCWD is primarily a fee-for-service government agency that charges customers based on consumption. The District owns and maintains the water system for the City of Marina and, since 2001, has contracted to manage water delivery for the former Fort Ord (Ft. Ord). Services provided in Marina and Ft. Ord include the provision of potable water, collection of wastewater, conservation services, and creation of new infrastructure (primarily through new developments). In total, the District serves approximately 30,000 residents through 8,000 connections in central Marina and Ft. Ord (including California State University of Monterey Bay).

The main source of water for the District is the Salinas Valley Groundwater Basin known as Basin #1. Salt-water intrusion is a concern in the sustainability of this basin, which supplies Marina, Ft. Ord, the City of Salinas, and agriculture in the Salinas Valley. Three deep-water groundwater wells drawing on this basin are owned and managed by the District. Water for Ft. Ord is

[4] The CAWD/PBCSD Reclamation Project, a cooperative effort involving the Carmel Area Wastewater District (CAWD), the Pebble Beach Community Services District (PBCSD), the Monterey Peninsula Water Management District (MPWMD), and the Pebble Beach Company (PBCo), is a proprietary (enterprise) fund of Monterey Peninsula Water Management District, the issuer of the Certificates of Participation which financed the Project's first construction project.

drawn from additional wells installed by the U.S. Army. Current water allocations for Marina and Ft. Ord appear to be sufficient for existing customers. The District has not experienced difficulties in supply due to the current drought but does maintain a Level 3 Water Rationing Plan, which places restrictions on outdoor watering.

MCWD Conservation Efforts

Under its Regional Urban Water Augmentation Project (RUWAP), initiated in 2005, the District is currently pursuing a mixture of approaches to ensure an adequate supply of water for current and future uses. These include water use reduction, reclamation and recycling, and desalination.

Water Use Reduction: MCWD maintains a conservation specialist on staff who works with residential and business customers in its service areas to implement the following conservation efforts:

- Incentive and rebate programs including landscape incentives (to encourage residents and businesses to switch from high to low water use by installing drip irrigation systems and timers) and rebates for installation of low-flow toilets;
- Monitoring of water use through a leak-detection program;
- Tracking water use through "smart" meters;
- Educational program in schools to teach children about water science and conservation;
- Public education program dispersing informational flyers.

Reclamation and Recycling: The MCWD is currently negotiating with the Monterey County Pollution Control Agency (MCPCA) to return treated wastewater from Marina to the District. This will involve the construction of a pipeline to deliver the treated water. The MCWD is also a signatory on the Memorandum of Understanding (MOU) regarding use of treated wastewater to recharge the aquifers. This MOU basically identifies conditions for a future agreement between the signatories.

Desalination

In 1996, MCWD built a desalination plant at Marina Coast beach. This plant was built to (a) have a backup for the wells drawing water from the basin and (b) test the technology. The plant was in operation for three years and decommissioned in 1999 due to mechanical failures, high operating costs, and because additional water was not needed at that time.

In 2006, MCWD took the lead in developing the Regional Desalination Project in collaboration with Cal Am and the Monterey County Water Resources Agency (MCWRA). The Environmental Impact Report (EIR) for this project was approved in December 2009, but the project fell apart in 2011 amid conflict of interest claims that resulted in litigation.

In January 2015, the Board of Directors of MCWD announced plans to construct a desalination plant to provide 2,700 acre-feet per year of water for future development in Ft. Ord.

FINDINGS

F1. The MPWMD has effectively communicated the need for consumers to conserve water.

F2. Reduced funding for the MPWMD rebate program may impact participation in the voluntary retrofit of home appliances.

F3. Water conservation efforts for the MPWMD are nearly maximized; further efforts may conserve an additional 500-1,000 acre-feet per year.

F4. Although water sources are sufficient for existing MPWMD communities and customers, this will change with the execution of Order 95-10 and enforcement of the State's Cease-and-Desist Order Cal Am to decrease pumping from the Carmel River.

F5. Although current water sources are sufficient to serve existing MPWMD customers, these sources are not sufficient to allow for growth.

F6. The MPWMD supports the current Cal Am proposal to construct (and so own) a desalination facility and has agreed to access low-cost funding for this project on behalf of Cal Am.

F7. The MCWD has sufficient water to serve existing customers but will need reliable sources of additional water if proposed developments in Ft. Ord are to move forward.

F8. 2014 groundwater legislation could affect the MCWD's current allocation of water from the Salinas Valley Basin.

F9. A lack of permanent senior management at MCWD has led to instability within the organization.

F10. Individuals elected to the MCWD Board of Directors are not required to undergo formal training in governance, procedure, and chain of command.

F11. The technology exists to track water use in real time, alerting technicians to serious water leaks; however, MCWD does not have this technology in place.

F12. Excess surface water from the Carmel and Salinas Rivers could be used to recharge the aquifers, providing a method for "storing" water that would otherwise flow to the ocean. MPWMD is currently capturing water from the Carmel River.

F13. The MOU signed by both districts and the Monterey County Water Resources Agency, the Monterey County Regional Water Pollution Control Agency, and the City of Salinas may lead to a more efficient use of reclaimed and treated wastewater across the county, provided the MOU results in a signed agreement.

F14. Conservation offset programs that involve conservation agreements between developers, water districts, and cities have significant potential to benefit both conservation efforts and city planning.

RECOMMENDATIONS

R1. Monterey Peninsula Water Management District (MPWMD) continue conservation efforts to achieve additional water savings, with the goal of conserving an additional 500 acre-feet per year by the end of 2016.

R2. MPWMD seek additional funding to offset reduction in rebate program budget by the end of 2015.

R3. MPWMD offer incentives for retrofitting multi-family laundry facilities by the end of 2016.

R4. MPWMD mandate installation of pressure reducers on all water supply lines by the end of 2016.

R5. MPWMD institute offset programs for new residential and commercial developments that offer incentives for builders to pay for conservation efforts in other structures as part of permit approval beginning in January 2016.

R6. MPWMD install water saving devices (low-flow toilets, water-efficient washers and dishwashers, aerators) in low-income housing units in conjunction with offset programs.

R7. The Marina Coast Water District (MCWD) continue conservation efforts to achieve additional water savings.

R8. MCWD install technology to track water use in real time by the end of 2016.

R9. MCWD hire additional personnel to expand current conservation efforts by September 2015.

R10. MCWD institute offset programs for new residential and commercial developments that offer incentives for builders to pay for conservation efforts in other structures as part of permit approval beginning in January 2016.

R11. MCWD hire permanent General Manager and District Engineer as soon as possible to stabilize operations.

R12. MCWD provide mandatory and ongoing training for all board members, effective immediately.

R13. MPWMD and MCWD keep abreast of new technology for conservation and desalination and utilize such technology when economically feasible.

R14. MCWD and MPWMD make all possible efforts to form an agreement with the signers of the wastewater MOU with the goal of having such an agreement in place by the end of 2015.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the Grand Jury requests a response as indicated below from the following governing bodies:

Monterey Peninsula Water Management District Board of Directors:

- Findings F1 thru F6, F13, F14; Recommendations R1 thru 6, R13, R14

Marina Coast Water District Board of Directors:

- Findings F7 thru F14; Recommendations R7 thru R14.

INVITED RESPONSES

California American Water Co.

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APPENDIX

Monterey Coast Water Timeline

Agency Acronyms (in order of appearance)

MCWD—Marina Coast Water District (special district)
MPWMD—Monterey Peninsula Water Management District (special district)
MRWPCA—Monterey Regional Water Pollution Control Agency
MCWRA—Monterey County Water Resources Agency ("The Mayors' Authority")
FORA—Fort Ord Reuse Authority
CPUC—California Public Utilities Commission
SWRCB—State Water Resources Control Board
MPRWA—Monterey Peninsula Regional Water Authority

1881: Charles Crocker (the Pacific Improvement Company) obtains easement to "lay down and maintain a line of water pipes from the Carmel River to the Hotel Del Monte," establishing a private water distribution system using water from the river that eventually becomes the Monterey County Water Works

1883: First dam is built on the Carmel River (the "Chinese Dam")

1919 - 1965: Monterey County Water Works changes hands (and names) several times but remains a private for-profit company controlling water delivery on the Monterey Peninsula

1921: Second dam is built on the Carmel River (the San Clemente Dam)

1948: Los Padres Dam is built with 20-year life expectancy

1960: Formation of Marina Coast Water District (MCWD) to provide water to residents of Marina

1965: American Water Works Company (Cal Am) purchases Peninsula's water delivery system and rights to Carmel River water from California Water and Telephone Company

1972: Formation of Monterey Regional Water Pollution Control Agency (MRWPCA) under the Clean Water Act, by the Monterey, Pacific Grove, and Seaside Sanitation Districts. In subsequent years, other north Monterey County communities joined to create what became a Joint Powers Authority in 1979 overseeing a regional plant for wastewater treatment

1978: Formation of Monterey Peninsula Water Management District (MPWMD) by State Legislature as a local agency with regional responsibilities. Stated mission (per website): "to promote or provide for long-term sustainable water supply, and to manage and protect water sources for the benefit of the community and the environment"

1990: MRWPCA Regional Plant goes on line, serving 13 communities

1993: U.S. Army and MCWRA sign an agreement annexing Ft. Ord to the MCWRA for the purpose of developing a regional water support system. Agreement extended to the Army's successor agency, Fort Ord Reuse Authority (FORA)

1995: Monterey County Water Resources Agency (MCWRA) replaces the Monterey County Flood Control and Water Conservation District as a flood control and water agency for the county

1995: Voters defeat ballot measure to build a new dam on the Carmel River

1995: State Water Resources Control Board (SWRCB) issues order to limit pumping of the Carmel River (Order WR 95-10)

2001: FORA and MCWD implement agreement transferring responsibility of the operation, maintenance, and ownership of existing water systems (including wastewater collection) to MCWD; specifies that FORA will retain extraction and discharge rights

2002: Assembly Bill 1182 mandates that the California Public Utilities Commission (CPUC) conduct a study to review water supply alternatives to the Monterey Peninsula. In response, study is completed that became known as "Plan B"—provided foundation and point of departure for **Coastal Water Project (CWP)** and eventually led to the development of the Regional Desalination Project

2003: CPUC dismisses Cal Am Carmel River Dam and Reservoir Project application; Cal Am proposes the Coastal Water Project (CWP)

2006: CPUC begins preparing EIR for CWP. Proposed CWP includes the Moss Landing desalination plant and an Aquifer Storage and Recovery (ASR) project in the Seaside Groundwater Basin. In response, Marina Coast Water District takes the lead in developing the Regional Desalination Project in collaboration with a number of other agencies and interests

2007: Sand City accepts $2.9 million in Prop 50 grant funding to build desal plant; signs agreement with Cal Am to lease and manage the facility

2009: SWRCB issues a draft cease-and-desist order to Cal Am to accelerate the reduction of pumping from the Carmel River, with goal of limiting pumping to 3,376 acre-feet per year by 2016 (a two-thirds reduction)

At this point, three projects are in the planning stage: two private desalination projects and one project (combining desalination, aquifer storage and recovery, new publicly-owned expandable desal plant, regional wastewater augmentation) by a coalition of local cities and agencies known as the Regional Water Project. (2008-2009 MCCGJ investigates water situation and issues a lengthy report)

Draft EIR for Coastal Water Project (CWP) released for public review in January. Final EIR certified by the CPUC in December. On December 3, CPUC issued a decision approving the Regional Desalination Project (RDP) to be implemented through a 3-way partnership of Marina Coast Water District (MCWD), Monterey County Water Resources Agency (MCWR) and Cal Am

2010: Sand City desal plant begins operation in April 2010, with the ability to produce 300 acre-feet of potable water per year

2011: RDP falls apart after conflict of interest claims are laid against Steve Collins

2012: January: Cal Am pulls out of CWP and partners (Cal Am, MCWD, MCRWA) go to court

February: Monterey Peninsula Regional Water Authority (MPRWA) is created. Mayors of each Peninsula city served by Cal Am comprise the MPRWA board of directors (known as the Mayors Authority). Purpose is take lead in new water-supply plan to replace Regional Desalination Project

April: Cal Am files application in for Monterey Peninsula Water Supply Project (slant wells for desal plant in Marina). Goal of project is to build a desalination plant that will produce 9,730 acre-feet per year (6,250 acre-feet per year if Groundwater Replenishment Project goes forward)

December: Board of Supervisors agrees to make an exception to the County ordinance that all desalination plants must be owned by a public agency, allowing Cal Am to own and operate a desalination plant on the Monterey coast

2013: MPRWA declares support for the Cal-Am project

2014: Measure O (re public ownership of water) on June ballot; MPRWA comes out against, as do local media and the Board of Supervisors. Measure is defeated

Cal Am moves forward with plans to build a test slant well in preparation for constructing a desalination plant north of Marina, capable of producing 9,750 acre-feet per year

Memo of Understanding is signed in October, between MRWPCA, MCWRA, MCWD, MPWMD, and the City of Salinas to address the use of recycled water

2015: MCWD announces plan to build a 2,700 acre-feet per year desalination plant to supply water for Ft. Ord development

Cal Am submits a draft Cease-and Desist Order (CDO) modification plan to the SWRCB moving overall cutbacks on Carmel River pumping from 2016 to 2020

Cal Am test slant well for desalination plant drilled and pumping as of March 2015

“FLY MONTEREY”
THE MONTEREY REGIONAL AIRPORT: AN ANALYSIS OF OPERATING EXPENSES AND REVENUE OPPORTUNITIES

"FLY MONTEREY"
THE MONTEREY REGIONAL AIRPORT: AN ANALYSIS OF OPERATING EXPENSES AND REVENUE OPPORTUNITIES

SUMMARY

Based on interviews and research that raised an issue of the sustainability of Monterey Regional Airport (MRA), the Monterey County Civil Grand Jury (MCCGJ) elected to conduct an investigation into the airport's business operations, a critical element in its ability to remain a viable business enterprise and commercial airport for the citizens of Monterey County. Since less than half of the airport's income is earned from providing commercial airline services, the investigation focused primarily on current non-airline operating expenses and analyzed potential revenue opportunities that may exist at the airport. The MCCGJ found that the Monterey Regional Airport is a well-managed operation with potential to expand its revenue and strengthen its viability.

BACKGROUND

Founded in 1941, Monterey Regional Airport (MRA) exists as a "non-hub primary commercial service, class 1 airport" as defined by the Federal Aviation Administration (FAA). The airport is currently served by four airlines: Alaska, Allegiant, American, and United. The operations of the airport mirror the operation complexities of a small city, as it is required by the FAA to provide fire and police protection among numerous other services. The airport substantially contributes to the regional economy and is considered a valuable community asset, playing an important role in serving the transportation needs of Monterey County residents and visitors.

The Monterey Peninsula Airport District (MPAD) was created as a public airport district whose territory and boundaries exist within Monterey County. The object of the district is to acquire, own, lease, improve, operate and maintain a public airport for civil and military purposes. The District was established as a body corporate and politic, meaning it is to be treated as a corporation.

The voters who reside within the Monterey Peninsula Airport District, elect a board of five directors who serve four-year terms and govern the Airport proper. The airport proper consists of 498 acres. In addition to the airport itself, the District boundaries encompasses an area that includes portions of Monterey, Pacific Grove, Del Monte Forest, Pebble Beach, Carmel-By-The-Sea, greater Carmel, Del Rey Oaks, Seaside, Sand City, the Monterey-Salinas Highway to Laureles Grade and the west end of the Carmel Valley (Figure 2).

Monterey Regional Airport is surrounded by commercial buildings and family homes with little, if any, room for airport property expansion. In addition to the actual airport facilities, the Airport District owns numerous buildings on the property that generate income for the airport. Currently 126 single engine, 21 twin engine and nine jet engine aircraft are based at the airport. 211 hangars and tie downs, and approximately 55 business tenants are found on the airport grounds (Figure 1).

According to its 2014 Mission Statement, Monterey Regional Airport will "provide the region convenient commercial and general aviation access to the national air transportation system, operate the

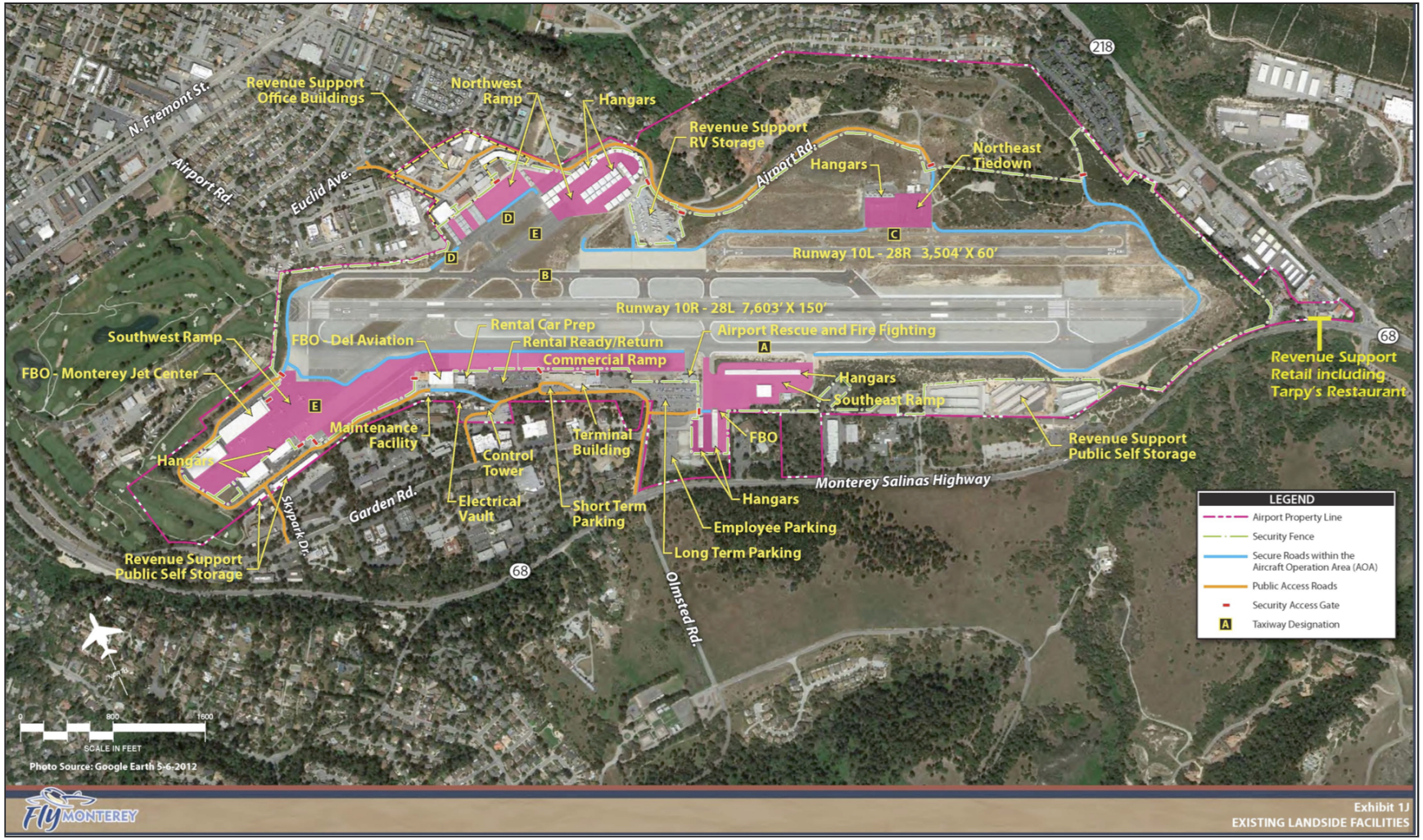


Figure 1. Existing landside facilities.

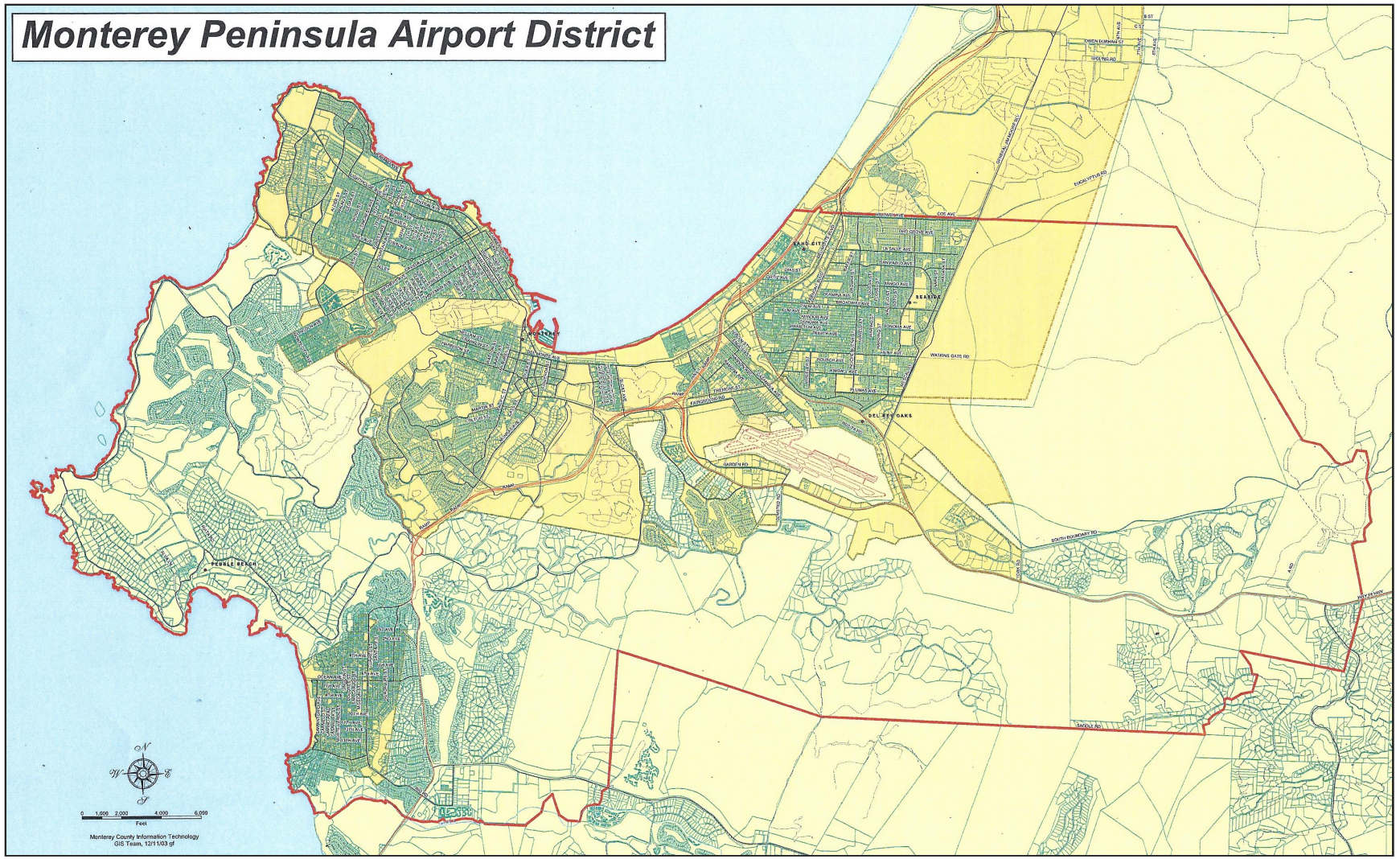


Figure 2. Monterey Peninsula Airport District (boundary in red).

airport in a safe, efficient, sustainable and fiscally responsible manner, and develop the airport to meet future needs, opportunities and challenges." MRA is currently working on a revision of its Airport Master Plan, which is intended to take a short, intermediate, and long term view of the airport's "20-year planning horizon," with the goal of maintaining its viability. Both professional consultants and a 25-member project advisement committee representing a variety of volunteer stakeholders drive development of the Plan.

INVESTIGATIVE METHODOLOGY

The MCCGJ interviewed members of the airport Board of Directors, several members of the airport management team, the airport's safety personnel, an airport property lessee and a local commercial realtor. We consulted two Aircraft Rescue and Firefighting Facilities (ARFF) specialists with the Federal Aviation Administration (FAA). Members of the MCCGJ also, reviewed the Master Plan in progress, attended the MRA Master Plan Information Workshop on November 18, 2014, and the MRA Board of Directors meeting on January 14, 2015. The following publications were also reviewed:

- Monterey Regional Airport Master Plan, Resolution No. 1621: Adjustment of Rates and Charges at MRA for Fiscal Year 2015
- Summary of Leased/Rented Spaces, June 30, 2014
- Monterey Regional Airport Master Plan (Study) including Meeting Summaries—January 23, April 15, July 8, 2014
- FAA memorandum re: 14 C.F.R. 139.303(a) re: fire staffing requirements
- City of Monterey Fire Department Projected Annual Budget/Pricing Details for Monterey Regional Airport Fiscal Year 2013-2014

DISCUSSION

The Monterey Regional Airport undertakes an annual review of its finances, including adjustment of rates and charges. Aviation rates are set in accordance with the FAA airfield residual cost recovery methodology. Terminal area rental rates are set annually and in accordance with the terminal compensatory cost recovery methodology (MRA Resolution No. 1621). Any adjustments to rates or charges may be implemented through the adoption of rate and charge resolutions.

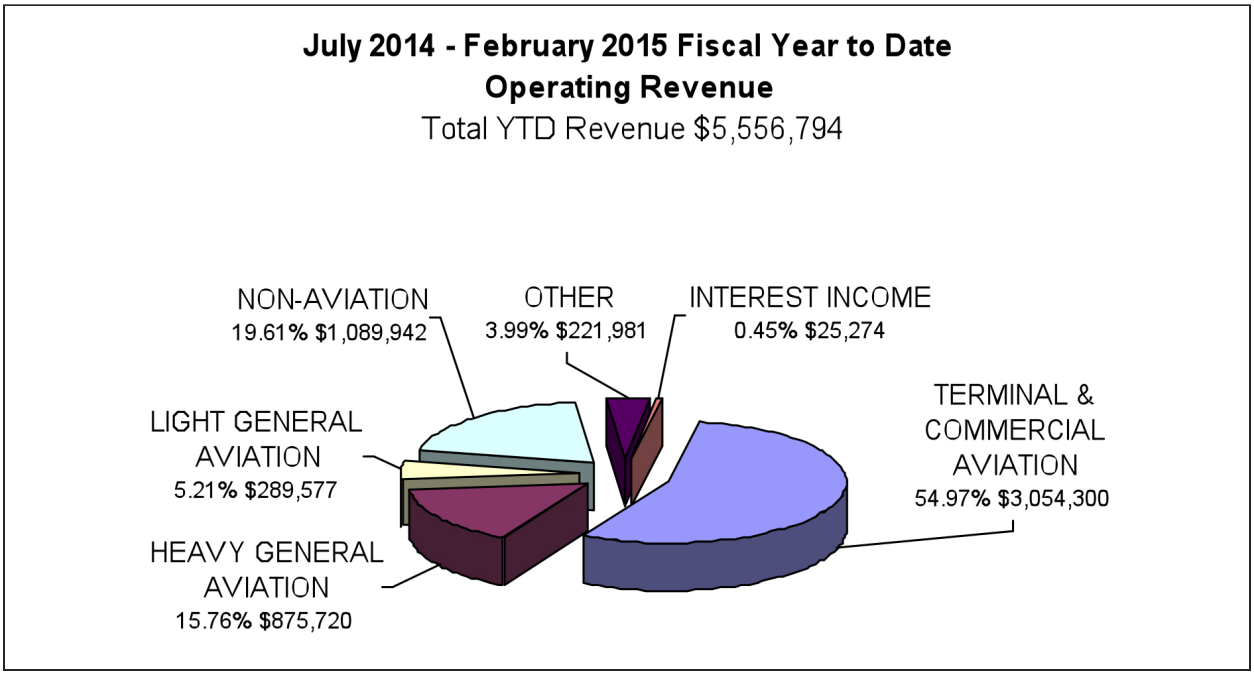
It is the job of the airport's General Manager (GM) to ensure the airport and its vendors observe the provisions of all contracts, privileges or franchises granted by the Airport District. The GM reports to the Board of Directors any violation and provides general supervision over all property of the Airport District, including the maintenance and improvement of real and personal property owned or leased by the Airport District. The General Manager's job description was last revised in May 2009 and may be updated when a new GM is hired in July 2015, following the retirement of the current GM.

Maintaining a steady, profitable income stream from leasable airport facilities needs to be carefully orchestrated. The goal is to maximize occupancy while maintaining rates that are competitive and will attract tenants. Many airports have significant acreage devoted to non-aeronautical uses, such as industrial parks, recreational uses, agricultural leases or retail businesses. These are intended to im-

prove the airport's overall financial position. As an enterprise (for-profit) agency, the airport is mandated by its charter to cover operating expenses through revenue. Any profit is reinvested in capital improvements. A modest property tax ($135,000 +/-) is collected each year from Monterey County and designated to be used only for capital improvements or marketing.

The MRA Board of Directors has recently formed a new ad hoc committee to review airport property development and leases and to maximize potential income-producing opportunities for the airport.

Main Revenue Sources



Landing and Gate Fees from Airlines

Of all passengers traveling by air from the greater Monterey market service area, there is currently only a 40% "catchment" which is the percentage of passengers in the area who want to travel by air and actually use Monterey Regional Airport. It is assumed that ticket price, reliability, number of direct flights to hubs, and convenient departure times are determining factors in passengers' decision to use airports in San Jose, Oakland and San Francisco for initial flight departures. The Monterey Regional Airport staff is continually working with current airline partners and other airlines to bring more flights to the airport; scheduling flights is ultimately the decision of the airlines, not the airport.

MRA has recently undertaken an extensive advertising campaign—"Fly Monterey"—by using television and social media to encourage area residents to use Monterey Regional Airport as their initial point of departure. It is expected that entities such as Laguna Seca Recreation Area, Pebble Beach Resorts, the Monterey County Convention and Visitors Bureau and the hospitality industry will support and encourage their inbound customers to use the airport facilities as part of their travel plans. It is also hoped that targeted advertising to local

outbound passengers from the surrounding areas of Watsonville, Santa Cruz and Salinas will lead to increased airport use.

Other Fuel and Landing Fees

Private and Government aircraft owners purchase fuel and pay landing fees from the two Fixed Base Operators (FBO's). As a cost saving measure, the FBO's have formed a separate company to purchase bulk fuel for dispersal to their customers. The landing fee is collected on all aircraft over 6,000 lbs., and remitted to the District.

Property Rentals and Leases

Pricing to local market rental rates is the goal of property rents and leases. Rentals and leases are a delicate balancing act, and it cannot be assumed that annual consumer price index increases to tenants are sustainable, as business income does not necessarily increase at the same rate. Property rentals and leased spaces fall into three categories: 1) Passenger Terminal Spaces, 2) General Aviation, and 3) Non-Aviation.

1) Passenger Terminal Spaces: This is the area within the terminal that is leased to airlines, food and gift concessionaires, and rental car companies. These spaces are either leased by the square foot or as a percentage of gross concession.

This passenger terminal use appears to be at a maximum capacity. A summary of the July 8, 2014 Master plan Meeting stated "terminal building analysis indicates the certain functional areas are already at capacity such as the hold rooms and the TSA screening areas. In terms of total area, in the long term, a total of approximately 92,000 square feet is forecast to be needed (the current total is 69,000sf.)."

2) General Aviation (GA): This includes both Fixed Base Operators and light general aviation.

Two Fixed Base Operators (FBO)—Monterey Jet Center and Del Monte Aviation—service both heavy (business and government jets and turboprops) and light (non-jet) aircraft. These two tenants have entered into long-term leases with the Airport District and occupy the area at the west end of the airport property. They are responsible for their own improvements and provide full service (fueling, maintenance and flight planning) operations.

"Light" general aviation refers to:

Specific areas where the airport leases a designated piece of land to a master tenant on a long-term lease; the tenant then builds hangars and leases them on a month-to-month basis.

A number of small "T" shaped hangars and tie downs that MRA owns and leases on a month-to-month basis.

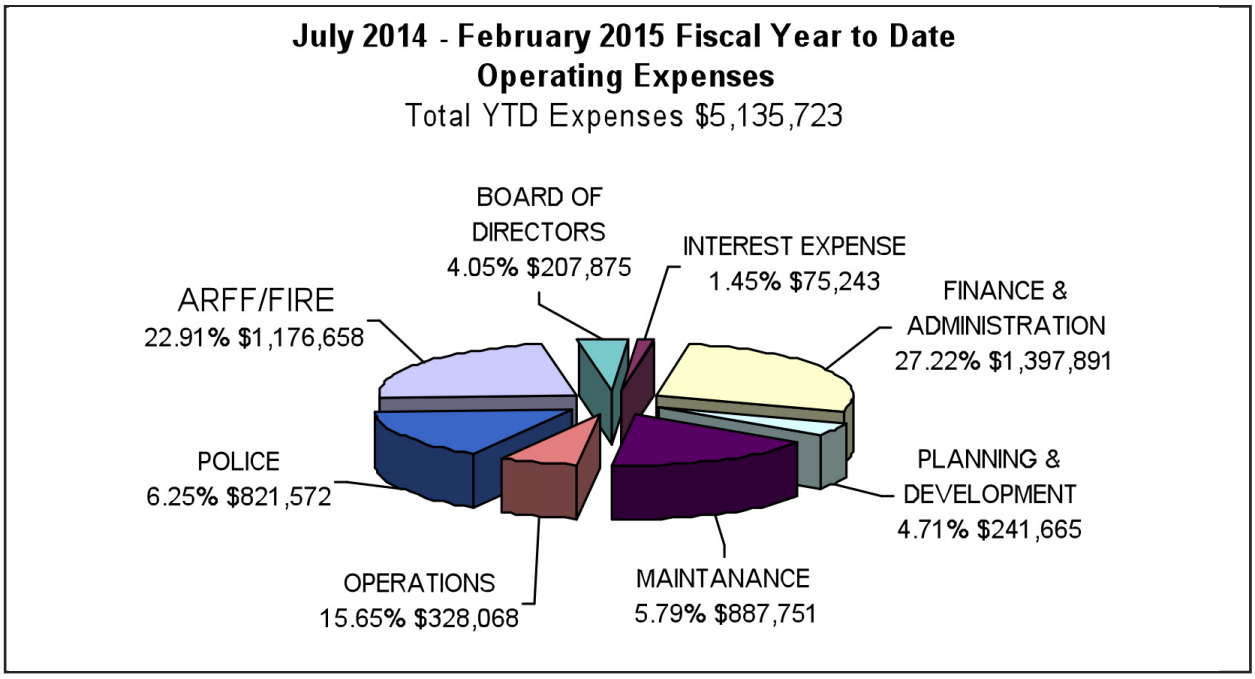
3) Non-Aviation: This includes both long and short-term leases, usually on a square foot basis mostly for buildings located on the north side of the airport property. Tarpy's Restaurant, located on the east end of the airport property, is contracted as a land lease. The outdoor storage area, consisting of RV storage, Self-Storage concession facilities and tree trimming company vehicle storage are located on the southeast side of the property.

Airport buildings for lease are a major component of the airport's fiscal operations. Ongoing maintenance of such buildings is inconsistent, and it is likely that the occupancy rates will suffer if the buildings deteriorate.

A review of the airport's June 2014 Summary of Leased/Rented Spaces showed that four properties have occupancy of 83% or lower occupancy. These included Terminal Space Storage at 81.5%, Light General Aviation space and facilities at 82.4%, Light GA tie-downs at 42.2% and Non-Aviation Outside Storage at 63.7%. Despite these four areas, the airport's overall average occupancy rate is an impressive 93.8%.

An important non-aviation concession is airport parking. At MRA, the parking rates have not changed since 2007/2008. Parking rates can be considered an enticement for customers, as most other costs have increased between 2007 and the present. Some airport customers have also discovered that there is free, unlimited parking on public streets within walking distance of the airport. MRA has had initial conversations with the City of Monterey about limiting street parking in some manner fitting the neighborhood, thus returning airport patrons back to the airport lots.

Other Airport Operations



The MCCGJ found that the salaries of personnel at MRA rank very high in comparison to other similar airports. Given the high cost of living in the Monterey area, adequate airport employee salaries serve to encourage high quality personnel to relocate and live in this area.

Fire services are staffed in compliance with FAA regulations (part 139 ARFF, Index B airport). In a relatively new agreement, these services are shared with the City of Monterey, providing cost savings, more personnel, reduced overtime costs, more training for Airport District personnel and improved fire services for the surrounding community. Police services are currently operated by the airport, primarily because of the nature of police requirements at a small airport. However, the question of in-house vs. shared police services remains a topic of discussion.

As a "federally obligated" airport, the airport property is first to be utilized for aviation purposes. If current and future aviation needs can be met, excess property may be used for compatible non-aviation purposes, including revenue support. The FAA provides guidance on what business activities are and are not compatible with airport activities. Following FAA guidance, the Board of Directors makes the final determination for any land use that is allowable.

The airport is not incorporated into the city or county, nor is it currently a public utility. However the potential to become a utility district does exist. This opens the possibility of 'new' revenue streams such as electrical management, telecommunications, underutilized water allocation, or solar farms that could be designed to have a low impact on adjacent neighborhoods.

Public elections for the Board of Directors are held every two years and are currently conducted by the Monterey County Elections Department. Each election costs the airport $135,000 regardless of the number of seats challenged. Consideration is being given to the retention of a private election company that would conduct the election, ostensibly at reduced costs to the requesting entity. Local municipalities and districts such as Carmel-By-the Sea and Moss Landing Harbor District have engaged such companies for election services.

FINDINGS

F1. The occupancy rate for non-aviation 'outside storage areas' properties is 63.7%, significantly lower than other Monterey Regional Airport spaces.

F2. Monterey Regional Airport parking rates have not been adjusted in seven years and are losing potential revenue for the airport.

F3. The availability of street parking in the adjacent neighborhood is causing the airport to lose parking revenue.

F4. The possibility exists to redefine the airport property as a "utility" district, potentially generating new revenue streams.

F5. The airport's north side property is a valuable, income-producing asset contributing to airport operations.

F6. Most tenant leases are subject to CPI (Consumer Price Index) rate increases. In some cases however, tenants cannot raise their price point at the same rate and remain in business.

F7. MRA pays competitive-to-high salaries for airport personnel, enabling employees to live on the Monterey Peninsula.

F8. MRA is currently underutilized by area residents, capturing only 40% of the passengers in its service area.

F9. Increased airline activity at the airport will increase revenue. Discussions with airlines, are currently underway.

F10. The Airport District is making a concerted effort to reach customers through local TV advertising and has begun to use social media to promote its services.

F11. The cost of Board of Directors elections can potentially be reduced by privatizing the election process.

RECOMMENDATIONS

R1. Dedicate adequate staff to oversee the property management component of the airport's revenue.

R2. Immediately evaluate non-aviation 'outside storage areas' such as the areas occupied by the current tree service tenants, to determine what can be done to encourage additional tenants.

R3. Provide regular maintenance and upgrades to the buildings that are located on the airport's north side property, to keep them rentable and up to standards.

R4. Confirm that all airport property rates are in line with local 'market rent' rates.

R5. Immediately research the potential of redefining MRA as a utility district to generate new revenue streams.

R6. Evaluate the impact of raising parking rates.

R7. Enter into further discussions with the City of Monterey to regulate free street parking on the adjacent city streets.

R8. Work with the local tourist and hospitality industry (Monterey County Convention and Visitors Bureau) to expand marketing of the area as a destination.

R9. Consider advertising with online commercial real estate services (such as LoopNet) as a means of attracting tenants.

R10. Expand the use of social media for marketing purposes.

R11. In terms of advertising, continue to emphasize the traveler's savings on time, gas, hotels, parking, and traffic aggravation by flying from Monterey.

R12. Continue to work with various airlines to pursue additional flight destinations.

R13. Immediately research the potential cost savings of hiring private companies to administer airport Board of Directors elections.

R14. Annually revisit the question of using shared police services vs. in-house services.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the Grand Jury requests a response to all Findings and Recommendations from the following governing body:

- Monterey Regional Airport Board of Directors

INFORMATION SECURITY AT NATIVIDAD MEDICAL CENTER: A MODEL OF BEST PRACTICES

INFORMATION SECURITY AT NATIVIDAD MEDICAL CENTER: A MODEL OF BEST PRACTICES

SUMMARY

In 2009, the Monterey County Board of Supervisors separated the Information Technology (IT) systems of Monterey County and Natividad Medical Center. As a healthcare system holding patients' Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Natividad has requirements for privacy and security that are different from those regulating the other County Departments. The Monterey County Civil Grand Jury (MCCGJ) 2013-14 report, *Privacy and Security of County On-Line Data and Information Systems*, focused on the County's IT Department and not Natividad Medical Center's IT Department. This report looks at the protections in place for those who utilize the services of Natividad Medical Center.

BACKGROUND

The need to protect PHI is significant. Theft of personal information can be used to infiltrate finances, damage reputations, extort money, or risk physical harm. Theft of medical information can allow persons and businesses to fraudulently obtain medical goods and services, whether by over billing Medicare, generating false records, abusing patient information to obtain prescription drugs, or contaminating an individual's medical history. There are serious penalties to health institutions reporting breaches. Because Natividad Medical Center is a county hospital, any breaches expose the County to exorbitant penalties.

The Ponemon Institute, a premier independent research organization on privacy, data protection, and information security policies, noted in its *Fourth Annual Benchmark Study On Patient Privacy and Data Security* (March 2014) that:

> Data breaches continue to cost some healthcare organizations millions of dollars every year. While the cost can range from less than $10,000 to more than $1 million, we calculate that the average cost for the organizations represented in this year's benchmark study is approximately $2 million over a two-year period. This is down from $2.4 million in last year's report as well as from the $2.2 million reported in 2011 and $2.1 million in 2010. Based on the experience of the healthcare organizations in this benchmark study, we believe the potential cost to the healthcare industry could be as much as $5.6 billion annually. [p. 2]

The Health Information Technology for Economic and Clinical Health Act (HITECH Act) imposes penalties of $100 to $50,000 per incident up to $1.5 million per year for privacy/security breaches depending on whether the breach was unknown, willful, corrected or not corrected.

METHODOLOGY

During the investigation, the MCCGJ interviewed several key personnel of the following offices and departments:

- Administrative Offices of the County of Monterey and of Natividad Medical Center
- Departments of Information Technology of Monterey County and of Natividad Medical Center

The MCCGJ also read and reviewed extensive published materials on the subject from the

- California Attorney General's Office
- Ponemon Institute
- U.S. Department of Health & Human Services Office of Civil Rights (OCR)
- American Hospital Association Solutions (AHA)
- ID Experts -Data Breach Response Experts
- International Association of Privacy Professionals

DISCUSSION

With the monetary penalties for breaches in excess of $1 million per year and the potential harm to patients' privacy, the MCCGJ investigated the readiness of Natividad Medical Center to thwart hackers and malware from invading its IT system. The report considers the following four areas of interest in connection with HIPAA breaches that most concern the California Attorney General and the Ponemon Institute and which can be controlled by Natividad Medical Center and its IT Department.

Annual Risk Assessments and Updating Privacy and Security Practices Based on the Findings

Natividad's IT Department conducts internal risk assessments annually, and if flaws are found, the department formulates an action plan to remedy the threat. The impact of the threat, the probability of the threat, and the cost to mitigate or fix the threat are weighed. If the system is locked down too tightly, functionality is lost.

All HIPAA breaches must be reported to the California Department of Public Health within five days of the breach. All incidents of breach that involve 500 or more California residents are required to be reported to the California Attorney General. To the credit of the IT Department, Natividad Medical Center has had no reportable breaches since the 2012 law requiring the reporting of such breaches.

To ensure privacy and security rules are followed, all health care facilities are on notice that the U.S. Department of Health & Human Services Office of Civil Rights (OCR) may conduct random audits at any time. To date, OCR has not audited Natividad, but the IT Department represents it is prepared for any such audit when and if it is contacted by OCR.

MEDITECH is the IT system used to manage electronic health records at Natividad Medical Center. All storage of electronic data is held "in house". It is backed up every night to disk and

magnetic tapes. It is backed up every week and stored in a vault-protected location. Some electronic data at Natividad Medical Center is stored in a "cloud", but storage of PHI data in a cloud is not technically available yet.

Strong Encryption to Protect Personal Information in Transit

Natividad Medical Center currently has approximately 200 network servers and approximately 1,200 laptop computers for its employees. There are multiple networks for storing data of different departments. Each network has its own dedicated servers. MEDITECH uses 12-13 servers. Before each laptop computer is assigned to an employee of Natividad Medical Center, it undergoes a total volume disk encryption, which prevents unauthorized access to data storage. If the user is unable to connect with the system, the laptop becomes unusable.

Every night the workstation computers are scanned for security. All websites accessed by staff are content filtered and scanned for viruses on an ongoing basis. Some have USB ports turned off. Users have access only to those networks for which they have a need to access. Smart phones can only access a guest network; they have no internal access. Employees can be set up to access their Natividad network email via their smart phones, but users must give permission for phone wipes by the IT Department, which would completely eliminate all storage data on the user's cell phone.

The IT Department staff through its system can determine who accesses data, what data is accessed, where and when it is accessed, and what is printed. All accesses to patient records are logged. Any suspicious activity can be traced to a specific workstation for follow-up.

The Natividad IT Department is working with other county hospitals to create a Health Information Exchange (HIE) where patient information can be shared electronically. Salinas Valley Memorial Healthcare System, Natividad Medical Center, and Community Hospital of the Monterey Peninsula are close to being able to connect with each other. Mee Memorial Hospital will follow. The HIE will be inclusive of county clinics and

GLOSSARY

Health Insurance Portability and Accountability Act of 1996 (HIPAA): a law enacted to make it easier for people to keep health insurance, protect the confidentiality and security of healthcare information and help the healthcare industry control administrative costs.

Office for Civil Rights (OCR): an arm of the U.S. Department of Health & Human Services that investigates complaints, enforces rights, and promulgates regulations, develops policy and provides technical assistance and public education to ensure understanding of and compliance with HIPAA privacy and security laws.

Health Information Exchange (HIE): the mobilization of healthcare information electronically across organizations within a region, community or hospital system.

Information Technology (IT): the application of computers and telecommunications equipment to store, retrieve, transmit and manipulate data, often in the context of a business or other enterprise encompassing computer hardware, software, electronics, semiconductors, internet, telecom equipment, e-commerce and computer services.

Protected Health Information (PHI): any information about health status, provision of health care, or payment for health care that can be linked to a specific individual, including any part of a patient's medical record of payment history.

the Monterey County Health Department. Even without the HIE in effect, the IT Department reported that paper breaches are more common than electronic breaches at Natividad. When requested, printed medical information is physically given to a patient for transmittal to another service provider, because Natividad Medical Center is not yet able to transmit data through an HIE.

Training of All Staff, Employees, and Third Party Vendors

All staff are trained in their IT responsibilities when they are hired, and they receive security training regularly. Before being hired, each must pass a background check. Third party vendors must also go through training and execute contracts drafted by counsel for the IT Department to ensure compliance with Natividad's patient PHI policies and procedures.

All users have unique passwords to log on to workstation laptops. There are separate passwords for the various networks. They must be changed frequently, and no similarities to former passwords are allowed. The system will lock out the user on multiple failed login attempts. All passwords and account information are kept in a vault for access by IT staff when necessary.

The IT system scans email coming in and going out of its networks. It blocks spam and any unauthorized links. It examines any suspected infections to the networks.

Policies and Procedures to Achieve Compliance and Secure Sensitive Information

Natividad Medical Center staffs its IT Department 24 hours a day, 7 days a week, every day of the year. A minimum of two (2) IT staff are on call at all times. Natividad Medical Center devotes 5.5% of its budget, approximately $10 million to IT.

Currently, Natividad's IT requires one factor (password) for access to the networks. The IT Department is moving toward two factors (badge and password) as a single access for all authorized platforms and auto logout users. This will eliminate the need to open multiple platforms and speed workflow.

There is a formal handbook containing specific information for compliance with policies and procedures. Troubleshooting occurs regularly, and IT Department staff monitor the system 24 hours a day to protect the community that utilizes the services of Natividad Medical Center. MCCGJ was pleased to learn of the standards and quality of care by Natividad's IT Department.

One important aspect of Natividad's service to the community is its readiness to communicate medical diagnoses and treatment in languages of the people it serves, including multiple dialects. Persons with language skills are on call to translate for patients and their families when no staff can. Currently Natividad has legally required written notices to persons who are impacted by PHI breaches in English and Spanish. If there are other languages commonly used by a large number of its patients, those notices should be translated for their understanding, as well.

FINDINGS

F1. The separation of Natividad's IT Department from the County's IT Department in 2009 was warranted, due to unique regulations and auditing standards for health provider institutions.

F2. Natividad Medical Center is exemplary of best practices in its protection of patients' PHI.

F3. Natividad Medical Center has 24/7 IT Department staff well-equipped to prevent cyberattacks.

F4. Natividad Medical Center minimizes downtime of its IT networks by dedicated, continual monitoring.

F5. Language translation services should be utilized in preparing written notices to persons impacted by PHI breaches whose common language is other than English or Spanish.

F6. A weak link exists in security of PHI with hand-delivered paper documents.

RECOMMENDATIONS

R1. Natividad Medical Center share its IT Department model with other county hospitals as a standard of excellence when appropriate at all upcoming opportunities.

R2. Natividad Medical Center immediately review and ensure that its notices to the public about HIPAA breaches are written in languages commonly understood by the impacted persons.

R3. Natividad Medical Center continue to improve and update best practices for secure physical delivery of PHI documents to other healthcare providers and individual patients while awaiting an active HIE for secure transmittals.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the Grand Jury requests a response to all Findings and Recommendations from the following governing body:

- Monterey County Board of Supervisors

APPLICABLE PRIVACY LAWS AND ENFORCEMENT MEASURES

Notice Laws

California's Data Breach Notification Statutes provide that agencies (Civil Code §1798.29) and businesses (Civil Code §1798.82) who maintain computerized data that includes personal information of others must notify individuals of any breach of their personal data immediately upon discovery. Personal information is defined to mean (1) a person's user name or email address in combination with a password or security question and answer that would allow access to an online account or (2) a person's name and one of the following:

- Social Security number
- Driver's license or California identification number
- Account number, credit card number, debit card number, with any required security code, access code, or password that would allow someone to access the individual's account number
- Medical information[1]
- Health insurance information[2]

The HIPAA Final Omnibus Rule of 2013 requires agencies and businesses sending notices for a breach that effects 500 or more residents of California to send a copy of the written Notice to the California Attorney General, thereby making a record of the crime. As of February 20, 2015, there were 18 reported in 2015 throughout California.

Law Enforcement

The OCR arm of the U.S. Department of Health and Human Services is tasked with enforcing the privacy and security laws. It has three functions. (1) It teaches health and social service workers about civil rights, health information privacy, and patient safety confidentiality laws that they must follow; (2) It educates communities about civil rights and health information privacy rights; and (3) It investigates civil rights, health information privacy and patient safety confidentiality complaints to find out if there is discrimination or violation of the law and takes action to correct problems.

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[1] Medical information as defined by the Civil Code is any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

[2] Health insurance information as defined by the Civil Code is an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

CARMEL-BY-THE-SEA
A GOVERNANCE REVIEW

CARMEL-BY-THE-SEA
A GOVERNANCE REVIEW

SUMMARY

In the fall of 2014 the Monterey County Civil Grand Jury (MCCGJ) received a written complaint from a group of Carmel-by-the-Sea (Carmel or City) residents asserting that during 2012-2014 the City's governance and administration had "substantially failed." The complainants requested that the MCCGJ investigate various alleged improper activities such as fiscal irresponsibility, lack of transparency, unfair treatment of employees, legal exposure, and others, and determine what led to the failure of proper oversight during the period. The complainants also asked the MCCGJ to recommend how Carmel's governance structure may be improved to avoid such problems in the future.

At the same time, the MCCGJ received a written request (see Attachment 1) from the Mayor and City Council asking that the MCCGJ review the City's organization—the adequacy of its policies, internal controls, safety checks, and recent corrective actions—and make any recommendations to ensure a more robust functioning of Carmel's government. The MCCGJ undertook the investigation as requested by the Mayor, City Council and citizens.

Carmel-by-the-Sea is a California General Law City (California Government Code Section 34000 et seq) founded in 1902 and incorporated on October 31, 1916. Under California Penal Code Section 925a, Grand Juries may investigate and report upon the operations, accounts, and records of the officers, departments and functions, and the method or system of performing the duties of any city and make such recommendations as it may deem proper and fit.

The investigative process led to some general conclusions by the MCCGJ:

- That in the years preceding the period covered in this Report the City had significant lack of compliance, Human Resources (HR) issues, and outdated systems and processes that aggravated the City's problems during 2012-2014;
- That the steps taken to bring the City into compliance and mitigate legal exposure encountered pushback from City employees and the citizenry;
- That the City Council and citizenry did not fully understand the "City Manager" form of government and the rules governing how the Mayor, City Council and administrators may interact;
- That the actions of the Mayor and City Council appeared to place more importance on avoiding public criticism, unfavorable media exposure and the threat of litigation than on conscientious oversight and governance;
- That many of the articles in local media heightened or escalated local concern by echoing the one-sided viewpoints of terminated employees since the City was prohibited by law from disclosing its reasons for terminations.

BACKGROUND

The governance of Carmel is controlled by the General Law provisions of the California Government Code (CGC) beginning at Section 34000. CGC section 36501 authorizes that general law cities be governed by a City Council of five members, a City Clerk, a City Treasurer, Police and Fire Chiefs, and any subordinate officers or employees required by law.

In the mid-1970s, Carmel adopted the City Manager/Weak Mayor form of local government, which combines the political leadership of elected officials with the strong managerial experience of an appointed local government manager. This form establishes a representative system where all power is concentrated in the elected City Council (Council), which hires a professionally trained manager (Carmel uses the term Administrator) to oversee the delivery of public services. It is the Council's ***duty to supervise the performance of*** the City Administrator as well as the City Attorney, City Treasurer and City Engineer.

The Carmel Municipal Code (CMC) provides that the City Administrator appointed by the Council is the administrative head of the City's government, under the direction and control of the Council. The Administrator brings to local government the benefits of training and experience in administering projects and programs on behalf of the governing body and carries out the Council's policies, ensuring that the entire community is being served. It is the responsibility of the Administrator to make certain that municipal laws and ordinances are enforced, to oversee fiscal and budgetary matters, to manage all employee actions, and to provide administrative direction for the day-to-day operations of all departmental activities. The Administrator also serves as the Council's chief adviser.

The role of the City Council is set forth in the Carmel Municipal Code (CMC), Chapter 2.08 (see Attachment 2). Under City Manager/Weak Mayor government, Council members are the leaders and policy makers elected to represent the community and to concentrate on policy issues that are responsive to citizens' needs and wishes. Power is centralized in this elected legislative body, which approves the budget and determines the tax rate. The Council also focuses on the community's goals, major projects, and such long-term considerations as community growth, land use development, capital improvement plans, capital financing, and strategic planning. The Mayor is a member of the City Council and holds the same power as the other Council members. He/she has one vote and no veto power. The Mayor sets the agenda and manages the Council meetings, and performs a ceremonial function. Notwithstanding this limited authority of the Mayor under the law, the MCCGJ investigation revealed that during the period in question, the Mayor played a strong and influential leadership role in the City's governance.

The CMC also provides that the City Council deals with administrative services and department heads only through the City Administrator, ***except for purposes of inquiry***. The MCCGJ understands this exception to mean that the Council members may—and indeed should when needed—inquire of those engaged in the City's administration concerning City affairs. How the City Council and the City Administrator are permitted to interact is severely constrained by the Ralph M. Brown Act, which mandates that, with certain limited exceptions, the only meetings of a majority of the Mayor and City Council with the City Administrator to discuss City business must be held during a duly convened, public Council meeting. The most common exceptions that permit "closed sessions" of the Council concern matters relating to litigation, real estate transactions, and personnel issues.

INVESTIGATIVE METHODOLOGY

In preparation for this investigation, the MCCGJ reviewed laws that apply to various kinds of local governments as well as the specific characteristics and processes of a General Law City, the policies and procedures of a City Manager form of government, and applicable transparency and ethics laws including the Ralph M. Brown Act, the California Public Records Act and the Political Reform Act of 1974.

Document Review

To understand the background of Carmel's governance problems and to sift out factual evidence from the flood of media coverage, citizen claims, and widely circulated rumor, the MCCGJ first performed an in-depth review of the Carmel Municipal Code, the California Government Code provisions covering General Law Cities, and the City Council Rules and Procedures, and then carefully reviewed additional documents, including:

- Minutes of all City Council meetings from January 2012–November 2014
- Carmel Public Records Act Response Policy adopted by City Council on August 5, 2014
- Correspondence
- City contracts
- Attorneys' engagement agreements and billings
- Financial data
- "The Municipal Organization—Past, Present and Future:" an overview report by new City Administrator Doug Schmitz dated November 4, 2014, as updated March 3, 2015.
- Citizen petition
- Newspaper articles
- Investigative reports
- Court-ordered search warrant
- Employee emails where provided
- City records produced in response to the MCCGJ's subpoena
- Citizen complaints
- Investigative Report on City of Carmel-by-the-Sea Contracts, dated May 5, 2015[1]

[1] The MCCGJ is not able to accept this report because of its limited and selective scope, its failure to recognize the City's historic and systemic contract process problems, the conspicuous lack of an interview with the City Administrator who was in office, and the absence of an audit prepared according to Generally Accepted Accounting Principles, as would have been provided by the use of a Certified Public Accountant.

Interviews

The MCCGJ conducted twenty-four personal interviews with individuals believed to have information relevant to this investigation. All interviewees signed an "admonishment" pledging not to disclose the fact of their interview, what questions were asked, and what answers were given. Interviewees were in the following categories:

- Current and former elected officials
- Current and former employees
- City residents
- City contractors and service providers
- Individuals representing the multiple complaints received by the MCCGJ

Key Requests Made by the MCCGJ

As the discussion below will illustrate, the City engaged in a "request and deny" strategy, which served only to cause many weeks of delay. The investigation was further hampered by instructions from the City Attorney and private legal counsel advising some interviewees not to answer MCCGJ questions relating to personnel matters of which they had direct, personal knowledge.

Security System Audit

In July 2013, the City contracted for professional services to perform a complete audit of the existing IT system and to report findings and security concerns. The security system audit was intermixed with related contracts for technical assistance and forensic services investigating reported unauthorized access to employee emails and protected accounts, so it is difficult to ascertain how much of the approximately $383,000 total spent on forensic services actually related to the audit. The audit report was described to the MCCGJ as an estimated 150 pages in length listing more than 800 security vulnerabilities. The MCCGJ asked to see the report.

In response to the MCCGJ's request, the City reported that the audit report could not be found, preventing the MCCGJ from assessing the City's response to this key report and from assessing the value of the "deliverable" for this large contract.

Waiver of Attorney-Client Privilege

Because of the considerable use by the City of outside legal counsel between 2012 and 2014 for employee terminations, Public Records Act (PRA) request reviews, HR matters, contract matters, and general legal services at a cost to the City of more than $475,000, the MCCGJ wanted to know more about the involvement of the City Attorney in such services and whether he has a regular procedural role in a defined list of City matters or is "on call" when needed. The MCCGJ also wished to speak with the outside attorneys who acted for the City in the areas noted above, to gain clarity about the appropriate use of separately retained counsel and to help determine if charges of cronyism were founded. For these, and only these, purposes the MCCGJ requested a waiver of attorney-client privilege.

In response to this request, the City staff used outside counsel to inform the MCCGJ that it would not waive attorney-client privilege, preventing the Grand Jury from examining this critically important area.

Waiver of City Council Closed Session Privilege

To further its investigation and gain insight into City Council processes regarding establishment of key initiatives and priorities, approval of contracts, supervision of the City Administrator, (and City Attorney, Treasurer and Engineer), public records request positions, and knowledge of major personnel actions taken, the MCCGJ requested waiver of the City Council's closed session privilege for these, and only these, purposes for the period 2012-2014.

In response to this request, the Mayor and Council voted on Feb. 10, 2015 to table the request until outside counsel could be consulted. The waiver was subsequently not granted.

Selected Personnel and Investigative Files

In order to form conclusions about the City's HR processes and the appropriateness of its major personnel actions during 2012-2014, the MCCGJ in January 2015 requested specific files for the affected employees relating to employment contracts and agreements, performance evaluations, progressive discipline, investigations, terminations and rehiring.

In response to this request, the MCCGJ was advised by the City Attorney to narrow the scope of the request. The MCCGJ complied by providing a shorter list of items, notably those records relating to the process of handling employee matters of behavior, terminations, and rehiring. This more limited request was made in writing to the City Attorney and in a personal meeting with the Mayor and City Administrator. The MCCGJ's letter was provided to local media media by someone other than the MCCGJ, despite its confidential nature.

The City then advised that it would not comply without a court order, so a subpoena was issued by the Presiding Judge of the Monterey County Superior Court and served on the City. Shortly thereafter the City filed a motion to quash the subpoena. In the subpoena hearing, the City Attorney argued that the MCCGJ must disclose why each document was requested.

On March 29, 2015, the Monterey County Superior Court issued its decision that the MCCGJ must provide an in-camera (confidential to the court only) showing that the MCCGJ's need for the requested disclosure of personnel information outweighs the employees' California constitutional right of privacy. The MCCGJ filed the requested showing on April 1, 2015, and the City quickly followed up with a letter to the Court asking to be present at any related confidential hearing. The Court denied the City's request. On April 7, 2015, the MCCGJ was asked by the Court for more information. The MCCGJ's response was filed with the Court on April 8, 2015. In a court order dated April 8, 2015, the Court ruled that the City's motion to quash the subpoena was denied, and that the requested records must be produced. The records were provided to the Court, which subsequently released them to the MCCGJ on April 23, 2015 along with a protective order providing for their return to the City after examination.

Investigative Methodology Summary

The comprehensive research and fact-finding done by the MCCGJ over seven months and through nearly 1500 hours of document review, personal interviews, and analysis have revealed a reasonably clear picture of governance in Carmel City Hall prior to 2012 and the part it played in the City's chaos that followed. The MCCGJ has also been able to form conclusions about the chain of events that took place between 2012 and 2014, and how the City's governance processes shaped those events.

These conclusions have been verified with multiple sources, and they will appear in the **Findings** section of this Report. Although the City has not fully cooperated in providing information that would conclusively corroborate certain of the Findings, the MCCGJ nevertheless believes that this Report is accurate and complete.

DISCUSSION

The Scope of the Investigation

In the course of this investigation, the Civil Grand Jury examined a number of obvious problem areas in the City's government, most notably the clash between old and new administrative styles, a lack of knowledge and attention on the part of City Council members, information technology security breaches, departmental irregularities, and allegations of misconduct. To assess these areas, the MCCGJ focused on the operating conditions of the City prior to the new administration, the directives given to City Administrator Jason Stilwell by the Mayor and City Council upon his hiring, the actions of senior City staff from November 2011 through 2014, the propriety of personnel actions taken by the City, including terminations and rehiring, and the City's governance throughout the period.

The State of the City before 2012

Following the economic slowdown of 2007 to 2010, the City of Carmel was left understaffed. The director's position in most departments had been vacant through retirement or separation, and this attrition caused many employees to take on multiple responsibilities. Most departments were affected, but the areas of Human Resources, Finance and Administration, and Planning were the most severely impacted.

In 2011, the staff of this charmingly unique City was a collegial group. City business was conducted, but in a quietly unorthodox manner for a municipal organization. Many City policies were outdated, ignored, or didn't exist. This was especially evident in the areas of:

- Financial Management (contract administration, payroll, purchasing, etc.);
- Human Resources (performance reviews, progressive discipline, salary ranges, job descriptions, etc.); and
- Administration (Public Records Act requests and Information Technology—network security, password administration, access to City files by unauthorized employees, etc.).

Interviews with the then City Council members revealed a serious lack of knowledge about the depth of these issues at the time (late 2011). The interviews also exhibited differing understand-

ing of the responsibilities of City Council members in a General Law City using a Weak Mayor form of government. Answers by Council members varied widely when asked what they believed were their responsibilities as a City Council member. Though some failed to mention oversight, the critical item consistently missing in the answers was the power of inquiry, cited in the Background section of this Report.

City Council members also consistently explained that they had had no authority regarding the actions of the City staff, despite the fact that the Carmel Municipal Code clearly cites the City Council's supervisory responsibility over the City Administrator, City Attorney, City Engineer and City Treasurer. Council members' understanding of the role of the City Treasurer was fragmented and none could explain why the Treasurer (a contract, part-time position) was not involved in the tracking of contract disbursements, a chronically troublesome area.

Many witnesses acknowledged that the City's financial accounting was inefficient, cumbersome, and error prone. The software is antiquated and its (limited) capabilities not fully implemented. Most management reports were developed on off-the-shelf spreadsheet software, after manual input from the financial system. These deficiencies made it difficult for City staff to provide the City Council with contract payment schedules and accumulated payment tracking reports.

The New City Administration

Following the departure of former City Administrator Mr. Rich Guillen, Mr. Jason Stilwell was hired in November 2011 as the new City Administrator. Mr. Stilwell's education and background were impressively deep in municipal finance, budgeting, state laws, municipal codes, and public administration systems and procedures. Mr. Stilwell also brought a large-organization perspective to a small City—something that would eventually cause difficulties.

Mr. Stilwell immediately observed the lack of process discipline, and took measures to understand the severity and the alternatives for problem solving. He began to staff the directors' positions that had been eliminated by the economic downturn. A key hire was Administrative Services Director, Ms. Susan Paul, in January, 2013. Ms. Paul was a 30-year municipal administration veteran with expertise in policy, municipal codes, purchasing systems, human resources and compliance, and her assignment as Director was to bring together, organize, and manage the functions of purchasing, contracts, finance, human resources, and the City Clerk. Contrary to what many residents and employees believed, the MCCGJ verified that Ms. Paul was hired through a competitive recruitment and interview process in which Mr. Stilwell did not participate.

Mr. Stilwell was employed by the City for 14 months before Ms. Paul was hired. When she assumed the Administrative Services Director position, they worked together to implement organizational changes, making personnel appointments, and instituting policy and procedural changes needed to move the City into compliance with City policies, the Municipal Code, and the various demands of fiscal and proper management of the public's resources. Ms. Paul acted quickly and decisively, although often in what has been described as an abrupt and non-communicative manner that began to cause irritation and resentment.

Problems identified by Ms. Paul and Mr. Stilwell included compliance violations, mishandling of contracts and payments, Human Resource issues, network security breaches, and other procedu-

rally deficient activities. These new administrators also uncovered employee behavior that they judged to be improper or dishonest, that put the City at risk, or that was a misuse of the City's resources for personal gain. Such behavior was dealt with swiftly by Ms. Paul, sometimes resulting in terminations, or in suspensions followed by terminations. Progressive discipline (which was not legally required) was rarely used, causing many ensuing problems and legal actions..

Multiple witnesses described Jason Stilwell as extremely bright and experienced in the management of a municipal organization. Although he received public accolades and positive performance reviews from the Mayor and City Council for his performance, he was also described as "not a good communicator." The MCCGJ believes that he failed to recognize the long-term and collegial relationships among the "Old Guard" employees (see "Five Forces" section below) and was not sensitive to the long-standing organizational culture at City Hall. Much the same can be said about Ms. Paul. She was an experienced, professional municipal manager who also underestimated the significance of the existing relationships and the coordinated pushback that would occur when long-term employees or contractors were terminated, even with what would otherwise be "good cause." Her style was described as loud, aggressive, and at times abrasive. Though personality clashes and major dysfunction ensued, the MCCGJ found no evidence of malicious motives by either Mr. Stilwell or Ms. Paul. Both held a strong desire to succeed, and both wanted to fix what many witnesses described as "a mess."

It should be noted that neither Mr. Stilwell nor Ms. Paul was able to completely implement procedurally sound workflow systems during their employment. A review of the files covering contracts generated during their tenure showed that a number contained the same issues that they were trying to remedy—missing statements of work, payment schedules, and milestone measurements. Moreover, the mounting adverse employee actions and increased Public Records Act requests were consuming a large amount of their time.

The MCCGJ was interested in the knowledge and involvement of the Mayor and City Council with what was happening under the new administration. Several witnesses testified that the Mayor and City Council received regular updates and communications regarding staff activity, personnel matters (although in some cases after actions were taken), processes and behaviors, and Code/policy violations during the 2012-2014 timeframe. Regardless, as the investigation progressed, it became clear, in the opinion of the MCCGJ, that the Mayor and City Council had vacated their responsibilities of oversight and inquiry. And when the public pressure to remove Mr. Stilwell and Ms. Paul and to rehire previously terminated employees became overbearing, it appeared that the Mayor and City Council chose public appeasement over problem solving.

The Five Forces

The overall function/dysfunction of the City during the three-year period of 2012-2014 can be depicted in a five-force relationship. Following are the factions that played a significant role in the disruptive conduct of the City's business:

- **The Old Guard** ("We've always done it this way…")

  The long-term employees of the City were making do with limited resources, and taking short cuts to stay afloat. Because of the reduction in the work force, most departments were functioning without a director and were in the hands of employees who may not

have been familiar with the provisions of the Carmel Municipal Code or who did not necessarily know how to keep or bring the City into compliance.

- **The New Administration** ("We need to fix this fast…")

  The new administrators saw policies and practices that were undocumented, unstructured, and out of compliance, giving the City legal exposure.

- **The City Council**

  With little attention to its responsibility for inquiry and oversight, the City Council was ineffective. When the Old Guard and the New Administration clashed, the Council took no action and allowed a business problem to escalate into a major public disruption.

- ***The Carmel Pine Cone***

  The local newspaper incited a groundswell of public opinion among the residents through articles generally biased against the New Administration. Articles supporting the Old Guard were the residents' only source of information about employee matters in particular, as the City was unable to respond to accusations for reasons of employee privacy. On November 1, 2013, the newspaper ran this statement in its Editorial Section:

  > City employees: Please help us figure out what's really going on at City Hall by contacting us with news tips. We guarantee your confidentiality. But DO NOT use a City computer, phone or email address to do it, because those are probably being monitored by your supervisors…

- **The Residents**

  Most of the politically active residents seemed to be strongly influenced by *The Carmel Pine Cone* and there was no real understanding of the difficult position the City was in following the strained economic period leading up to 2011/2012. Compliance issues, lack of adherence to City policy and the Municipal Code, and the impact of the absence of a professional Human Resources Director or management were not observable to the general public.

City Council Orientation and Training

Managing local government is not easy because issues are complex, resources are scarce, the media watches closely, and municipalities are governed with lengthy policies and Municipal Codes. Governing as a collective body is very different from running for office as an individual. Trying to remain true to one's political commitments and beliefs while also making decisions that are in the best interest of the entire community is something every elected official has to confront daily. All too often, new mayors and council members receive little more than on-the-job training to equip them for their roles.

A solution to this problem is provided by the League of California Cities (The League), which provides a "New Mayors & Council Members Academy"—a must-attend for newly elected officials and for veteran council members wanting a refresher course on the basic legal and practical framework in which City officials operate. The 2½-day Academy (not to be confused with the League's Annual Meeting) is held in late January in Sacramento and includes the state mandated

AB 1234 Ethics course and important fundamental topics taught by subject matter experts and seasoned elected officials. The League offers a follow-up program in leadership development, the "Mayors and Council Members Executive Forum."

The MCCGJ requested information as to whether any Carmel elected officials had ever attended this Academy training. The City did not respond to the request; however information from the interviews suggests that although some City Council members had attended an annual meeting of the League, none had ever attended the Academy Training or the Executive Forum.

Information Technology Security and Procedures

Upon the arrival of the new Administrative Services Director, Susan Paul, a review of the Information Technology network and the City's computer systems was conducted. It was found that network security was almost nonexistent, and that several employees (some accounts say the number was as high as a dozen) reported that their files and email had been accessed without their knowledge or permission, including those of Mr. Stilwell and Ms. Paul. To locate the source(s) of this unauthorized computer access, the City contracted in February 2013 with a forensic investigator to conduct a security audit. The seriousness of some of these actions prompted a police investigation.

According to interviews, the audit revealed the following pertinent facts:

- Standard security software updates for servers and computers had not been applied and were several updates behind.
- Wi-Fi access was unprotected and easily accessible, even from the street outside City Hall.
- Many computers were not properly password protected, and multiple employees had access to computers assigned to others.
- Access rights defining specific lists of individuals with levels of information privileges were compromised, and were in violation of the City Municipal Code 2.52.780 Personnel Files—Security), which states:

  > Personnel files are private and confidential. All persons will insure that confidentiality of the records is not revealed, nor open to scrutiny by the casual observer, nor the contents altered or removed. Personnel files may be reviewed only upon authorization of the City Administrator or designate with reasonable notice. Any review will be in the immediate presence of the employee having custody of the files. (Ord. 87-1 § 2, 1987).

  Witnesses reported that personnel files, including medical records, had been accessed, and in some cases downloaded to other City computers.
- The security audit was provided to the City through a report estimated at 150 pages in length that enumerated some 800 security vulnerabilities. As noted earlier, a copy of this report was requested by the MCCGJ but it was not provided. The City was unable to locate the report.

- Following the initial audit, another investigation was conducted into the alleged unauthorized access of employee emails and files. The MCCGJ was informed that findings of this investigation included the following:
  -- Network shares were created, allowing unauthorized employee access to the computers assigned to others, including access to that employee's email and protected files.
  -- General computer access went beyond the administration level; employee-assigned computers were accessed with specific employee passwords.
  -- Some employees gained unauthorized access to the City's computer records from their personal computers at home.
  -- City computers were often left logged-in while unattended, leaving them easily accessible by anyone.
  -- Examples of unauthorized files accessed were:
    ➛ Payroll information of a Police Services Officer and other City employees,
    ➛ General fund revenues and budget information,
    ➛ Personnel documents including private medical records,
    ➛ Employee performance appraisals,
    ➛ Emails sent to City Council members.

Human Resources: Employee Terminations/Resignations

The MCCGJ conducted numerous witness interviews covering the lack of structure and compliance violations in the handling of Human Resources procedures prior to the hiring of the new City Administrator, Jason Stilwell. Examples of such violations occurring before 2012 included:

- Pay raises awarded outside of the pay grade schedule for the position without proper approval to amend the pay scale,
- Employees assigned HR or payroll duties without experience or job knowledge,
- Some employees in positions requiring specific certifications without said certifications,
- Confusion among employment status and classifications; i.e. part time, contract, at will, represented, etc.,
- Failure to address Causes for Disciplinary Action (Carmel Municipal Code: 2.52.340),
- Failure to abide by the City Municipal Code regarding employee progressive discipline (Carmel Municipal Code: 2.52, Article IX. Disciplinary Actions).

Between February 2013 and July 2014 six City employees were terminated and one employee was placed on indefinite leave. There were also two employees who resigned during this period. The employment suspensions and terminations were all approved by Mr. Stilwell and occurred after Susan Paul was hired and assumed responsibility for Human Resources. The City had not had an HR Director since 2010.

Some employment terminations were preceded by a period of administrative suspensions with pay; others were done swiftly. All of the terminations occurred after extensive review by, and with advice from, outside legal counsel, hired at significant expense to the City by Mr. Stilwell. (The cost of employment matters billed by outside counsel is outlined in another section of this Report.) Several terminations had been desired or recommended much earlier by their respective managers, and witnesses reported that in at least one case the termination had not been author-

ized by the prior administration in order to avoid the risk of litigation. When Ms. Paul arrived, personnel actions moved to the front burner and, with the endorsement of outside counsel, went forward.

Although the Carmel Municipal Code (CMC) has a discretionary progressive discipline process (CMC Article IX. Disciplinary Actions), according to witnesses this process was largely unused either before or after 2012. Under a General Law City, however, the City Administrator has the exclusive authority to administer employee discipline, including terminations, and the City Council has the right of inquiry into these matters *before* they are made final. Several witnesses reported that the Mayor and City Council were made well aware of the circumstances surrounding these termination issues. However, most Council members erroneously believed that an inquiry into these employee matters was not permitted until a termination was complete and litigation was threatened or filed against the City.

Most suspensions, terminations, and resignations during this period were made public by articles in the local media (primarily *The Carmel Pine Cone*). As noted earlier, only the employees' versions of the acts or omissions leading to the adverse employment actions were reported, since the City was restrained by law from reporting the employer's side to the local media concerning any individual employment matter. This one-sided reporting was instrumental in defining the public perception that most of the involved employees were treated unfairly and that the City was losing valuable talent and "institutional knowledge."

However the evidence considered by the MCCGJ indicated that there was employee conduct that violated commonly accepted employment standards and/or specific provisions of the Carmel Municipal Code. The terminations and suspensions that followed took place with the assistance of counsel and followed an appropriate process.

Shortly after the hiring on October 1, 2014 of new City Administrator, Mr. Douglas Schmitz, three former long-term employees who had been fired under Stilwell were rehired and given back pay, retroactive benefits, and substantial damages payments in settlements of their threatened or existing lawsuits. In at least one case, the salary at rehire was significantly higher than the new position would otherwise warrant. These settlements, including the rehires, leave several areas without closure:

- They were completed without the involvement of the City's outside defense counsel, the person most knowledgeable about the facts and legal issues of these terminations.
- The rehiring of these employees raises some long-term issues for the City, including the adverse effect on the morale of fellow employees.
- The fact that these settlements were made quickly and early in the litigation or pre-litigation stages, with only the employees' version of the circumstances publicly known, strongly implies that all of them were wrongfully terminated and made arbitrary victims of the "Stilwell/Paul Administration." That conclusion, based on the body of evidence and documentation reviewed by the MCCGJ, is neither fair nor warranted.
- Finally, the settlement process noted above indicates, in the MCCGJ's opinion, a desire to quell political unrest rather than address serious employment issues.

Contract Awards

Media reports and Carmel resident complaints concerning governance and administration of Carmel during the 2012-2014 period emphasized the belief that something was very wrong with how the City awarded and administered contracts for City services and supplies, with such assertions as the following (discussed in detail below):

- Contract Splitting
- Severing Relations with Local Vendors
- Cronyism
- Contract Value
- Legal Counsel Issues

While on occasion these reports and complaints questioned the role of the Mayor and City Council, the overwhelming ire was directed at Mr. Stilwell as City Administrator and Ms. Paul as Administrative Services Director. The assertions listed above formed one of the key grounds for citizen demands that the employment of Mr. Stilwell and Ms. Paul be terminated.

The MCCGJ requested copies of the various contracts going back as far as 1984, including those about which the media and citizenry complained, and supporting materials such as requests for proposals, proposals, staff reports recommending contracts, City Council Resolutions approving contracts, purchase orders, invoices and payment records, and amending materials where applicable. While the City was cooperative, its files generally did not contain all the materials comprising the contracts. Contract proposals and exhibits reflecting the scope of the work to be performed were missing on occasion, as were staff reports to the Council. There was no evidence of public bidding for contracts in excess of $25,000 as called for in the Carmel Municipal Code (CMC). Some contracts used a prior contract form but failed to use the name of the new contractor. Copies of contracts executed by both parties were missing. In spite of these deficiencies, the MCCGJ believes that the materials provided by the City are sufficient to support the conclusions that follow.

- **Contract Splitting**

  CMC Section 3.12.310 states: “No purchase orders involving amounts in excess of $25,000 shall be split into parts to produce amounts of $25,000 or less for the purpose of avoiding the provisions and restrictions of this Article.” The CMC does not define contract splitting but speaks in terms of splitting purchase orders into contracts.

  The media and citizenry complained primarily about three contracts, each initially not to exceed $25,000, issued to computer forensics expert Mark Alcock:

  -- Contract No. ASD-PCS-MA-001-2013 called for unspecified forensic technology investigative services. The date of this contract is unclear. The copy provided by the City is dated July 23, 2013; however, other materials reviewed by the MCCGJ suggest that its original date was February 25, 2013. Invoices reflecting services in the February-May 2013 time frame were not provided.

  -- Contract No. ASD-PCS-MA-Sec-002-2013, dated May 5, 2013 called for the installation and configuring of network routers and security devices, providing security devices, and providing security guidance and additional technology services as

necessary. The manner in which all of these contracts are numbered supports the conclusion that contract 001 (a. above) preceded contract 002.

-- Contract No. ASD-PCS-MA-Examiner-003-2013 dated June 19, 2013 covered the coordination of investigative activities with various enforcement agencies, serving as "forensic technology" to support various agencies, and additional technology services as necessary.

On August 23, 2013 the City Council authorized amendments to both the May 5 and June 19 contracts to increase the amounts thereunder respectively to $43,500 and $60,000. There appeared to be a practice of allowing the consultant to overrun the contract amounts, followed by a "catchup" City Council-authorized contract amendment.

The use of the word "investigative" in two of the three contracts lends some credence to the concern of contract splitting as well as the overruns calling for contract amendments. However, the CMC speaks in terms of splitting purchase orders, not contracts. The MCCGJ found no use of purchase orders to secure the services of this consultant. The probability is that under the circumstances confronting the City at that time and given the believed urgency in the need for forensic technology services, plus uncertainty as to the scope of forensic services needed, the action taken was warranted. In all events, the MCCGJ received credible testimony that Mr. Stilwell was given legal advice that the Alcock contracts did not constitute contract splitting

- **Severing Relations with Local Vendors**

A prominent concern of the media and Carmel citizenry was their assertion that City administrators eroded the effectiveness of the City's Community Planning and Building Department by closing out a long-standing contractual relationship with Carmel Fire Protection Associates (CFPA). By mid-2007 CFPA was principally represented by two retired long-term Carmel City employees who provided the same fire protection and building plan-checking services to the City and to those general building contractors active within the City that they had provided as employees. Both were well regarded and popular within the City administration and the local construction industry.

The arrival of Mr. Stilwell and Ms. Paul brought a review of the City's contracting practices and scrutiny of large contracts. It became apparent that the City was not adhering to its public bidding obligation for contracts in excess of $25,000 and that services were being provided and paid for under expired contracts.

The City provided the MCCGJ with copies of the agreements with CFPA going back to September 1, 2004 up to and including the last agreement in effect dated September 1, 2007. Although this agreement was for a two-year term ending August 31, 2009, CFPA continued to provide services under the 2007 agreement and the City continued to pay for such services through at least August 2012. In August 2012, CFPA drafted a renewal contract dated August 1, 2012 for a two-year term and sent it to Mr. Stilwell for processing. The City took no action to renew the CFPA arrangement, and in March 2013 Ms. Paul received input from the Community Planning and Building Department that the contract with CFPA was no longer necessary because the City of Monterey was providing some of the same services under a November 16, 2011 "Agreement to Provide Fire Services be-

tween the Cities of Monterey and Carmel." Therefore Ms. Paul directed that there be no further business with CFPA.

The MCCGJ found no documentation indicating that the services described in the CFPA contracts ever went out for public bid or that they were of such a special nature as to qualify for the exception to public bidding found in CMC Sections 3.12.140 and 160, which permits the City Administrator to utilize "competitive negotiation" where warranted.

In terms of the City's failure to use public bidding where local vendors were involved, the City also entered into eight agreements between June 2006 and December 2014 for consulting services covering destination marketing and public relations with Monterey and Carmel firms known variously as Anda/Burghardt Advertising and Burghardt/Dore Advertising. Each of these agreements was for $100,000 or more (the average about $180,000) and they were usually for a one-year term. The records provided by the City did not include any indication that any of these agreements was a result of public bidding. The current agreement (No. 013-13-14) expires June 15, 2015.

- **Cronyism**

  The media and Carmel citizenry identified the following contractual relationships as reflecting "cronyism," a not otherwise identified or explained term:

  -- The four contracts, with amendments, between the City and Public Consulting Group, Inc., (PCG) of Sacramento and its Vice President, Sally Nagy, for information technology services especially in connection with the development of the City's Strategic Information Technology Plan and Interactive Government Project. A fifth contract to implement the technology plan with PCG was pulled from consideration by the City Council in September of 2014 after public outcry, with the intent that a bidding process would be used; and

  -- The engagement of the Santa Barbara office of the law firm of Stradling, Yocca, Carlson & Rauth, APC, to represent the City in employment law matters, including unlawful termination litigation, and Public Record Act response issues.

  The City provided copies of the agreements between these two service providers. The history of the relationship between these two vendors and Mr. Stilwell and Ms. Paul was explored to the extent the persons interviewed were able to comment. Other than the prior (before 2012) presence of the vendors in the City of Santa Barbara while Mr. Stilwell and Ms. Paul were employed by Santa Barbara County, and an acknowledged working relationship in Santa Barbara between Ms. Paul and Ms. Nagy some five years earlier, the MCCGJ found nothing to suggest any special relationship between Mr. Stilwell or Ms. Paul and either of these two vendors. The MCCGJ found nothing to suggest that Mr. Stilwell or Ms. Paul benefited economically from the City's engagement of these two vendors. It is not uncommon for professional administrators to establish relationships with professional service providers and to call upon such providers for assistance in new circumstances.

  Regarding the engagement of other attorneys from outside the area by the City Administrator, specifically from Santa Barbara, the MCCGJ found no evidence of cronyism, as

charged by the local media and many City residents. Further, the MCCGJ questioned why Mr. Freeman, the City Attorney, was not involved in the selection of outside counsel. The question remained unanswered because the City denied the waiving of attorney-client privilege for the City Attorney.

- **Contract Value**

  The four contracts with Public Consulting Group, Inc. (PCG) discussed above were also criticized on the ground that they were a waste of money as they produced little value.

  Based on materials provided by the City (which may not be accurate or complete), it appears that the contracts in question, including overruns, called for the City to pay PCG a total of $269,460, of which $88,660 remains unpaid. While some of the services provided by PCG were for day-to-day IT support, the bulk of the services were for work performed in the development of the City's Strategic Information Technology Plan and Interactive Government Project. The MCCGJ has been unable to identify any meaningful progress implementing this IT Plan, although witnesses have said that it continues to be a City Council goal. The usefulness and appropriateness of the IT Plan to meet the City's needs would appear to be a wait-and-see situation, as the MCCGJ was unable to address the accusation that the contracts produced little or nothing of value.

- **Legal Counsel Issues**

  Concerns regarding legal counsel revolve around three areas: the use of firms outside Monterey County, the services provided by local legal counsel, and the amount spent on outside counsel from 2012-2014.

  -- *Securing legal services from firms outside Monterey County*:
  The media and Carmel citizenry were critical of the City's use of law firms located in Santa Barbara and Los Angeles during 2012-2014, and what they felt were excessive payments to such firms. The City provided the MCCGJ copies of the engagement agreements between the City and all law firms engaged by the City during the 2012-2014 period, as well as their related billing statements. The MCCGJ's ability to review the legal services provided during the period 2012-2014 was hampered by the City's unwillingness to waive the attorney-client privilege, which would have allowed the MCCGJ to discuss with retained counsel more details concerning the nature of and need for services rendered.

  -- *Local Legal Counsel*:
  Donald G. Freeman, Esq. has been employed as the Carmel City Attorney continuously since February 1984. Based on records provided by the City, Mr. Freeman was included in the City's retirement plan from 1984 to 2007. His latest open-ended Employment Agreement for Legal Services became effective June 1, 2004 and provides for both "Ordinary" and "Extraordinary" Services: "Ordinary Services" include providing legal advice and opinions to the Mayor, City Council and City Administrator in the regular course of City business covering such matters as administrative procedures, Council and Commission actions, and attendance at all regular Council meetings, as well as drafting and preparing ordinances, ordinary contracts and engaging in legal research necessary to properly advise and protect the interests of the City. "Extraordinary Services" include preparation of complex legal documents, representing

the City in any Court litigation, Court appearances for prosecution of City ordinances, eminent domain proceedings, labor negotiations, municipal bond and assessment proceedings.

The MCCGJ noted that the services to be rendered by Mr. Freeman, who in addition to his City employee duties also engages in the private practice of law, do not specifically include assisting in employment termination matters, HR matters, contract review and compliance, or PRA response advice. Nor do the services to the City specifically involve him in the engagement and supervision of outside special counsel.

The involvement of the City Attorney throughout the relevant time period was questioned by the MCCGJ because there were many instances of the City's turning to outside counsel for employee terminations, PRA request reviews, HR matters, contract matters, and general counsel. In some instances, outside counsel was provided by firms outside the Carmel area, and by firms appearing to be previously known to the New Administration (Stilwell and Paul). Occasionally, Mr. Freeman acted as counsel on the above matters, and, as noted earlier, it is unclear if the City Attorney had a regular procedural role in a defined list of City matters, or was "on call" when judged as needed.

An interview with Mr. Freeman would have allowed the MCCGJ to better determine if cost-saving improvements could be made in this area, and also to determine more definitively if there was cronyism, as described in the citizen complaint. However, because the City denied the waiver of attorney-client privilege, the MCCGJ recognized that such an interview would not offer any meaningful inquiry.

-- *Use of Outside Counsel:*

During 2012-2014 the City looked to outside special legal counsel for significant support in employee termination matters, wrongful termination litigation, real estate litigation, Public Records Act requests and related litigation, as well as human resource issues. These services were not available from Mr. Freeman; the MCCGJ was informed that he did not desire to provide such services and encouraged the use of outside special counsel.

The data provided by the City covering the use of outside legal counsel included, in addition to the engagement agreements, invoices, purchase orders, and payment records. These additional materials did not appear to be complete in every case, however the MCCGJ regards the materials as sufficiently complete to make the conclusions reasonable under the circumstances.

The table below, reflects the approximate amounts paid by the City during the 2012-2014 period to outside special counsel for the most-called-for special services: Public Record Act (PRA) requests, Employee Terminations, and General Employment Law advice, as well as the hourly billing rates.

Attorneys' Fees Total by Category 2012-2014

Firm and Office Location	*Billing Rate/hr*	PRA Requests	Terminations	General Employment	Totals
Stradling Santa Barbara, CA	*$150-395*	$73,568	$72,123	$183,741	**$329,432**
Liebert Los Angeles, CA	*$225-300*	$26,103	$7,981	$36,686	**$70,770**
Burke Los Angeles, CA	*$180-280*			$31,087	**$31,087**
Ogeltree Columbia, SC	*$395*		$9,394		**$9,394**
Meyers Oakland, CA	*$275*			$42,792	**$42,792**
Totals		**$99,671**	**$89,498**	**$294,306**	**$483,475**

This analysis is an approximation because it is not clear if the City provided copies of all billing statements; the Stradling invoices covering general employment matters for the last Quarter of 2013 clearly include advice with regard to some terminated employees. However, the MCCGJ believes that the billing statements that were provided support its conclusions as to the kind of services being rendered.

The hourly rates charged by these firms are not out of line, ranging from $150/hr to $395/hr, with most of the work being done by associates in the $225-$280/hr range. The highest fees were charged by a partner with the Stradling Firm at $395/hr for work in the termination/litigation area

Since 2012, the City has paid for outside legal advice and services for:

- General legal counsel (2 different firms)
- PRA requests
- General business and facilities
- Employment advice including training on harassment and discrimination, discipline, terminations, post-termination hearings, labor & employment topics & Skelly hearings
- The proposed events center project
- Potable water allocations
- Acquiring water rights
- Joint Powers agreements
- City's right to provide advanced life support EMS
- The PG&E explosion of March 3, 2014
- Negotiating and drafting the lease of Flanders mansion
- Defending suit brought by Flanders Foundation
- Government transparency
- Litigation settlement

The attorney invoices establish that Mr. Stilwell and Ms. Paul were doing their "due diligence" in the termination cases and seeking guidance at every turn. Had they been acting irresponsibly or vindictively, their attorneys would almost certainly have advised against completing the adverse employment actions. While the MCCGJ acknowledges the significant dollar amounts spent on outside legal services, they were not, under the circumstances, unusual. The sum of **$483,475** for 2012-2014 compares favorably with legal expenses in the four prior fiscal years, as follows:

2008-2009	$612,940
2009-2010	463,402
2010-2011	358,502
2011-2012	452,277

Public Records Act Inquiries

A source of significant controversy was the area of PRA requests. In the late 2011 timeframe, these were handled very informally. There was no process for logging requests or recording what information was provided. There was also no structure in place to determine whether the information requested was actually a public record and whether it was proper to release it. It appeared that anyone could walk up to the window in City Hall, ask for a record, and it was provided. The new City Administrator addressed this issue.

Processes were created by, or at the direction of, Mr. Stilwell to log and review PRA requests and properly edit them where required. With public attention focused on the City, requests increased in number, burdening City staff. As the threat of legal actions grew, requests swelled to the point where a timely response was almost impossible. Outside counsel and other advisors were brought in to assess and edit requests and relieve City staff of the additional workload. The money spent on outside assistance was widely and controversially publicized.

This matter has been addressed by City Council Resolution 2014-059, dated August 5, 2014, Public Records Response Policy.

CONCLUSION

The 2014/2015 Monterey County Civil Grand Jury was asked by the Mayor of Carmel to review the City's policies and internal controls and to make recommendations. In addition, a formal Citizens' Complaint was filed requesting that the MCCGJ examine City governance and failed oversight. This Report is as comprehensive as possible, given the constraints of time and resources, and the systematic lack of cooperation by the City. However it could not purport to address all the complaints, issues and problems of Carmel-by-the-Sea's management and governance.

FINDINGS

Findings F1 through F6 apply to the time period prior to the hiring of Mr. Jason Stilwell in late 2011.

F1. In the time period note above, City operations were undisciplined, as City policies were outdated, nonexistent or ignored. With several empty Department director positions, employees worked hard to keep up and paid little attention to standard municipal procedures.

F2. In the time period noted above, there were serious flaws and vulnerabilities in network system security, placing the City at risk financially and legally.

F3. In the time period noted above, contracts were mismanaged with regard to public bidding, purchase order processing, and services provided with expired contracts.

F4. In the time period noted above, the City Council was not provided with contract payment schedules or accumulated payment tracking reports.

F5. In the time period noted above, the Human Resources process was mismanaged with regard to pay grades, progressive discipline, and proper staff training, and was lacking in leadership.

F6. In the time period noted above, the Public Records Act request process was unstructured, noncompliant, and ad hoc.

F7. The Mayor and City Council did not fully execute their responsibilities of inquiry and oversight.

F8. Neither the Mayor nor the City Council members received any formal training or substantive orientation on the responsibilities of their positions.

F9. The Mayor and the City Council members were more responsive to political pressure than to the need for effective governance.

F10. Mr. Stilwell was a well-qualified City Administrator who recognized and diligently addressed widespread City management problems and tried to implement shifting City Council priorities, maintaining a professional attitude in spite of external pressure and criticism. He may have avoided much of the upheaval surrounding his administration by having a clearer perception of the nature of small-town government and exercising a more thoughtful and measured approach to change.

F11. Ms. Paul was an experienced Administrative Services Director who quickly recognized areas of mismanagement and risk for the City and implemented solutions within what she understood to be her areas of authority with due diligence and proper municipal procedure. Her decisive by-the-book actions and abrupt manner caused resentment among longtime employees and City residents, which may have been avoided with more sensitivity on her part to the City's culture.

F12. There was no credible evidence to support allegations of contract splitting, cronyism or any other wrongdoing under Mr. Stilwell or Ms. Paul.

F13. The General Law/Weak Mayor structure was often misunderstood by Carmel citizens and the City Council.

F14. The local media provided easy access for City employees to vent their side of a story when the City's hands were tied by employee privacy restraints.

F15. The governance and administration of the City is unduly influenced by the reportorial and editorial practices of *The Carmel Pine Cone*.

F16. The position of City Treasurer is underutilized and so provides little benefit to the City.

F17. The City Treasurer was isolated from any meaningful role in the contract/invoice disbursements and tracking system.

F18. There was no evidence of any systematic review of contracts in excess of $25,000 by legal counsel as to form or content.

F19. A significant amount of money is spent on outside counsel as it supplements the City Attorney position in numerous matters including but not limited to labor and employment concerns, public records requests, general business and facilities, joint powers agreements, municipal law, and miscellaneous lawsuits.

F20. Historical averages of amounts spent on outside legal services over the past five years would support a full-time City Attorney and staff where such attorney would have experience in contracts, employment matters, and Public Records Act requests, as well as municipal law.

F21. The City Council seriously failed to exercise its power of inquiry in its decision-making process regarding rehires, by excluding the City's outside defense counsel from the process and by negotiating hasty settlements of claims in the early or pre-litigation stages, which precluded any meaningful scrutiny of these employment issues.

RECOMMENDATIONS

R1. The City require all elected officials to undergo The League of California Cities "New Mayors & Council Members Academy" formal training, for each new term of office.

R2. The Mayor and City Council conduct a structured review of the City's departments each month, to ensure proper oversight of City operations and more aggressive use of their power of inquiry.

R3. The City immediately procure or upgrade to an appropriate IT System and secure the data network.

R4. The City immediately hire an experienced Human Resources Director and fill all open positions as quickly as possible.

R5. The City define and utilize a formal, mandatory progressive discipline system to be consistently applied for all employee disciplinary matters.

R6. The City require that all employees undergo formal training, with specific focus on job responsibilities, City policy, and Municipal Code guidance for their specific positions.

R7. The City immediately procure and implement appropriate, full-function financial management software.

R8. The City review the contract awarding process to ensure that the Carmel Municipal Code provisions are being followed at departmental levels, and that where called for, public bidding is used.

R9. The City review (or rewrite if necessary) the purchasing process, to ensure that the Carmel Municipal Code provisions are current, complete, and are being followed.

R10. The City adopt a procedure whereby all major contracts are reviewed and signed off by the City Attorney and City Treasurer.

R11. The City report periodic payments under contracts to the City Council, in a manner which reflects the total contract amount and total payments to date, as well as the current monthly payment.

R12. The City establish a content list for City contract files and assure that such files contain (as applicable): bidding process compliance (RFP); vendor proposal and all attachments; legal review; staff summary report to the City Council; City Council resolution; and where there are contract amendments, all of the foregoing as appropriate.

R13. The City enhance the role of the City Treasurer such that the position has responsibility in the day-to-day financial management, including tracking the status of all contracts, identifying payment overages, and reporting to the City Council.

R14. The City make the City Attorney position a full-time City employee requiring meaningful experience in the areas of contracts, employment law, and Public Records Act requests, as well as municipal law.

R15. The City Attorney manage the selection, and oversee the engagement of outside legal counsel, including the review and approval of their billings.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests responses to all Findings (except F10, F11, and F14) and all Recommendations from the following governing body:

- The City Council, Carmel-by-the-Sea

ATTACHMENT #1
Letter to the Monterey County Civil Grand Jury from Mayor Jason Burnett

City of Carmel-by-the-Sea
POST OFFICE BOX CC
CARMEL-BY-THE-SEA, CA 93921
(831) 620-2000

November 5, 2014

Francis M. Small, Jr., Foreperson
Brandon Hill, Foreperson Pro Tem
Civil Grand Jury
P.O. Box 414
Salinas, CA 93901

Dear Foreperson Small and Foreperson Pro Tem Hill,

Recent events within the City of Carmel-by-the-Sea's organization have called into question the adequacy of our policies, internal controls and safety checks. These must be robust to function for the public's benefit regardless of who is serving the city including the City Council, appointees, the City Administrator, the City Attorney, the City Treasurer or who is on staff.

The City Council, the City Administrator, and the City Attorney have undertaken numerous corrective actions, have called for several independent investigations and will likely take additional action following the conclusion of these investigations.

The City Council requests the Civil Grand Jury review our organization, our corrective actions and make any additional recommendations.

Respectfully,

Jason Burnett

Jason Burnett
Mayor of Carmel-by-the-Sea

ATTACHMENT #2
Carmel Municipal Code Section

Internal Relations 2.08.070

A. Council-Administrator Relations. The City Council and its members shall deal with the administrative services and department heads of the City only through the City Administrator, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of the City Administrator. The City Administrator shall take orders and instructions from the City Council only when it is sitting in a duly convened meeting, and no individual Council member shall give any orders or instructions to the City Administrator.

B. Departmental Cooperation. It shall be the duty of all subordinate officers, including department heads, the City Attorney, the City Engineer and the City Treasurer to assist the City Administrator in administering the affairs of the City efficiently, economically and harmoniously.

C. Attendance at Commission and Committee Meetings. The City Administrator may, and upon request of the City Council shall, attend all meetings of the Planning Commission, the Library Board, the Community and Cultural Commission, the Forest and Beach Commission, the Community Activities Recreation Commission, and any other commission, board, or committee created by the City Council. At such meetings, the City Administrator shall be recognized and heard by the presiding bodies on all matters upon which the Administrator wishes to address such body.

D. Appeals of Commission or Committee Decisions. Notwithstanding any other provisions of this code, and consistent with State law, the City Administrator may appeal any decision of any commission, board, or committee created or appointed by the City Council. The appeal shall follow the procedures established for other appeals, except that no fee shall be required. In making such appeal, the City Administrator shall have the same rights, privileges, and responsibilities as any other appellant. (Ord. 98-2 § 1, 1998; Ord. 77-22 § 1, 1977; Code 1975 § 234).

EDUCATION
A "NO EXCUSES" APPROACH TO ENGLISH LANGUAGE LEARNING IN MONTEREY COUNTY

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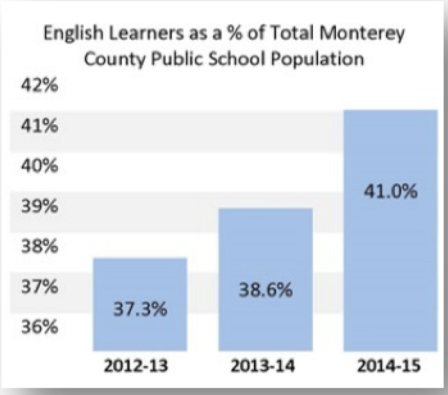
EDUCATION
A "NO EXCUSES" APPROACH TO ENGLISH LANGUAGE LEARNING IN MONTEREY COUNTY

SUMMARY

The low educational achievement of our youth has been a concern in Monterey County for many years. Results of Standardizing Testing and Reporting (STAR)[1] published annually by the California Department of Education continue to show that with very few exceptions Monterey County students are underperforming and are not reaching minimal academic levels established by the State of California.

By far the lowest academic performance in the County is found among the growing population of English Language Learners (ELL), who comprise more than 40% of the County's K-12 public school population. These students consistently underachieve, as they struggle to acquire the English language skills that will enable them to succeed in regular classrooms. The improvements in performance by English Language Learners in Monterey County have been negligible for decades. The predictable result for these students has been school failure, chronic unemployment, and the likelihood of crime.



Source: Monterey County Education Reports to the Community.

School districts in California operate autonomously for the most part, but they are assisted in a variety of ways by the County Offices of Education (COE). For example the COE are in the position to provide ELL professional development/training, mentorship, and services for their school districts that help create and support robust ELL programs. It was not evident to the Monterey County Civil Grand Jury (MCCGJ) that the Monterey County Office of Education (MCOE) has done all it can in the ELL area. To verify this conclusion, the MCCGJ met with administrators and staff members at MCOE, some school district administrators and board members in Monterey County who use MCOE services, and administrators at other County Offices of Education in the state whose standout leadership and passionate commitment to ELL success generate positive outcomes for their students.

Because our students' ability to learn English impacts not only their own academic and workplace futures but also the economic and social well-being of Monterey County, the MCCGJ focused its investigation on how MCOE can strengthen its role in helping school districts bring the

[1] STAR was replaced by the California Assessment of Student Performance and Progress (CAASPP) in January 2014.

County's 30,000 ELL students to a level of English proficiency that will give them the chance to be successful. Monterey County's English Language Learners will be among our future leaders, and we need to see that they get the education they deserve.

The challenges—poverty, parent illiteracy, number of diverse cultures and dialects, geographic spread of the County, lack of funding—are admittedly formidable, but clearly real improvement is possible. The time for excuses by MCOE, by the County Board of Education, by school districts, and by the citizens of Monterey County is past. We need a "no excuses," focused approach to English Language Learning in every school in our County.

BACKGROUND

Monterey County is divided into 24 independent K-12 school districts that include 134 schools serving 74,000 students. The districts are governed by locally elected school boards and administered by superintendents. School district sizes range from the largest with nearly 14,000 students to districts with only one school and just over 100 students.

Monterey County is an area of extreme cultural diversity that poses a significant challenge for public education. The California Department of Education reported that in March 2014 Monterey County had 30,608 ELL enrolled in the public K-12 school system. Ninety-five percent of these students are Spanish speaking, and many are not literate in their own language. In some districts the percent of ELL exceeds 85%. No Monterey County school district with an ELL population of over 30% has met the state's minimum Academic Performance Index (API) standard,[2] and such districts typically are also lacking all-important parent involvement as well as full awareness and participation by the local school boards in prioritizing English Language Learning.

Barriers to ELL Success in Monterey County

The MCCGJ was interested in why so many English Language Learners in our school districts are not meeting minimal levels of proficiency needed to succeed in school and work. Two measures—the state API Standard and the Federal Academic Yearly Progress (AYP) Report—show that schools and districts in Monterey County with significant numbers of ELL universally have not met established targets.[3]

The MCCGJ learned that in Monterey County the biggest barriers to English learning success are: (1) the large numbers of migrant and non-English speaking families, which can overwhelm a school district's ability to respond effectively; (2) the presence of all-Hispanic enclaves in the County (with primarily US-born individuals) in which families can live and work without the need to learn English; (3) lack of parent education and literacy; (4) poverty; and (5) the lack of basic life skills, life experiences and opportunities that poverty brings.

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[2] Until 2014, Monterey County used the state's Academic Performance Index (API) as a measure of academic performance and improvement, with a scoring range from 200–1000 and a statewide minimum target of 800. The CA Board of Education is developing a new measure that will replace API.

[3] The MCCGJ is limited by statute in its investigation of education to operational procedures, methods and systems. Explicitly prohibited are investigation of substantive policy concerns and curriculum.

Because a new state funding model that has expanded the autonomy of school districts prevents MCOE from being able to mandate specific ELL programs in school districts, it is even more important that the local school district leadership and the local community jointly desire positive outcomes. Competent local school boards must be elected and trained. The MCCGJ noted that current local school boards are not necessarily aware of the importance of ELL programs or the resources needed to overcome the barriers.

The investigation revealed other challenges to ELL success, such as the geographical spread of the County, lack of widespread communication among districts about successful strategies, inadequate access of students to computers (particularly at smaller schools with limited budgets), and lack of confidence by most districts interviewed in the support offered by the County's Office of Education. The MCCGJ found that although MCOE has an in-house ELL specialist position (currently vacant) and provides some limited ELL professional development activities for school districts, its support consists primarily of advisory services using a "fee for service" model when school districts request its assistance in the ELL arena.

Recent Changes Impacting Education in Monterey County

Common Core Standards: In 2013 California adopted new "Common Core State Standards" (CCSS) intended to develop and measure the higher order learning skills of understanding, applying, analyzing, and evaluating. Reaching these standards requires new methods of teaching and learning and is a special challenge for ELL, who struggle with the basics of language. New testing based on CCSS was administered for the first time in spring 2015. The testing was done on computers, another challenge for some school districts whose students—including ELL—have limited access to technology.

Local Control Funding: In 2014, following six years of budget cuts in California public schools, the state instituted a new school-funding model called Local Control Funding Formula (LCFF). Under this mandate each school district in the county is required to develop a Local Control Accountability Report (LCAP) that outlines its strategic plan of required resources and services that will serve the unique requirements of their students. Once the LCAP is prepared, approved by MCOE and submitted to the state, schools receive a base amount of funding. In addition, districts with high percentages of disadvantaged students receive supplemental funding. This funding model gives local school districts unprecedented control and great latitude in how they may use LCFF funding in improving student performance. Since many schools in Monterey County qualify for the supplemental funding, the new LCFF is an opportunity for "game-changing" strategic improvement for English Language Learners.

Role of Monterey County Office of Education

The educational hub in Monterey County is the Office of Education, which is run by an elected County Superintendent of Schools who reports to a five-member elected Board of Education. Like other California COE, MCOE performs a variety of state-mandated compliance and other functions under the direction of the California State Superintendent of Schools, including:

- Providing assistance to districts and schools with the implementation of statewide legislative mandates and programs;

- Exercising AB-1200 statutory oversight of school district fiscal operations including approval of districts' annual budgets;
- Offering support services to the districts that include credentialing, professional development, teacher recruitment, and instructional services;
- Administering separate educational programs for special student populations;
- Monitoring and reporting on all aspects of low performing schools; and
- Ensuring school district compliance in a variety of areas.

Role of Monterey County Board of Education

The Monterey County Board of Education oversees the Monterey County Superintendent of Schools in establishing the direction and priorities for the County Office of Education through its budgetary determinations and leadership to support the success of public education. A primary responsibility of the Board of Education is to approve the curriculum and maintain accountability for student learning and safety in schools and programs operated by the County Office of Education.

When students fail to learn English they typically show poor academic performance and low self-esteem that, unfortunately, may lead to gang activity. And educational staff member noted, "These are the students who predictably end up in our jails."

Education Code Section 1040 requires the County Board of Education to adopt rules for its own governance and keep a record of its proceedings, approve annual budgets of the Superintendent of Schools and review the report of the annual audit. Because the Board of Education has been granted fiscal independence by the Board of Supervisors (BOS), the annual budgets do not need BOS review. The Board of Education also has a statutory duty to hold appeal hearings for students expelled by local school districts. Additionally the Board may adopt rules governing the administration of the COE and perform other non-mandated duties.

INVESTIGATIVE METHODOLOGY

The investigation of ELL student success involved multiple avenues of inquiry including:

- Interviews:
  - -- Monterey County Superintendent of Schools
  - -- A Monterey County Board of Education member
  - -- MCOE department and administrative staff members
  - -- Monterey County school district administrators
  - -- Monterey County school district board members
  - -- County Office of Education superintendents in other California counties
- Evaluation:
  - -- MCOE Curriculum Leadership meeting
  - -- Monterey County Leadership Summit agenda
  - -- MCOE website

- Research and Review:
  - -- *Performance levels* of all Monterey County school districts, including overall API scores, ELL API scores, and ELL Proficiency levels in English and mathematics, using California Office of Education databank, DataQuest (Refer to Glossary)
  - -- *Best practices* in teaching and learning for English Language Learners (Appendix A)
  - -- *Budgets* for selected schools and MCOE departments and administrative offices
  - -- *English Learner Master Plans* of selected school districts

DISCUSSION

Despite the tireless efforts of many teachers and school administrators throughout Monterey County, individual school districts have produced uneven ELL achievement results. The MCCGJ was able to identify selected districts making good progress in ELL education and other districts having high percentages of students who never achieve English proficiency throughout their 11-year tenure in the educational system (classified as a long-term English learners). These disparate results are a product of the strategies, resources, and determination of local districts working on their own. There seems to be very little collaboration and sharing of ideas, resources, and strategies among Monterey County school districts. The one common factor for all, however, is the Monterey County Office of Education, which is in a unique position to foster relationships that can benefit ***all*** English Language Learners and not just those who are lucky enough to be enrolled in the right districts.

The following discussion will address four topics: (1) Rigorous Academic Standards and Performance Accountability, (2) Communication Portal for Countywide Schools and Districts, (3) Professional Development/Training in English Language Learning, and (4) MCOE Organizational Support for ELL Services. These are areas in which MCOE can provide support to individual school districts and bring consistency to their efforts. Each area describes what is currently being done at the Monterey County Office of Education and can be done to further support the English Language Learner in our County.

RIGOROUS ACADEMIC STANDARDS AND PERFORMANCE ACCOUNTABILITY

Monterey County's ELL performance levels are discouraging for our community. By third grade, only 19% of ELL students who start in kindergarten in Monterey County schools reach the English proficiency that is needed to participate in academic work in English.[4] The other 81% of English Language Learners (long-term English learners) lag behind their classmates and many never reach English proficiency throughout their time in school. A former County Su-

% of English Learners Achieving the State Target Levels for English Proficiency in Grade 3

	2009-10	2010-11	2011-12	2012-13	2013-14
Monterey County	16%	15%	21%	21%	19%
California	21%	20%	26%	24%	23%

Source: California Department of Education, DataQuest, CELDT Annual Assessment.

[4] See 2014-2015 Monterey County Office of Education "Report to the Community," p. 5.

perintendent commented, "If children haven't learned English by third grade, we know they're in trouble…and it's our fault." When students fail to learn English, they typically show poor academic performance and low self-esteem that, unfortunately, may lead to gang activity. An educational staff member noted, "These are the students who predictably end up in our jails."

The following discussion outlines how the development of strategies that focus on standards, accountability, and best practices can help focus learning achievement for the English Language Learner.

LCAPs that Incorporate ELL Standards and Strategies

The newly state mandated Local Control Accountability Plans (LCAP) developed by local school districts are so far producing uneven results regarding ELL academic achievement in Monterey County school districts. Because the California Department of Education has yet to establish firm standards for these plans, the County Offices of Education—including MCOE—have the freedom to work with their school districts to develop and implement their own countywide standards that go beyond mere compliance. Some COE have already done this, but MCOE has not. MCOE administrators have also expressed an interest in developing ELL resources for countywide use; however, to date this has not been accomplished.

The COE interviewed by the MCCGJ all provide major guidance and support to districts in developing their LCAP, sending teams to the school districts in advance and helping districts include ELL best practices in their plans. Their help goes far beyond the required compliance role of reviewing and approving district LCAP before they are submitted to the state for funding. These COE promote the practice of using the LCAP as a district's working strategic plan and of using the LCAP to define a district's professional development needs and practices.

English Proficiency Standards and Measurement

Several interviewees noted the importance of using frequent assessment to know immediately when a child is ready to transition to a regular classroom. The California English Language Development Test (CELDT) identifies students who are English Language Learners and determines their level of proficiency and progress. Based on results from the CELDT and other measures, students may be reclassified as Fluent English Proficient (FEP) and thus allowed to move to classes delivered in English only. Students who are assessed for their English learning progress only once a year may miss a window of opportunity to be placed in a regular classroom. Ongoing assessment of ELL students is time-consuming and costly for a district, but it clearly pays dividends in student advancement.

ELL Best Practices

The MCCGJ identified many state and national best practices (see Appendix A) that have been tested to show that they are creating positive outcomes for ELL students. Some school districts are using these. The MCCGJ also identified several local districts that have "pockets of educational excellence" where a top-down commitment that originates with the school district superintendent or a school principal is leading innovative strategies and better ELL outcomes. There is

an important role for MCOE to play in regularly disseminating this information and sharing successful strategies countywide.

A commitment that reaches down to every level to provide a consistent, determined, "no excuses" approach to English Language Learning was cited by most interviewees as vital to ELL success. Monterey County school districts with this dedication stand apart in key ways. For example, their school boards have supported the district superintendent in prioritizing English language professional development for all content area teachers who have transitional English learners in their classes, not just for those who teach ELL classes. Some have looked outside Monterey County to find and emulate proven English language programs, and some bring experts from throughout California to work with their teachers. (One administrator took carloads of the district's board members, administrators and teachers to sit in classrooms of a school in another county known for notable English learning success.)

These districts hold themselves accountable to the goals in their Local Control Accountability Plans (LCAP). They also benchmark their performance against proven successes elsewhere in California. Some districts with the largest ELL populations emphasize the hiring of teachers primarily from the local community, so they can more successfully engage non-English speaking families in their children's education.

Although the MCCGJ's confidentiality mandate prevents listing which districts, schools and personnel were interviewed, we have used observations and information from interviews as well as research in the field to compile a list of ELL "evidence-based"[5] best practices mentioned above (see Appendix A), including some that school districts would like to use if funding permitted or if MCOE were able to negotiate group discounts with publishers of desired ELL curricula. Other less formal but successful practices that surfaced in the investigation included hiring language coaches to develop daily individualized lesson plans based on a student's level of comprehension of a particular class topic the day before, or having teachers speak only English to children before and after school, at lunch, and on the playground.

Communication Portal for Countywide Schools and Districts

The Monterey County Office of Education is located in Salinas, California and serves all public schools within its 3,771 square mile service area. Given this geographically extensive area, communication to all districts is a challenge. School districts located closer to the county office seem to be more connected than those located in the southern, most rural parts of the county.

"Communication is our lifeblood," noted one County Office of Education Superintendent whose highest priority is to listen to what the school districts need and find ways to support those needs. Several strategies were noted that fostered two-way communication throughout the various counties in the state that included: (1) using a bottom-up approach for frequent meetings with the school districts where the districts set the agenda, and lead and conduct the meetings; (2) offering a robust website that highlights best practices, grant opportunities, and professional development activities; (3) working closely with each school district in developing Local Control Accountabil-

[5] Evidence-based practices are those that have evolved from the conscientious use of best evidence from systematic research using sound methodology.

ity Plans that incorporate sound, evidence-based strategies for ELL success; and (4) providing opportunities for all stakeholders (i.e. teachers, administrators, parents, staff members, students, board and community members) throughout the county to gather and share their ELL experiences.

Bottom-up Communication Approach

There was no evidence to suggest that MCOE encourages bottom-up communication to listen and learn about the needs of local English Language Learning programs from frontline educators and administrators. MCOE seems to use a top-down communication approach that is effective when dealing with their primary, mandated focus on state compliance issues but does little to bring area school districts together to share efforts on effective ELL strategies.

Where other successful county offices of education have regular, school district-led functional area meetings (administrative staff, teaching coaches, financial, etc.) as a norm, frequent meetings specifically focused on English Language Learning could not be identified in Monterey County. MCOE does bring senior district administrators together on a regular basis; however, the main focus of these meetings is on state compliance and reporting issues. The newly launched Curriculum Leadership meeting offered by the MCOE Educational Services Department shows some promise in sharing best practices. These meetings, although currently infrequent, are hosted at different County schools where administrators learn about new programs and strategies offered in their districts.

In other counties interviewed it was found that ELL specialists typically work closely with the school districts to develop their internal ELL plans by sharing ELL best practices and facilitating working groups with curriculum and instruction. In Monterey County, individual schools and districts can request ELL consulting services that are provided by an MCOE specialist for a fee. It appears that there is no proactive diagnostic approach to soliciting input about the ELL needs of school districts that provides opportunities for County districts to share, engage, empower, and partner to leverage limited resources.

Website

The MCOE website contains a quantity of information but lacks any English Language Learner resources or best practices that could be accessed by school districts. The districts seem to be "on their own" to locate and fund resources that can assist their ELL programs.

Development of Local Control Accountability Plan

MCOE provides a series of workshops for school districts in developing Local Control Accountability Plans that include a plan for English Language Learning. The focus of these workshops seems to be the compliance requirements of the report (i.e. inclusion of mandated sections, necessary wording, etc.), and not necessarily effective strategies. The MCCGJ found no evidence that MCOE works closely with individual districts to discuss viable plans that could best serve their English learner populations. This is especially true for districts located in the southern, most rural portions of the County where access to MCOE services is severely limited.

Stakeholder Opportunities to Share ELL Experiences

There was no evidence to suggest that MCOE provides opportunities for stakeholders (school boards, parents, students, staff, community members, etc.) of the County to share their experiences with ELL education. It is widely recognized that these ELL support groups cannot be effective if they don't know or understand what they can contribute. The Monterey County Board of Education offered a Leadership Summit for the first time in 2014 addressing stakeholder concerns; however, English Language Learning was not included on the agenda.

Professional Development/Training in English Language Learning

Virtually all Monterey district school administrators interviewed noted that the most critical component to the success of the English Language Learner is a passionate and well-trained teacher who sets high expectations for all students. In addition, the various stakeholders that influence and support the English Language Learner—including parents, administrators, school staff members, community members and school board members—must work in tandem with these teachers toward achieving the common goal of ELL success. Given the changes in education and the challenges our English learners face, it is imperative that all these educational players are knowledgeable and continually informed.

The MCOE Educational Services Department is tasked with providing professional development opportunities throughout the County. The following discussion will address what is needed to assure that our teachers and school stakeholders are provided quality, timely, accessible, and affordable professional development opportunities to support their English Language Learners.

Quality Learning Experiences

The workshops, trainings and special programs offered by MCOE are often not well subscribed. A repeated theme from the districts interviewed was that they were less interested in attending a workshop given by an MCOE staff person than hearing about proven strategies from outside experts with documented success.

Timing/Scheduling of Training

All the COE interviewed by the MCCGJ plan their professional development calendars a year in advance, modifying offerings as needed by the districts. This gives teachers time to plan their schedules. Very few ELL training workshops have been scheduled at MCOE over the past year, and the workshop schedule appears to be developed one month at a time.

Accessibility

Given the vast service area of the MCOE, it is very difficult for schools in southern parts of the County to take advantage of trainings, since most are offered at the Salinas location. Even when distance is not a factor, pulling teachers out of class and paying for substitutes is a costly and far from ideal solution for large-scale professional development. Asking teachers to attend training in the evenings or on weekends is equally unsatisfactory. For these reasons, some successful COE have adopted alternative venues such as online training to provide professional develop-

ment services. One County Superintendent refused to close a critically important technology program that lost its state grant funding and continues to support this online program with COE general funds. "We would be hard pressed to provide the rich support we do without it," he said.

MCOE does not offer online professional development programs nor does it offer any other alternative delivery systems other than the traditional, face-to-face method.

Affordability

For most districts, the cost of MCOE-hosted workshops was less a deterrent to attending than the questionable quality of the offerings. On the other hand, bringing in high quality experts in the field was expensive for individual school districts. Hosting educational experts of proven, evidenced-based ELL methods and programs on a countywide basis could help districts reduce professional development costs and provide the quality that's needed in this ever-changing field.

Stakeholder Training

Finally, all stakeholders in the ELL environment need training and the opportunity to share best practices. One county hosts an ELL summit every year that is well attended by all county stakeholders, giving them a venue to learn how to become an effective support to the English Language Learner. Although there are agencies in Monterey County that provide training workshops for stakeholders such as school boards and parents, the MCCGJ could not determine that any provide information about their roles in the ELL process.

MCOE Organizational Support for ELL Services

One of the challenges to ELL success in Monterey County may stem from the organization of the Monterey Office of Education itself. MCOE is an exceptionally large bureaucracy that is responsible for running or supporting many programs and services throughout the County, only one of which is English Language Learning. It is understandably easy to lose focus on any one of the many educational needs; however the following discussion identifies five areas of focus for MCOE that can make a difference in ELL education.

English Language Specialist

Although MCOE content specialists (e.g., those with focused knowledge and expertise in an educational area such as math and English) have a minor responsibility in ELL teaching and learning, there is one specified position for an ELL Specialist, which is currently vacant. This position is vital for MCOE to fulfill its role in providing leadership, offering professional development, and facilitating communication to develop partnerships with the 24 school districts. Without the focus this position can bring to the table, problem solving and the development of strategies that involve all the stakeholders known to impact ELL success cannot be realized.

Budget Support

A comprehensive job description for the ELL Specialist position has been developed at MCOE; however, there is no operational budget beyond salary for the activities in the job description.

Lacking one or more consistent and well-funded ELL Specialist(s) at the County level results in school districts having no specific support, access to expert resources, or ELL mentorship.

Grant Writing

The most successful COE actively seek outside sources of funding for important programs that benefit the school districts, and their grant writers regularly advise and assist school districts in competing for their own grants. Local school districts in Monterey County also have a significant need for grants assistance to identify and be competitive for outside funding for unfunded critical needs such as technology, textbooks and teaching materials for Common Core, the purchase of ELL "best practice" curricula, expert ELL consulting assistance, or special programs for English learners. Current administrators at MCOE provide limited help with grants as time permits, but no professional grant writer(s) is on staff to offer expertise, guidance and support. The MCCGJ did not gain the impression that this is a priority for MCOE.

Leveraging Resources

Another MCOE staff function that potentially could make an inestimable difference to school districts is the brokering of group discounts with publishers for ELL "best-practice" curricula and resources. Few school districts in the County have been able to afford expensive evidence-based ELL programs and curricula, even though these have demonstrated success for English learners. A proactive approach by MCOE might identify opportunities to secure proven resources for interested districts at affordable rates.

Organization Audit

Under the new Local Control Funding model, the scope of services that explicitly fall to County Offices of Education has been reduced as some of these responsibilities have passed to local school districts. An organizational audit by MCOE would determine optimal staffing levels at the County office that reflects this new scope of services. An audit might find that there is a greater need for staffing in the areas above than in previously needed areas.

Looking Ahead

The MCCGJ believes that the Monterey County Office of Education can play a more effective leadership role in fostering two-way communication with school districts, developing a mechanism to share best practices, shaping ELL training and services around the expressed needs of the school districts, regularly bringing in veteran outside experts as resources, looking for economies of scale and partnering with districts to seek solutions that can best be implemented on a county-wide basis, finding ways to encourage local school board member training, providing extra support to small districts, helping districts engage parents and other stakeholders, and other measures.

With the recent changes in school funding, academic standards, standardized testing, and school accountability, Monterey County Office of Education has a window of opportunity to make the

most of these changes to meet the challenge and give English Language Learners the tools to lead productive lives.

The findings that follow highlight the current state and challenges of educating English Language Learners in Monterey County. The recommendations outlined below offer some concrete steps that can be taken now to ensure that these students are not forgotten.

FINDINGS

F1. English Language Learners (ELL) in Monterey County perform far below the minimal academic standards established by the state and continue to be unprepared for college or the workplace, largely due to inadequate progress in learning English.

F2. Monterey County school districts have developed local control accountability plans (LCAP) that are producing uneven results in ELL academic achievement.

F3. The training and support MCOE offers to school districts in development of their LCAP centers primarily on achieving compliance with state requirements and does not include working together to create quality standards or ELL strategies that can produce positive results.

F4. There is an important role for MCOE to play in regularly disseminating ELL best practices and sharing successful ELL strategies countywide.

F5. There was no evidence to suggest that MCOE promotes two-way communication and a partnership approach with school districts that encourages sharing of information and resources or that solicits frank input about the needs of local English Language Learning programs from frontline educators and administrators.

F6. Although the MCOE website contains a variety of information, it is completely lacking in English Language Learner resources and best practices.

F7. There was no evidence to suggest that MCOE or any other professional organization provides opportunities for stakeholders (school boards, parents, students, staff, community members, etc.) to learn about their role and responsibilities in supporting the English Language Learner.

F8. The workshops, trainings and special programs offered by MCOE are often not well subscribed by school districts.

F9. The relatively few ELL professional development trainings that are offered by MCOE do not appear to be scheduled well enough in advance to allow for planning by school district personnel.

F10. It is very difficult for schools in southern parts of the county to take advantage of MCOE trainings, since most are offered at the Salinas location.

F11. MCOE does not offer online professional development programs/training or significant other alternative delivery systems to increase accessibility and participation.

F12. Quality professional development provided by experienced ELL experts (generally not MCOE staff) and focused on proven evidenced-based methods was identified as a need by County school districts.

F13. MCOE has one specified position for an ELL Specialist that is currently vacant.

F14. There is no operational budget beyond salary for the activities listed in the MCOE ELL Specialist job description.

F15. No professional grant writer(s) is on staff at MCOE to offer expertise, guidance and support to school districts**.**

RECOMMENDATIONS

All the following recommendations are for action by Monterey County Office of Education, under the direction of the Monterey County Board of Education:

R1. Work with school districts to create a set of ELL standards for use or reference in the development of districts' LCAP, to make it easier for them to set and achieve ELL goals.

R2. Act as a resource for small school districts located in rural, distant areas of South Monterey County in meeting and exploring how they can work together to make most efficient use of shared ELL and other resources.

R3. Establish a satellite office in South Monterey County to increase accessibility and communication of County programs and services by September 2016.

R4. Take on the role of compiling and disseminating successful ELL practices and performance measurements around the County.

R5. Publish best practices and resources for all ELL stakeholder groups on the MCOE or other dedicated website by September 2016.

R6. Establish the regular practice of offering forums that bring together school district ELL personnel with their counterparts at other districts, so they can share information, explore solutions to similar problems, and share strategies and practices by January 2016.

R7. Sponsor and facilitate an annual stakeholder (i.e. representative parents, boards, students, administrators, support staff, etc.) "Summit" to help each group define its roles and responsibilities that influence the English Language Learning process starting in September 2016.

R8. Adopt or develop an online program of professional development workshops to increase access for teachers unable to attend on-site classroom training by June 2017.

R9. Begin a regular practice of soliciting input from all County school districts to determine professional development needs as a basis for creating an annual calendar of ELL educational services, workshops, and activities by September 2015.

R10. Make a commitment to bring the best evidence-based state and national programs and expert speakers on English Language Learning for County professional development activities.

R11. Immediately fill the English Language Learning specialist position that has been recently vacated.

R12. Establish an operational budget for the MCOE English Language Learning specialist to carry out the full scope of duties that support professional development, open communication and cooperation among all County school districts by September 2015.

R13. Hire a full-time grant writer to consistently identify grant opportunities and develop grant applications to raise additional funds in support of district ELL programs.

R14. Benchmark and evaluate County ELL practices and services against practices used by other COEs that are successfully serving ELL stakeholders beyond state compliance requirements.

R15. Perform an organizational audit to determine optimal staffing levels at the Monterey County Office of Education that reflects the diminished scope of required COE services provided under the new Local Control Funding model.

RESPONSES REQUIRED

Pursuant to Penal Code section 933.05, the Monterey County Civil Grand Jury requests responses to all Findings and Recommendations from the following governing bodies:

- Monterey County Office of Education
- Monterey County Board of Education

GLOSSARY

Academic Performance Index (API): A measurement of academic performance and improvement of individual schools in California. API scores ranges from a low of 200 to a high of 1000. The statewide API performance target for all schools is 800. API has been discontinued as of March 2014.

Academic Yearly Progress (AYP): Part of the federal *No Child Left Behind* Act, AYP indicates whether a school or district has improved a required amount each year, as defined by the California Department of Education. An important component of AYP is the percentage of students meeting or exceeding proficiency levels in English and Math.

California Assessment of Student Performance and Progress (CAASPP): Established on January 1, 2014, the CAASPP System replaced the prior Standardized Testing and Reporting (STAR) Program, which became inoperative on July 1, 2013. CAASPP will focus on achievement using newly adopted Common Core Standards.

California English Language Development Test (CELDT): a test administered to any student from grades K-12 who has a *home language* other than English. The CELDT identifies students who are English learners, determines their level of English proficiency, and assesses their progress toward acquiring English proficiency.

Common Core State Standards (CCSS): Educational standards describe what students should know and be able to do in each subject in each grade. In California, the State Board of Education decides on the standards for all students, from kindergarten through high school.

DataQuest: A data portal hosted by the CA Department of Education that provides reports about California's schools and school districts. Data are presented for easy comparison among schools, districts and counties and includes information about school performance indicators, student and staff demographics, expulsion, suspension, truancy and a variety of test results.

English Language Learner (ELL): a person who is learning the English language in addition to his or her native language.

Fluent English Proficient (FEP): Students who are fluent English proficient are those whose primary language is other than English and who have met the district criteria for determining proficiency in English.

Local Control Funding Formula (LCFF): The LCFF budget package replaces the previous K-12 finance system with a new funding formula. For school districts and charter schools, the LCFF creates base, supplemental, and concentration grants. For county offices of education (COE), the LCFF creates separate funding streams for oversight activities and instructional programs. A supplemental grant equal to 20% of the adjusted base grant is targeted to disadvantaged students. Targeted students are those classified as English Language Learners (ELL), students eligible to receive a free or reduced-price meal, foster youth, or any combination of these factors (unduplicated count).

Local Control Accountability Plan (LCAP): A critical part of the new LCFF, the LCAP is a mandated annual strategic plan prepared by each district in California to set forth the district's vision for students, goals and specific actions to achieve the goals. Eight required priority areas include (1) implementation of Common Core State Standards; (2) improving student achievement

and outcomes along multiple measures (including test scores, English proficiency and college and career preparedness) and six other priority areas. Districts must engage parents, educators, employees and the community to establish these yearly plans, which must be accepted before LCFF funding is released to the district.

Standardized Testing and Reporting (STAR): Each spring, students in grades two through eleven take a STAR test, which measures how well schools and students are performing in math, reading, writing, science, and history. In 2014 STAR was replaced with California Assessment of Student Performance and Progress (CAASPP).

APPENDIX A: BEST PRACTICES FOR ENGLISH LANGUAGE LEARNING

Note: The list below is a representative sample of best practices and resources in English Language Learning used locally, statewide, and throughout the nation.

CPIN - Preschool English Learners Guide
http://cpin.us/content/pel-guide-training

This is a series of modules offered by the California Preschool Instructional Network that focus on instructional strategies for preschool English learners.

Dual Language Immersion Programs
http://sites.uci.edu/bilingualteacher/dual-immersion-schools/

Dual language immersion programs, specifically two-way immersion programs, are designed for students, native and non-native speakers of English, to learn two languages; one language does not replace the other. The main goals for these programs are for students to achieve strong levels of academic proficiency in both languages and to value cultural diversity. In well-implemented programs, both native English speakers and native speakers of the partner language tend to do as well or better in English, the partner language, and tests of academic achievement than their peers in other educational programs.

Engaging ELL Families
http://www.colorincolorado.org/pdfs/guides/Engaging-ELL-Families.pdf

This guide outlines how school districts can create a culture of success within their school community to make ELL success a priority. An important aspect of ELL success is family engagement that can only work if all members of the community (including administrators, staff, parents and students) are committed to the broader mission.

Engaging Stakeholders
http://www2.ed.gov/programs/readingfirst/support/stakeholderlores.pdf

This brief focuses on how schools, districts, or states can plan for active parent and community involvement that can sustain student success in reading. The emphasis is on stakeholder engagement where a stakeholder is defined as an individual or group with an interest in the success of an organization in fulfilling its mission—delivering intended results and maintaining the viability of its products, services and outcomes over time.

GLAD Project - Guided Language Acquisition Design
http://projectglad.com/

Project GLAD® is a model of professional development in the area of language acquisition and literacy. The strategies and model promote English language acquisition, academic achievement, and cross-cultural skills. Project GLAD® was developed and field tested for nine years by the United States Department of Education and is based on years of experience with integrated approaches for teaching language. Tied to the Common Core Standards and State Standards, the model trains teachers to provide access to core curriculum using local district guidelines and curriculum.

Key Principles for Managing ELL Instruction
http://ell.stanford.edu/sites/default/files/Key%20Principles%20for%20ELL%20Instruction%20with%20references_0.pdf

The Common Core State Standards (CCSS) in English Language Arts and Mathematics as well as the Next Generation Science Standards (NGSS) require that English Language Learners (ELL) meet rigorous, grade level academic standards. This paper provides a list of principles that are meant to guide teachers, coaches, ELL specialists, curriculum leaders, school principals, and district administrators as they work to develop CCSS-aligned instruction for ELL students. These principles are applicable to any type of instruction regardless of grade, proficiency level, or program type.

Read 180
http://www.intensiveintervention.org/chart/instructional-intervention-tools/12870

READ 180 is a comprehensive system of curriculum, instruction, assessment, and professional development to raise reading achievement of struggling readers. READ 180 is intended for use in grades four through high school. The program is designed for students with disabilities (particularly behavioral disabilities), English Language Learners, and any student at risk of academic failure. The academic areas of focus are reading (including phonological awareness, phonics/word study, comprehension, fluency, vocabulary, and spelling) and handwriting (including spelling, sentence construction, and planning and revising). READ 180 is currently used in all 50 states and in over 40,000 classrooms.

Sheltered Instruction Observation Protocol (SIOP)
Helping Educators Working Effectively with English Language Learners
http://www.cal.org/siop/

The SIOP Model* is a research-based and validated model of sheltered instruction that has been widely and successfully used across the U.S. for over 15 years. Professional development in the SIOP Model helps teachers plan and deliver lessons that allow English learners to acquire academic knowledge as they develop English language proficiency.

Strategies for English Language Learners K-12
http://www.scholastic.com/teachers/collection/strategies-english-language-learners

This site contains a series of articles to help educators reach ELL from early childhood through high school. While there are different methods for teaching English as a second language, the one constant is the knowledge of how empowering it will be when students can communicate effectively in English. Students are acutely aware of the handicaps involved with not having English language skills in school, in their communities, and for their future educational and career goals. The English Language Learner is your greatest ally in the effort to teach.

In the Starlight: Research and Resources for English Language Learner Achievement
http://www.vcoe.org/Portals/VcssoPortals/cici/In%20The%20Starlight.pdf

This paper prepared by Martha Hall, Superintendent of Schools in San Bernardino County, provides research and resources that provide a framework for promoting sustained reading development for English Language Learners.

SALINAS CITY COUNCIL MEMBER JOSÉ CASTAÑEDA

SALINAS CITY COUNCIL MEMBER JOSÉ CASTAÑEDA

SUMMARY

Since being elected to the Salinas City Council in 2012, José Castañeda is often in the local news for disagreements with other City Council members or the City Attorney, as well as being involved in outside legal issues. Unfortunately, Mr. Castañeda's defiant behavior and an apparent disrespect for the law are not recent developments. For example, the year before his election to the City Council, Mr. Castañeda was convicted of a crime of falsifying a publicly filed document. Moreover, upon beginning his term on the City Council, he refused to step down as the Board President and Trustee of the Alisal Union School District (hereinafter "Alisal Board"), although these were unlawful incompatible offices. This refusal led to the City of Salinas bringing a court action at significant expense to the taxpayers to remove him from the Alisal Board. Nearly a year after his election, the Monterey County Superior Court granted Judgment against Mr. Castañeda, removed him from the Alisal Board, and imposed the maximum fine of $5,000. Mr. Castañeda has never paid this fine despite demands to do so, and the City has long since abandoned its efforts to collect it. The Monterey County Civil Grand Jury (MCCGJ) believes that Mr. Castañeda should be held to the same standard as every other citizen and either immediately pay this outstanding fine to the State, or the City of Salinas should resume efforts in court to collect it.

BACKGROUND

Early in the 2014-2015 Monterey County Civil Grand Jury (MCCGJ) term, it was brought to the panel's attention the fact that a City of Salinas Council member, José Castañeda, may not have paid the $5,000 fine imposed by the Monterey County Superior Court in 2013 stemming from his incompatible office case. During the course of this investigation, it was discovered that in 2011 Mr. Castañeda had been charged with forgery and other crimes related to his attempt to recall a Monterey County Supervisor.

The MCCGJ began an investigation to determine the details and current status of these matters.

INVESTIGATIVE METHODOLOGY

The Conflict of Interest Case Methodology

The MCCGJ interviewed officials of the City of Salinas and reviewed relevant documents created before the filing of the incompatible office case in Superior Court. Also reviewed were relevant pleadings filed in the Monterey Superior Court case, titled *The People of the State of California, on the Relation of the City of Salinas, a charter city and municipal corporation vs. José Castañeda, an individual*, bearing case number M123946, filed on July 9, 2013 (hereinafter

"the incompatible office case"). Finally, documents related to attempts by the City to collect the $5,000 fine from Mr. Castañeda were reviewed.

The Criminal Case Methodology

The MCCGJ obtained copies of the District Attorney's Investigation Report, including the evidence that supported the charges against Mr. Castañeda. In addition, the MCCGJ obtained a copy of the written plea agreement that Mr. Castañeda signed in the case titled, *The People of the State of California v. José Castañeda*, Monterey County Superior Court case number SS111127A. An investigation was also made into whether or not Mr. Castañeda completed the terms of his sentencing.[1]

Several written and oral attempts to interview José Castañeda were made by the MCCGJ, but he refused to respond in any way.

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[1] Mr. Castañeda was elected to the City Council despite being convicted the year before of a criminal charge involving dishonesty related to allegedly filing false recall election documents. This began in April of 2011 when Mr. Castañeda spear-headed a petition to recall Monterey County Supervisor Fernando Armenta. As a part of the recall effort by Mr. Castañeda, a Recall Petition was addressed to Mr. Armenta that explained the reasons for the recall. Mr. Castañeda obtained the requisite number of voter signatures on the petition and completed and signed the attached "Proof of Service," "Under Penalty of Perjury," that purportedly verified that he had personally served the petition, as required, on Mr. Armenta at the latter's Salinas residence at 7:07 pm on April 21, 2011. However, Mr. Armenta denied ever being served with Mr. Castañeda's Recall Petition, and it was established through documents and witnesses that Mr. Armenta was not at his residence that evening but in Gonzales attending a meeting of the Salinas Valley Solid Waste Authority, and afterwards, he and his wife spent the night outside of the county visiting relatives.

When questioned by Monterey County Election Department employees and a District Attorney investigator as to whether or not he actually served Mr. Armenta with the subject petition on April 21, 2011, Mr. Castañeda was adamant that he personally served Mr. Armenta at his residence. Moreover, after apparently learning of the doubts by officials as to whether he had actually served the petition, Mr. Castañeda filed a second "Amended Proof of Service" with the County Elections Department in which he again signed "Under Penalty of Perjury" that he had served Mr. Armenta at his residence on April 21, 2011, but the time was changed from the first Proof of Service from "7:07 pm" to "9:00 pm to 11:00 pm."

After a complete investigation by the Monterey County District Attorney's Office, the District Attorney filed a felony criminal complaint against Mr. Castañeda. The Complaint charged him with four felony counts arising from his filing of the two allegedly perjured documents with the County Elections Department.

Despite an overwhelming case against him, a plea bargain was reached on August 24, 2011, in which the felony charges were dismissed and Mr. Castañeda pled "nolo contendere" (guilty) to a new single lesser misdemeanor charge of a violation of the Elections Code by filing false affidavits. As a part of the plea agreement, Mr. Castañeda was fined $1830, plus $100 in restitution, $140 in court costs, 40 days in jail or a work alternative, and three years of supervised probation. The investigation by the MCCGJ revealed that Mr. Castañeda completed the sentence imposed and avoided doing any jail time.

DISCUSSION

INCOMPATIBLE OFFICE

Under California Law, certain public offices (positions) are considered incompatible with each other and cannot be held by the same person. Incompatible offices create a conflict of interest, though not necessarily a financial conflict. (The use of the term "conflict of interest" herein refers to incompatible offices.)

At the time of his election to the City Council in 2012, Mr. Castañeda was President and a long-term member of the Alisal Union School District Board of Trustees. The law is clear that a person serving in a city as both a member of a school board and a member of the city's council, is engaged in a conflict interest [*Government Code* § 1099 (Hereinafter § 1099), and the published Attorney General Opinions and appellate cases decided thereunder]. This conflict of interest *required* that Mr. Castañeda resign as a member of the board of the Alisal Union School District, the first position held. The investigation by the MCCGJ revealed that Mr. Castañeda was urged in writing by the City to resign from his Alisal Board position. This urging included a detailed legal discussion showing that Mr. Castañeda had no defense to the de facto incompatible office. However, he refused to comply and remained on the Alisal Board.

Subsequently, the City retained outside counsel to bring a court action on behalf of the People of the State of California seeking an order under § 1099 to remove him from the Alisal Board and impose the maximum fine of $5,000 pursuant to *Code of Civil Procedure* § 809. That action was brought on July 9, 2013, nearly seven months after Mr. Castañeda swore his Oath of Office on December 18, 2012. Although Mr. Castañeda offered no factual or legal defense to the action, he still refused to resign, and the case went to Judgment. The Judgment was entered on September 20, 2013 and included an order that Mr. Castañeda be removed from the Alisal Board and imposed the maximum fine of $5,000 pursuant to *Code of Civil Procedure* § 809. This Order is attached to this report. It cost the City $26,555 in legal fees to obtain the judgment in the incompatible office case.

From December of 2012 until the Judgment, approximately nine months, Mr. Castañeda was not permitted by either the Alisal Board or the City Council to participate or vote on any matters.

Shortly after the entry of the Judgment, the City began proceedings to collect the fine from Mr. Castañeda, but gave up when it was revealed that Mr. Castañeda did not have any visible assets or sufficient income to levy on and he had several other prior uncollected civil judgments against him. The City also did not want to expend any more resources on the matter considering that the fine was payable to the State and not the City. The last written demand made on Mr. Castañeda to pay the fine was on June 3, 2014.

The City has failed to pursue all legal avenues in requiring Mr. Castañeda to pay the $5,000 fine.[2] Even though it may not be "cost effective" to resume efforts to collect the fine from Mr. Cas-

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[2] As early as the turn of the last century, the California Supreme Court held that a fine imposed pursuant to *Code of Civil Procedure* § 809 is in the nature of a *penal* fine not a *civil* fine [*People ex. Rel. Warfield v. Sutter S. R. Co.* (1900) 129 Cal. 545].

This means that the City has the potential remedy of seeking the incarceration of Mr. Castañeda under a contempt of court motion if it goes back to court to enforce the payment of the fine [*Code of Civil Procedure* § 1209 (a)(5)].

taneda, it is the MCCGJ's opinion that Mr. Castaneda must be held to the same standard as any other citizen and pay this legal obligation, especially since he brought it upon himself.

CONCLUSION

Unfortunately, a seemingly popular Salinas elected official has conducted himself after taking office in manner that reflects poor legal and ethical decisions, if not a disrespect for the law. He should consider placing the incompatible office difficulties behind him by paying the $5,000 fine without costing the City any further legal expense.

FINDINGS

F1. José Castañeda is currently serving a four-year term, until the end of 2016, as one of the seven elected members of the Salinas City Council. He was elected to the Council in November 2012 to represent District 1.

F2. At the time of his election to the City Council, José Castañeda was President and a long-term member of the Alisal Union School District Board of Trustees ("Alisal Board").

F3. The law is clear that a person who is serving in a city as both a member of a school board and a member of the city's council is holding incompatible offices and must resign the first office that he was elected to.

F4. Mr. Castañeda refused to resign from his position with the Alisal Board, forcing the City of Salinas to hire outside counsel to bring a court action ("the incompatible office case") seeking an order to remove him from the Alisal Board.

F5. On September 20, 2013 a Judgment was entered in the incompatible office case removing Mr. Castañeda from his position with the Alisal Board and ordering him to pay a fine to the State of California in the sum of $5,000.

F6. The incompatible office case cost the City of Salinas the sum of $26,555 in legal fees.

F7. Mr. Castañeda has failed and refused to pay the $5,000 fine.

F8. Subsequent to the Judgment in the Action, the City began collection efforts, including a demand that Mr. Castañeda pay the $5,000 fine, but it gave up efforts when it was learned that he had no attachable assets and he had other civil judgments against him.

RECOMMENDATIONS

R1. José Castañeda immediately pay the $5,000 fine that is outstanding in the incompatible office case.

R2. The City of Salinas pursue the appropriate post-judgment proceedings in the incompatible office case to enforce payment of the $5,000 fine from José Castañeda to the State.

R3. The City explore amending the City's Charter to provide for the removal of a City Council Member upon conviction of a crime involving moral turpitude or the failure to pay a fine imposed by a court.

RESPONSES REQUIRED

Pursuant to Penal Code § 933.05, the MCCGJ requests responses to all Findings and Recommendations R2 and R3 from the following governing body:

- Salinas City Council (minus José Castañeda)

The MCCGJ invites José Castañeda to respond to all Findings and Recommendation R1.

VANESSA W. VALLARTA, State Bar No. 142404
CHRISTOPHER A. CALLIHAN, State Bar No. 203010
CITY OF SALINAS
OFFICE OF THE CITY ATTORNEY
200 Lincoln Avenue
Salinas, CA 93901
Phone: (831) 758-7256
Fax: (831) 758-7257
Email: vanessav@ci.salinas.ca.us

THOMAS A. WILLIS, State Bar No. 160989
KAREN GETMAN, State Bar No. 136285
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: twillis@rjp.com

Attorneys for Relator City of Salinas

FILED
SEP 20 2013
CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY
C. Silveira

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

THE PEOPLE OF THE STATE OF CALIFORNIA, on the Relation of the CITY OF SALINAS, a charter city and municipal corporation,

Plaintiff,

vs.

JOSÉ CASTAÑEDA, an individual,

Defendant.

No.: M123946

Action Filed: July 9, 2013

KTK

~~[PROPOSED]~~ JUDGMENT

Hearing:

Date: September 20, 2013
Time: 9:00 a.m.
Dept.: 15

(The Honorable Lydia M. Villarreal)

The motion for judgment on the pleadings of plaintiff The People of the State of California, on the relation of the City of Salinas was heard by this Court on September 20, 2013. Thomas A. Willis of Remcho, Johansen & Purcell appeared for plaintiff and José Castañeda appeared in pro per. After considering the motion for judgment on the pleadings, opposition, and the accompanying points and authorities submitted by plaintiffs, the paper and records on file in this action, and oral argument, and GOOD CAUSE APPEARING,

IT IS ORDERED that:

1. Plaintiff's Motion for Judgment on the Pleadings is GRANTED;

2. Judgment is entered in favor of plaintiff; and

3. Mr. Castañeda is hereby removed from his office of Trustee of Alisal Union School District and shall pay a fine of $5,000, payable to the State of California.

DATED: SEP 2 0 2013

Kay T. Kingsley

JUDGE OF THE SUPERIOR COURT

KAY T. KINGSLEY

HOUSING AUTHORITY OF MONTEREY COUNTY
PRESERVING RESOURCES FOR QUALIFIED RESIDENTS

HOUSING AUTHORITY OF MONTEREY COUNTY
PRESERVING RESOURCES FOR QUALIFIED RESIDENTS

SUMMARY

The Monterey County Civil Grand Jury (MCCGJ) received a formal complaint that the Housing Authority of Monterey County (HAMC) was inadvertently providing assistance to residents not eligible for aid and had failed to respond to or investigate an earlier complaint sent directly to the HAMC.

The MCCGJ determined that the HAMC does not presently have a method for documenting and following up on at least some complaints from citizens and clients. As a result, individuals who do not qualify for HAMC assistance may, indirectly, be benefiting from HAMC programs.

BACKGROUND

The mission statement of the HAMC is "to provide, administer, and encourage quality affordable housing and related services to eligible residents of Monterey County. We strive to provide decent, safe, sanitary and affordable accommodations for low income persons and families."
The HAMC is a public agency chartered under the Health and Safety Code of the State of California. The Monterey County Board of Supervisors established the HAMC in 1941 to address housing needs in the community. Funding for HAMC comes from the federal Department of Housing and Urban Development (HUD), from grants and specific allocations from various State of California housing programs, and from rental income from those properties owned by HAMC. The HAMC administers a variety of programs to accomplish its goals. One of these is the *Project Based Program,* formerly called the Section 8 Project Based Program. Under this program, the HAMC contracts with specific owners to rent all the units in one complex on behalf of HAMC clients. These are multi-unit apartment complexes, with one landlord. The list of these addresses is available at the HAMC office. Vouchers are not used in this program, since the HAMC money goes directly to the landlord, and not through the tenant.

The second program is the *Housing Choice Voucher Program*, formerly known as the Section 8 Voucher Program. Qualified applicants receive a voucher, with which they can seek rental units on their own. They present this voucher to an owner/landlord. The HAMC will make payments to the landlord as long as the family is eligible and the apartment or home continues to qualify. The tenant and renter both sign a lease, and a copy is held by the HAMC. The 2014-2015 budget for both of these programs is $31,544,496.

METHODOLOGY

In the course of this investigation, the MCCGJ reviewed documents and conducted the following interviews:

- Complainant

- Members of the HAMC Board of Commissioners
- Management and staff of HAMC
- County Administrator's Office staff

Documents reviewed:

- Contracts and publications that are part of the HAMC operating mandates.
- Pamphlets and materials available to the public in the offices of HAMC.
- HAMC website: www.hamonterey.org.
- Operations and duty statements of the Board of Commissioners, as published by the Board.
- 2014-2015 Budget for the Housing Choice Voucher Program

DISCUSSION

The complainant in this particular case provided an address in Salinas to the HAMC and stated that he believed there were people living there, in apartments subsidized through the Housing Choice Voucher Program, who were not HAMC certified clients, nor were they eligible to become clients. In essence, they were "getting free rent and bragging about it." The complaintant received a response via e-mail shortly after submitting a formal complaint, stating that the Director of HAMC would look into the issue and refer it to the Housing Program Manager to pursue. The director told the complainant it would be helpful to have more information as to the HAMC clients' names, in order to question them about possible ineligible occupants in their units, but said the complaint would be pursued.

The complainant informed the MCCGJ, a few months after the complaint was submitted, that he had not received an answer from the HAMC as to what happened with the situation. When the MCCGJ asked the HAMC, two months later, if the matter had been investigated yet, the answer was "no." We asked if the HAMC could have sent someone to that particular address to talk to that landlord, and the answer was "yes." This led to an investigation of the agency's governance and process for determining eligibility and handling citizen complaints.

GOVERNANCE

The Executive Director of the HAMC is hired by and reports to the HAMC Board of Commissioners. The Executive Director or management staff reporting to the Director hires all other employees.

Five of the seven-member Board of Commissioners of the HAMC are appointed by the Board of Supervisors, one per supervisorial district. The two additional members are current recipients of housing aid. The Board of Commissioners hires and supervises the Executive Director of the HAMC and the clerk of the Board. The Board meets monthly, and the meetings are open to the public. The public is notified of the monthly meeting schedule and location by website and by written announcement at the central HAMC office.

Some of the stated duties of the Board are as follows:

- To establish a long-range vision to meet community needs.
- To plan actively for the future.
- To establish policies that provide direction to the agency to comply with applicable federal, state and local laws and regulations.
- *To establish policies that ensure program integrity by preventing fraud, abuse, waste and mismanagement*. [Emphasis added]
- To oversee the expenditure of public funds.
- To monitor the performance of the Executive Director and the Board Clerk.

The Board also has a set of goals as established in its strategic plan. Two that are especially pertinent to the issues of this investigation are:

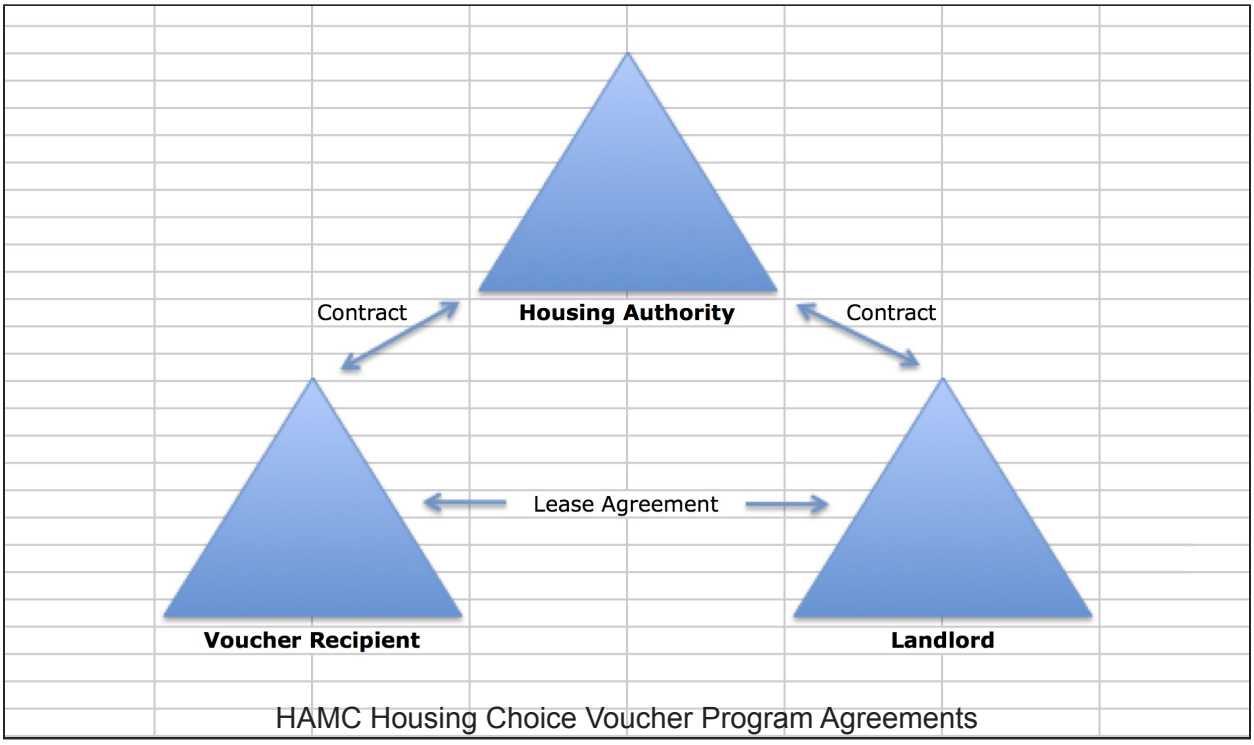
- To respond to the shifting paradigm in federal, state and local housing programs to create greater transparency.
- To continue to use good business acumen to ensure the long-term financial and physical viability of its properties.

Determining Eligibility for Assistance

In both the Project Based and Housing Choice Voucher programs, when each person applies for assistance, the staff performs an intake process that includes determining legal status (recipients must be legal residents), social security number, income, and number of people who will be living in the subsidized unit. A criminal background check is also run on applicants.

HAMC staff conducts a yearly re-certification review for each recipient to ascertain continued eligibility. The family must report if any additional family members are added to the household. Housing Specialists (case managers) also make an annual visit to the property for the purpose of ascertaining that the unit is up to standard, and that there are no people living there other than those who were approved and certified on the original application. The landlord is required to report to the HAMC any additional people living in the unit of which he/she is aware.

In the Housing Choice Voucher Program, the HAMC enters into a contract with individual landlords, as well as with the recipients of aid. The landlords are obliged to rent each unit only to the number of people agreed upon with the HAMC. The owner/landlord has the responsibility of approving the family as a suitable renter. The HAMC makes Housing Assistance Payments (HAP) directly to the owner/landlord as long as the family is eligible and the housing unit continues to qualify under the program. They pay the landlord according to the voucher, and what was the agreed upon rent. The HAMC can enforce the HAP contract (which is mandated by HUD) with the landlord with regard to a specific tenant. If unauthorized persons are living in the unit covered by the contract, both the landlord and the approved tenants can be cut from the subsidy program. The clients would lose their voucher, and be terminated from receiving future assistance from and Housing Authority. The landlord would be disqualified from receiving Housing Authority voucher payments from HAP.



HAMC Housing Choice Voucher Program Agreements

All residents who are living in units must be certified by the HAMC. If any other people move into that unit, they, too, must be certified. If additional people are living there, and are not reported by the tenant or the landlord, both the tenant and the landlord are in violation of the contract and so may be terminated from the program. The HAMC has a limited amount of money, and must prioritize those on the waiting list. If there are unqualified residents receiving assistance, the agency cannot offer assistance to other people who are eligible to receive benefits. Some people are on the waiting list for years.

Enforcement and Complaints

While determining eligibility rests with HAMC staff, the investigation of complaints of fraud is the responsibility of both staff and the Board of Commissioners. Complaints may be made orally at the Board of Commissioners' monthly meeting or in writing and addressed to agency management directly.

Agency Staff

HAMC files are organized by the name of the client and cross-referenced by address. If a complaint comes in about a named individual, the Housing Specialists (case workers) look up the person by name and deal with the complaint in that manner. Although it is possible to cross-reference by address to identify an individual or family receiving assistance, it does not appear that HAMC uses this method to follow-up on complaints based on address only. That is why this complainant's issue was not researched.

The HAMC does not currently maintain a formal log with which to track complaints. They claim to maintain an informal log, but it was not made available for MCCGJ review. The agency estimates that the average number of verifiable complaints received from the public about tenants is three or four per month. Complaints against landlords are received less frequently. If an investigation is launched into a complaint, and a violation is apparent, a formal hearing is held and the client and/or landlord may be terminated from the program.

HAMC supervisory staff stated that the more carefully staff conduct recertification interviews, the more likely they are to find evidence for violations such as increases in income from new jobs or other means, or unauthorized persons living with the certified clients. Notice of unauthorized persons may also come from local law enforcement if police are called to the property for any reason.

To conduct thorough investigations into cases of suspected fraud (unauthorized residents living in subsidized units), supervisory staff stated that they need the assistance of a program integrity specialist who would be able to spend time investigating any appearance of fraud or mismanagement (as in landlords not reporting additional residents). The agency would also like to work more closely with the local law enforcement and the District Attorney (DA) to investigate possible breaches of contract. In one of the first such joint efforts with the DA, the HAMC recovered $35,000, from fines and restitution payments.

The agency does not have a quality management committee of unit supervisors that analyzes client input and complaints from the public, which we believe would offer a useful method of tracking and improving problem areas. These committees review any public input, check for accuracy, identify potential problem areas, and make a corrective action plan to remedy issues that need attention. They then set up a formal monitoring system to check on progress and redo plan if necessary. They report to Executive Director on a regular basis.

Board of Commissioners

The procedure for the Board of Commissioners with regard to oral complaints from the public is that the Chair of the Board, at the meeting, "recognizes persons who desire to speak and protects the speaker who has the floor from disturbance or interference. She/he will report out to the full Board any follow-up on comments from the public."

The MCCGJ found that the Board of Commissioners did not have a written procedure for following up on complaints presented at Board meetings. The Board Chairperson committed these complaints to memory for resolution. Such complaints were referred to the Executive Director for appropriate action, and the Board was not necessarily apprised of the outcome.

During the course of this investigation, the HAMC Board reported to the MCCGJ that they have a new policy in place for receiving and tracking complaints. This policy was submitted and approved at a Board meeting of March 23, 2015. It is filed as "Resolution 2813" and approves the "Board Policy Response to Public Comments at a Board Meeting." This policy stipulates:

> When a person makes a comment that requires a response (such as a complaint or query), the Board Chair will direct the Executive Director to look into the matter and respond back to the commenter. The Executive Director will respond in writing to the commenter if the commenter has provided an address to which it can be di-

rected. The Board Chair will receive a copy of the response, read and initial that he/she has received it, and report back to the full Board under New Business that the response has been provided to the commenter.

This step, when fully implemented, may address the MCCGJ's concern that the HAMC is not following up on complaints. However, Resolution 2813 only addresses public comments made at Board meetings and does not stipulate the creation of a formal method of investigating and tracking all complaints received by the HAMC.

FINDINGS

F1. The HAMC does not currently have any meaningful procedure for the receipt, processing, investigation or response to complaints regarding abuse of its housing assistance programs.

F2. The Board of Commissioners has not had a formal complaint tracking mechanism.

F3. Resolution 2813, adopted by the Board in March 2015, does not provide for an ongoing complaint log that should be available to the public and staff at Board meetings,

F4. Resolution 2813 does not require a process whereby analysis of complaints by the Board is mandatory as a regular agenda item.

F5. The Executive Director of HAMC did not respond to at least one member of the public (the complainant referred to above) even though she stated in writing that she would. Therefore, this particular complaint was unresolved. There may still be ongoing violations at that particular address.

F6. HAMC staff do not respond readily to complaints about a given address, and prefer to focus on individual clients by name, despite the fact addresses can be cross-referenced on the database, and names of clients currently living at that address can be called up.

F7. HAMC staff also do not maintain a formal log of complaints received.

F8. The agency needs more staff help to investigate complaints and community concerns, for example a program integrity specialist.

RECOMMENDATIONS

R1. That Resolution 2813 be expanded to provide transparency to the public and staff as to how complaints are analyzed and managed. A log of these issues, with timelines and responses documented, should be the basis of an ongoing quality management review by the Board, thus checking their status and being responsive to the public.

R2. That the HAMC adopt a formal written complaint resolution policy and procedures. This would include of a log of incoming complaints, to whom they were assigned, and how and when they were resolved.

R3. That the HAMC respond to complaints about particular addresses where their clients are located as readily as they do to complaints about individual clients by name. They are encouraged to use all database entries available for pertinent information.

R4. That HAMC establish a Quality Management committee to review, analyze, and report on complaints received by the Agency

R5. That the HAMC hire a program integrity staff member to work with the Housing Programs for outreach and investigation of possible fraud and mismanagement. A person in that position would assist the HAMC in fiscal management by identifying misuses. He/she would work with the DA to prosecute and recover monies.

R6. That the HAMC investigate, currently, the address that was the subject of the complaint referred to in this document.

R7. That HAMC increase interaction with Law Enforcement so that there could be cross reporting on addresses of police calls (such as when the police know the address is an HAMC project-based unit.)

R8. HAMC establish a program to create more owner/landlord awareness of current and ongoing regulations that they may need reminders about. Quarterly meetings with landlords would be useful, in addition to an HAMC newsletter.

RESPONSES REQUIRED

Pursuant to Penal Code § 933.05, the MCCGJ requests responses to all Findings and Recommendations from the following governing body:

- The Board of Commissioners of the Housing Authority of Monterey County

THE MONTEREY COUNTY JAIL
A REVIEW OF PAST AND CURRENT PROBLEMS

Monterey County Jail about 1885. Courtesy of the Monterey County Historical Society.

THE MONTEREY COUNTY JAIL
A REVIEW OF PAST AND CURRENT PROBLEMS

SUMMARY

The Monterey County Civil Grand Jury (MCCGJ) has undertaken an inquiry into the condition and management of the Monterey County Jail (Jail) and found numerous problems, many of them serious. These problems involve issues concerning health and safety of inmates, finances and budgeting, facilities maintenance, excessive overtime, safety of employees, and administration of the Jail. An additional area of concern is the contracting for medical services.[1]

The Jail has long experienced inmate health and safety problems, leading to a class action lawsuit filed in 2013 in Federal District Court by current and former inmates of the Jail. While the MCCGJ's investigation was proceeding, that lawsuit was not only granted class action status by the Court, but the Judge ordered that specific medical and facilities changes be made immediately at the Jail due to the inadequate health and living conditions of inmates. As this report was being finalized, a tentative settlement was reached between the parties to the case in which the Sheriff agreed to make certain changes which will improve facilities, as well as correct safety and medical problems alleged at the Jail.

However, the issues that the MCCGJ investigated for this report were different from the class action case and were found, for the most part, to have existed quietly over a number of Sheriffs' administrations. It is possible that the problems identified in this report are as critical to the overall health and welfare of inmates and the security of staff as are the problems alleged in the class action lawsuit.

The Grand Jury found that these problems can be attributed to deficiencies in specific areas: funding and proper allocation of funding, medical contracting, leadership, and staffing of the Jail.

California's jail population is likely to continue to increase as prisoners with longer sentences accumulate in county jails due to realignment. Thus, for the Monterey County Jail, the problems identified in this report may increase unless the recommended corrective actions are promptly taken.

BACKGROUND

California Penal Code § 919 (b) requires that "The [civil] grand jury shall inquire into the condition and management of the public prisons within the county."

The Monterey County Sheriff is the chief law enforcement officer in the County and is also responsible for maintaining the Jail. The Sheriff is elected by Monterey County voters every four years. The Sheriff proposes a budget annually, but the actual budget is that sum which is ap-

[1] Some of the conditions identified in this report may have been corrected by the time this report is released.

proved by the Monterey County Board of Supervisors. The Detention Division of the Sheriff's Office hires and supervises guards, manages the Jail, and receives the largest part of the Sheriff Office's budget.

The Jail is a Type II (holding persons pending an arraignment, participating in a trial, or awaiting sentence) and Type III (holding persons convicted and sentenced) detention facility. The existing facility (built in 1972) is rated to house approximately 825 inmates, but the average daily population has gone as high as 1150 inmates. As this is written, there are 884 inmates in the Jail, 107 of which are women.

The Sheriff's Detention Division receives prisoners and inmates from state and Monterey County agencies, including the California Department of Corrections for parole violations, the County Probation Department for probation violations, and the Superior Court of California (County of Monterey) once the individual is sentenced.

The Jail is subject to a biennial inspection by the California Board of State and Community Corrections (BSCC), and must comply with California Code of Regulations, Title 15 (Crime Prevention and Corrections—"Minimum Standards for Local Detention Facilities"). The Jail must also comply with Title 24 (Building Standards Code—"Minimum Standards for Local Detention Facilities"). The Jail is also subject to an annual inspection conducted by Monterey County Health Department.

Within the Jail there is an on-site infirmary staffed with medical, psychiatric, and dental staff. The Jail also provides a laundry, kitchen, library, commissary services and a chapel.

Inmates are housed in 31 separate housing units that range from single cells to open dormitory settings. Sentenced inmates reside in open dormitories and some provide labor for work crews for the facility. Work crews inside the facility are used for tasks such as kitchen work, cleaning, and general maintenance. Work crews can also be sent outside the facility for basic grounds keeping around the Sheriff's Office and for litter pick-up along highways and roads throughout Monterey County.

Unsentenced inmates are held in secured housing units and do not participate in work crews. Most sentenced inmates have access to a limited number of programs that include GED classes, religious services, library services, and drug and alcohol treatment programs.

State prisons were designed and built to house inmates serving lengthy sentences, while county jails were originally designed and built for inmates with terms of one year or less. With the passage of Assembly Bill 109 (AB 109, or realignment) in 2011, California's detention facilities were "realigned." Realignment transfers the responsibility of supervision for some felony offenders from state prison facilities to county jails, and inmates serving sentences longer than one year may now be housed in county jails.

INVESTIGATIVE METHODS

In examining the conditions and management of the Monterey County Jail, the MCCGJ interviewed numerous officials and employees in the Sheriff's Office, Probation Department, and Auditor-Controller's Office, as well as other sources. Some individuals were contacted several times

to confirm facts or to provide additional information. MCCGJ members visited the Jail on three separate occasions.

During the course of these interviews and visits, the MCCGJ requested, and was provided, a large number of documents pertaining to the Jail and its operation, including details on the spending of funds related to AB 109 and the Inmate Welfare Fund (IWF).

DISCUSSION

Class Action Lawsuit

A class action lawsuit filed in 2013 by inmates of the Monterey County Jail has brought to the forefront many of the substandard medical and safety issues that have persisted at the Jail over the years. The action was filed in United States District Court, Northern Division, and is entitled *Hernandez, et. al v. County of Monterey, et. al,* case No. 5:13-cv-2354-PSG.

The *Hernandez* case was brought by 21 current and former inmates of the Monterey County Jail against not only Monterey County and the Sheriff's Office, but the for-profit medical provider at the Jail, California Forensics Medical Group, Inc. (CFMG).[2]

The case alleges numerous practices and policies that violate state and federal law, as well as provisions of the California and U.S. Constitutions. The 135-page Complaint alleges deficiencies at the Jail that involve inadequate safety and medical care. Concerning safety, the plaintiffs allege: (1) insufficient custody staffing; (2) inadequate inmate classification system; (3) dangerous and inadequate jail facilities that make it difficult to monitor inmates; (4) overcrowding; and (5) inadequate training of staff.

Concerning inadequate medical care, the allegations focus on: (1) the failure to provide adequate health screening and medical care; (2) the failure to provide adequate mental health assessments and care; and (3) the failure to provide disabled inmates proper accommodations so that they can receive basic care and recreation. The action seeks mainly injunctive relief to order the defendants to improve the allegedly substandard jail conditions that threaten the safety and welfare of the inmates.

Although there has not yet been a trial on the merits of the plaintiffs' claims in Federal court, recently, the Judge has made two significant rulings in favor of the plaintiffs and against the County of Monterey and the other defendants: (1) On January 29, 2015, the Court granted class action status to the case, certifying as a class action case the numerous alleged health and safety violations at the Jail; and (2) on April 14, 2015, the Court granted plaintiffs' motion for a preliminary injunction, after the Sheriff's Office allegedly failed to implement many of the numerous changes that had been recommended by four experts who were mutually retained by the parties.

The Court held that plaintiffs have made a preliminary showing that they will likely succeed on the merits and in its April 14, 2015 ruling, it ordered that the defendants make the following changes, pending a trial on the merits: tuberculosis screening; medical assessment at intake for intoxicated inmates, including follow-up treatment and monitoring; develop treatment protocols

[2] CFMG has been the sole provider of medical care at the Jail for 26 consecutive years. They were awarded their current three-year contract in 2012, with the option for two one-year extensions, after responding to a Request for Proposal issued by then-Sheriff Scott Miller.

and medication for detoxifying inmates; timely providing newly booked inmates with current prescriptions, or if medications are unknown, administer bridge medications; removal of all hanging points in the administrative segregation units to reduce suicides by hanging; conduct welfare checks every 30 minutes of all inmates housed in the segregation units at irregular and unpredictable intervals; provide an on-going system to identify all inmates who have a disability, such as hearing, speaking or ambulation and provide such inmates with accommodations that permit them to participate in all activities and programs offered to non-disabled inmates; eliminate the current requirement to use stairs for physically impaired inmates to access the yard or treatment programs; and furnish sign language interpreters for all hearing impaired inmates for all areas of jail life, including communicating with guards and all programs and activities offered to non-impaired inmates.

The Court required all of the foregoing changes at the Jail to be implemented within 60 days of the April 14, 2015 Order. In May 2015, the parties to the action reached a tentative settlement of the entire case pending the Court's approval. The settlement will include additional County funding to correct most of the substandard medical, facilities, and security conditions alleged in the action.

As stated above, the specific problems that were observed or reported to the MCCGJ, set forth in this report, go beyond the conditions alleged and settled in the class action case. These problems may be divided into the following general areas: health and safety issues; financial and contracting issues; and administrative issues.

Health and Safety Issues

The MCCGJ has learned of a number of problem areas within the overall topic of health and safety at the Jail. These include inmate deaths in custody, missed or skipped health and welfare checks, missed or skipped exercise yard time, the mailroom, and the overall condition of the facility itself.

A number of these same issues were pointed out in the Biennial Inspection Report of the California Board of State and Community Corrections (BSCC) issued in August, 2014. (This inspection report is included as Attachment 1.)

Deaths in Custody

There were three inmate deaths at the Jail during 2014. The MCCGJ was told by Jail officials that two of these deaths were attributed to drug overdoses.

As of mid-May, there have already been three deaths in custody during 2015. Two are reported to have been suicides.

Inmate Welfare/Safety Checks

The investigation revealed that there is a chronic problem with deputies at the Jail failing to conduct required visual checks on inmates, referred to as "health and welfare checks" or "safety checks." The MCCGJ found strong evidence that inmate welfare checks throughout the Jail are

not routinely being done once per hour, nor are they being done on an irregular schedule as required under California law.

As defined in California Code of Regulations, Title 15, Division 1, Chapter 1, Subchapter 4, *Minimum Standards for Local Detention Facilities* (Title 15):

> "Safety checks" means direct, visual observation performed at random intervals within timeframes prescribed in these regulations to provide for the health and welfare of inmates. …
>
> A sufficient number of personnel shall be employed in each local detention facility to conduct at least hourly safety checks of inmates through direct visual observation of all inmates and to ensure the implementation and operation of the programs and activities required by these regulations. There shall be a written plan that includes the documentation of routine safety checks

Concerning the frequency and the documentation of safety checks, Title 15 sets forth the following minimum standards:

a. Safety checks shall be conducted at least once every 60 minutes and more frequently if necessary.
b. Safety checks shall be conducted on an irregular schedule (staggered) so that inmates cannot predict when the checks will occur.
c. Safety checks shall be done by personal observation of the deputy and shall be sufficient to determine whether the inmate is experiencing any stress or trauma.
d. Cameras and monitors may supplement the required visual observation safety checks but they shall not replace the need for direct visual observation.
e. Safety checks will be clearly documented on permanent logs in accordance with the office Daily Activity Logs and Shift Reports Policy.
f. Actual times of the checks and notations should be recorded on the daily activity logs.
g. Log entries shall never be made in advance of the actual check. Log entries made in this manner do not represent factual information and are prohibited.
h. Special Management Inmates shall be checked more frequently as detailed in the Special Management Inmates Policy. [The "Special Management Inmates" are inmates in sobering cells and safety cells. Those checks are conducted twice within a 30 minute period.]

At the Jail, an administrator collects the various logs filled out by deputies from throughout the facility and compiles a Daily 24-Hour File Audit to identify compliance issues.

Daily 24-Hour File Audits of Jail compliance from the first quarter of 2015 which were reviewed by the MCCGJ show that inmate health and welfare (safety checks) are frequently missed or skipped, or not adequately documented. These audits show that during January of 2015, full compliance was achieved on only eight days.

As an example, the Daily 24-Hour File Audit for January 14, 2015 notes:

- Missed or skipped health & welfare check: Infirmary 0700, K-5 2300
- Missed or skipped health & welfare check: Dorm-D 0700
- Missed or skipped health & welfare check: Isolation 1400

The daily compliance figures for February 2015 show that full compliance was achieved on only four days that month.

For example, the Daily 24-Hour File Audit for February 1, 2015 notes:

- Missed or skipped health & Welfare checks: T-Pod 0900, 1300 U-Pod 0900, 1300 "No entry one deputy" written on the bottom of the roster, indicating a proper health & Welfare check was not conducted.
- Missed or skipped health & Welfare checks: H-Pod 1900 Time listed, no initials. J-Pod 1700 skipped.
- Missed or skipped health & Welfare checks: Isolation cells 2200, 2300

The Daily 24-Hour File Audits for March 2015 show only nine days of full compliance. Three typical days in March with missed or skipped health and welfare checks, March 4, March 9 and March 18, 2015, were logged in the Daily 24-Hour File Audits as follows:

- Missed or skipped health and welfare checks: D-Wing 0700, F-Wing, 0700, F/S Wing 0700
- Skipped or missed Health and welfare checks: 0700 A-Pod, 0500 E-Pod, 1900 J-Pod, 0600-0700 Infirmary, 1200 B-Wing, 1200-1300 C-Wing
- Missed or skipped health & welfare checks: 2300 Q-Pod, 1700 B-Pod, 1700 C-Pod, 1700 E-Pod

Based on these Daily 24-Hour File Audits, full compliance for inmate welfare/safety checks during the period from January 1 to March 31, 2015 totaled to only 21 out of 90 days.[3]

It is also unclear whether or not inmate welfare/safety checks are being done on a random basis as required by Title 15. Another problem the MCCGJ discovered was that some logs are incorrectly or falsely filled out, with checks being claimed when they were not actually done.

Illegible signatures or initials on the logs create a serious problem in identifying the deputy who is responsible for missed or skipped inmate welfare checks and other problems noted in the Daily 24-Hour File Audits. For example, the File Audits for the first ten days in January showed that an average of nearly 40% of the initials on various rosters and logs were illegible. During the last ten days of March the Daily 24-Hour File Audits did not include percentages, but noted "illegible initials" on three days, "illegible initials increasing" on two days, "several illegible times and initials" on three days, "illegible times" on one day, and "the vast majority of the initials were illegible" on another day.

Illegible initials or signatures make accountability more difficult and appear to be associated with a general resistance to change. Other factors that have been suggested to the MCCGJ include lack of knowledge of Title 15 minimum requirements and lack of familiarity with Jail procedures. All of these may be attributed, in part, to lack of, or ineffective use of, a formal, mandatory progressive discipline system by supervisory staff: the MCCGJ has been told that in the past there have been few to no consequences for a deputy's failure to comply with jail policies.

[3] Examples of other problems identified in the Daily 24-Hour File Audits include incorrect counts on the Inmate Daily Count Sheets, Housing and Control Rosters not matching, exercise yard time being cancelled because of staffing shortages, missing Control Key Accountability Logs, missing Health and Welfare Check Logs, "visual check from outside of pod" instead of proper checks, etc.

Exercise Yard

Title 15 requires that each inmate be allowed three hours per week in the exercise yard. A sample of audits reviewed suggests that this minimum requirement is routinely missed. For example, entries on the Daily 24-Hour File Audits for the last week in March read as follows:

- 3/25/15 Men's yard was canceled due to staffing shortages. The following housing units missed yard today: K-16, G-Pod, K-17 & I-Pod. Women's yard was not documented as being conducted today nor was a reason provided for canceling it. Housing units that missed yard today were: W-120, W-121, W-123
- 3/26/15 Men's yard was canceled due to staffing shortages. The following housing units missed yard today: C-Pod, F-Pod, B-Pod, E-Pod, H-Pod J-Pod. Women's yard was also canceled, housing units that missed yard today were: Q-Pod, U-Pod, R-Pod. Rehab yard was conducted today according to the 24-Hour log yet no documentation of who attended was submitted.
- 3/27/15 According to the 24-Hour log of events, Rehab yard was conducted today yet no documentation has been submitted indicating who actually attended yard.
- 3/30/15 Main Jail yard was canceled today by the D-Team supervisor. Housing units that were not afforded yard today were: K-16, G-pod, C-Pod, K-17, I-Pod & E-Pod
- 3/31/15 H-Pod yard was canceled today by the team Supervisor. Women's Yard was canceled today due to staffing shortages. The following housing units were not afforded yard today: S-Pod, T-Pod & W118

The BSCC Biennial Inspection report of August 2014 (Attachment 1) recommended that "the compliance officer position be prioritized to conduct on-going internal audits of high risk operations in the jails." It is clear from a reading of samples of the Daily 24-Hour File Audits that compliance problems are being identified in these internal audits. What is uncertain are the actions, if any, that are being taken to correct these compliance problems.

Mailroom

The investigation by the MCCGJ identified weaknesses in the operation of the mailroom. That facility handles up to 500 pieces of mail per day, but is staffed by a single Mailroom Clerk working five days a week. Finding contraband and screening mail is an overwhelming job for a single employee. While some facilities use mail screening machines and inspect mail with dogs trained to detect drugs, these are not used in the Jail. All mail screening is currently done by hand and visually. The MCCGJ was also told that there is no on-going training for mailroom staff in new methods for detecting contraband.

When the Mailroom Clerk is on vacation or takes sick leave, it is unclear if other Jail staff members fill in or whether the mail just stops until the clerk returns to duty. The MCCGJ was told that some individuals were currently being trained to staff the mailroom during the Mailroom Clerk's vacations and sick leave days, but we were also told of delays and mail stoppages when the clerk is absent.

Another potential security problem is that inmate-to-inmate mail is permitted. The MCCGJ was told that communications between inmates from different sections of the Jail can create safety problems for inmates and staff.

Contraband

In addition to the mailroom, there are other methods for introducing contraband, such as drugs, into the Jail. One method is throwing items over the fence into an exercise yard for later retrieval. Another is that some incoming inmates smuggle contraband into the Jail in a body cavity.

Whatever method or combination of methods are used, contraband has been described to the MCCGJ as an ongoing serious problem in the Jail, with two deaths during 2014 being attributed to drug overdoses.

Programs

There are very few rehabilitation and educational programs for inmates in the Jail, although there are funding sources available. A number of programs were offered in past years, but with staff and funding cuts, the GED and Introspect drug, alcohol and related programs are among the few still in place. The GED program has recently been revised with accredited instructors, and Introspect, a private contractor, has been offering drug, anger management and alcohol recovery programs in the Jail since 1998. Recently there have been several new programs added on the women's side of the Jail, but the MCCGJ is not aware of any new programs on the men's side.

Facility

Jail staff interviewed told the MCCGJ that the Jail is currently not in full compliance with Title 15 and Title 24 requirements.[4]

Some of the limitations of the current facility include little to no room for programs (discussed elsewhere in this report), lack of viewing windows in dormitory doors, limited staff in the observation tower, lack of cameras in some critical areas, and the overall poor maintenance condition of the Jail.[5]

The lack of viewing windows prohibits vision by a deputy entering a dormitory area. While the video system provides some visibility to the officer in the control tower, a deputy on the floor cannot personally assess a dangerous or crisis situation without manually opening a dormitory area door.

The interior of the Jail is monitored by use of video cameras. A sole officer is stationed in a control tower, and monitors multiple screens surrounding his/her desk. One person cannot see everything at one time and respond appropriately and rapidly as necessary. Any distraction is possible, and periodic breaks are necessary for that staff member. Also the video camera system has well-known blind spots: many critical areas of the facility do not have current camera coverage. On

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[4] California Code of Regulations, Title 15 (Crime Prevention and Corrections—"Minimum Standards for Local Detention Facilities") and Title 24 (Building Standards Code—"Minimum Standards for Local Detention Facilities").

[5] Plans are currently being finalized to build a Jail addition which will address some of the problems of the existing physical facility. The Jail addition will, for example, address some safety concerns, but the MCCGJ believes it may not provide adequate space for inmate programs. Based on the MCCGJ's investigation, there are existing health and safety concerns that may not be addressed by the new facility, which in any case will not be completed until at least 2018. Further, the current Jail facility, with all its deficiencies and inadequacies, is planned to remain in use even after the new addition is built.

June 10, 2014, then-Sheriff Scott Miller addressed the Monterey County Board of Supervisors and requested funding for additional cameras, but that funding was not included in the Sheriff's 2014-2015 budget.

Cleanliness of the facility is a problem. The MCCGJ noted during three separate visits numerous areas of the Jail that were very poorly cleaned and/or needed painting or other maintenance. These conditions may pose public health risks.

For example, this is particularly apparent in the holding cell, where newly arrived inmates are kept until there is a disposition regarding their status. This cell is frequently crowded and there does not seem to be a regular or adequate cleaning schedule. There is only one toilet and one drinking faucet for a large number of inmates.

Some inmates placed in the holding area may be withdrawing from alcohol or drugs. It is a very small area, with only benches around the edges for sitting or lying. This then becomes a medically risky area, especially when the room is crowded.

Overcrowding of this area was also noted in the BSCC inspection report of August, 2014 (Attachment 1).

Finance Issues and Contracts

Inmate Welfare Fund

At the Jail, the Sheriff's office collects approximately $1 million dollars per year, mostly from inmate pay telephone fees and profits from the inmate commissary. This money is deposited in the Inmate Welfare Fund, over which the Sheriff has the sole spending discretion. Under California law, this money must be placed into an account and must be spent primarily for the benefit of the inmates, including benefits and salaries of personnel conducting education and drug and alcohol treatment programs. Any funds not needed for such programs or for other inmate welfare expenditures, may be used for the maintenance of jail facilities. California Penal Code § 4025 (e) governs the use of inmate welfare funds:

> (e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in programs to benefit inmates, including but not limited to education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors.

During the course of the MCCGJ investigation into the conditions at the Jail, it was discovered through documents and interviews with Jail staff that approximately 50% of the Inmate Welfare

Fund in recent years has been spent on salaries and benefits for employees who should have been paid from the Sheriff's general fund. As of April 2015 there were a total of seven employees paid out of the Inmate Welfare Fund. These included six non-sworn employees (five Inmate Service Specialists and one Mailroom Clerk) and one sworn Programs Sergeant.

The investigation revealed that only the Programs Sergeant is involved in supervising the inmate Jail programs and volunteer programs, which tasks qualify as a paid position under the requirements of Penal Code § 4025 (e). The five Inmate Service Specialists (ISS) paid from the Inmate Welfare Fund do not appear to be providing the inmate benefits specified in Penal Code § 4025 (e).

The only inmate-benefit programs being offered at the Jail and paid for by the Inmate Welfare Fund are the Chaplain, Introspect (drug, alcohol and anger management programs), and a GED program. There have not been any trade or job skills programs for several years due to staffing cutbacks.

Currently, there are five Inmate Services Specialists employees, of which four are entry level and one is a Senior ISS. The job description for an ISS employee states in part that the employee is supposed to be involved in training inmates in skills related to laundry, janitorial, groundskeeper, general maintenance, and repairs of the jail. The ISS are supposed to give guidance and feedback to inmates on completed work and help develop job skills of inmates to prepare them for the outside. The Senior ISS employee's job description states in part that this person is supposed to develop and oversee inmate programs in laundry, groundskeeper, janitorial and general maintenance, and work with the Salinas Adult School and outside agencies for inmate placement. (See Attachment 2 for the ISS job description, and Attachment 3 for the Senior ISS job description.)

On paper the job descriptions for these ISS positions involve conducting trade and educational programs, but because of personnel shortages and the lack of programming space at the jail, these employees and the inmates they supervise are performing routine maintenance and kitchen duties that should otherwise be paid under the Sheriff's general budget. Although all of the ISS employees use inmate crews to perform the maintenance and kitchen work, it was admitted by a number of jail personnel that there is no time for actual training and no physical space at the jail to provide classroom time. The inmates are used as labor crews for the ISS employees and are necessary to complete the required jail maintenance, but there are no actual training sessions on the job or in a classroom. The MCCGJ was told that two inmates had been on the maintenance crew of an ISS employee continually for two or more years, showing clearly that the goal has been to provide for Jail maintenance rather than inmate training. It was also learned that the inmate labor is essential to completing the daily Jail maintenance, kitchen cleaning, and food service.

It was learned that the Mailroom Clerk has been for many years paid out of the Inmate Welfare fund.[6] This payment is improper under Title 15, §1063, which requires as a minimum standard for county detention facilities that inmates be provided with incoming and outgoing mail. That

[6] As of July 1, 2015 the Mailroom Clerk will no longer be paid out of the Inmate Welfare Fund.

section provides that every inmate is permitted unlimited mail, and inmates without funds must be provided at least two postage paid letters per week.

Concerning the cost of the five ISS personnel and the Mailroom Clerk to the Inmate Welfare Fund: in fiscal year of 2013-2014, for example, the total funds collected were $905,241, and the total amount expended was $1,054,99 (there was a shortfall of $149,755). The total cost of salaries, insurance, taxes and benefits to these employees was the sum of $706,716. The salary and employee-related costs for the Programs Sergeant was the sum of $195,653. Subtracting this from the total employee costs for 2013-2014 leaves the cost of $511,063 for the five ISS employees and the Mailroom Clerk. This amounts to approximately **56%** of the monies collected in the Inmate Welfare fund, and approximately **48%** of the fund with the shortfall added.

The MCCGJ questions whether a number of other charges against the Inmate Welfare Fund are consistent with the "benefit" or "welfare" of the inmates pursuant to Penal Code § 4025 (e). (See Attachment 4 for a detailed breakdown of the expenditures from 2013-2014 Inmate Welfare Fund.) For example, in 2013-2014, there were the following charges: Buildings & Improvements Maintenance–$2,135; Equipment Maintenance–$24,212.65; Noncapital Equipment–$7,783.36; Mail Handling Charges–$3,021.78; Postage and Shipping–$7,072.07; Legal Service-External–$15,101.00; Other Department Expenses–$6,861.14; Equipment–$8,407.80.

The last audit that was done of the Inmate Welfare fund was for fiscal year 2009-2010. That audit was done by the Monterey County Auditor-Controller's Office. However, the scope of the audit did not appear to cover whether the individual charges were made in compliance with Penal Code § 4025 (e).

One of the first things Sheriff Bernal did shortly after taking office in January 2015 was to discharge the members of the Inmate Welfare Fund Advisory Committee. This Committee was formed to advise the Sheriff in the use of the funds deposited in the Inmate Welfare Fund. The disbanding of the Committee was done reportedly because there were members of the Committee who were being paid from the Fund and that was viewed by the new Sheriff as a conflict of interest. To date, there have been no new members appointed outside of the Sheriff's Office to sit on the Committee.

Jail Positions Funded by State Realignment Funds (AB 109)

The passage into law of Assembly Bill 109, the Public Safety Realignment Act of 2011, created historic changes to California's corrections system, especially in terms of supervision responsibility. This realignment shifted responsibility for the low-level offenders and parole supervision from the state to the counties. Under this legislation, the state continues to incarcerate offenders who commit serious, violent or sex crimes, but the counties are tasked with incarcerating, rehabilitating and supervising low-level offenders. AB 109 has evolved with subsequent legislation (SB 1020,AB 117 and AB 118) which grant funding to the counties to undertake their new role of incarceration and rehabilitation in what had been exclusively the state's correctional responsibility. The Community Corrections Partnership (CCP), previously established by Penal Code § 1230, has been chartered to design and recommend a local plan for approval by the County Board of Supervisors for the implementation of AB 109, including the deposit and allocation of state funds to reimburse counties for increased local costs. The Monterey County CCP is re-

quired to have 14 members, including the Presiding Judge and the District Attorney, and is chaired by the Chief Probation Officer, currently Marsha Parsons. Pursuant to Penal Code § 2030, the Chief Probation Officer has the discretion to spend and is ultimately responsible for the AB 109 funds received from the state.

Since the passage of AB 109, there has been a yearly written Memorandum of Understanding (MOU) entered into between the Probation Department and the Sheriff's Department, wherein the Probation Department agrees to reimburse the Sheriff's Department for the payment of wages, facilities and training related to the housing of AB 109 inmates at the Jail.

The last MOU was entered into on August 25, 2014. (A copy of this agreement is attached to this report as "Attachment 5.")

On the first page of the MOU, under "DUTIES AND RESPONSIBILITIES Sheriff's Office" item 2 states that the Sheriff's Office will be provided funding for "two portable training and reentry classrooms with technology equipment and materials needed to complete GED requirements, vocational and college level course work." These portable classrooms were budgeted, but because of cost overruns due to Americans with Disabilities Act (ADA) compliance, were never installed. It is widely agreed that there is an absence of space at the Jail for any additional rehabilitation programs.

Item 3 under the same section of the MOU states: "Provide one full-time (1.00 FTE) Deputy Sheriff who will provide classification services to ensure proper programmatic and housing of inmates." The job description for this position, in part, includes screening inmates for pre-trial services, including programs. It was found by the MCCGJ that, although this position is filled with a full-time Deputy, he is working as a standard classification deputy or as custody staff, and does not perform duties related to "programming" of inmates. Programming duties are reportedly not being performed because of understaffing of both classification officers and custody deputies.

Item 5 under this same section of the MOU states: "Provide one full time (1.00 FTE) Criminal Intelligence Specialist who will assist the Classification Unit and Probation Officers placing sentenced inmates on Involuntary Electronic Home Monitoring, measure recidivism rate and prepare statistics for various agencies and Sheriff's command." Like the "Classification Deputy" above, the position of "Criminal Intelligence Specialist" is filled but the employee is not performing the duties enumerated.[7]

Medical Contract

As stated above, the contract for medical services has been held by CFMG, a for-profit provider, for approximately 26 consecutive years. The current contract will end June 30, 2015, but the Sheriff's Office has reportedly exercised an option to extend it for one additional year. The existing contract has an option for one additional one-year extension. If that second extension is exercised, the contract will expire on June 30, 2017.

[7] At the time of this writing the MCCGJ has been told by several officials at the Sheriff's Office that this position will shortly be filled by a person fulfilling the duties of a Criminal Intelligence Specialist

The MCCGJ is not aware of any study that shows whether or not it would be feasible and perhaps even more beneficial, to have medical care provided by County staff instead of an outsider provider. This could be in partnership with Natividad Medical Center under the administration of the Sheriff, a clinical manager, and a physician medical director.

ADMINISTRATIVE

Based on the evidence that the MCCGJ has gathered, the problems within the Monterey County Jail have stemmed from deficiencies in three specific areas: proper allocation of funding, leadership and staffing.

The Core Values within the Monterey County Sheriff's Office Mission Statement are described as:

Model Leadership Excellence with Honor and Integrity

Compassionately Embrace Diversity

Serve with Dedication, Loyalty and Respect

Objectively Perform Our Responsibility with Sacrifice and Courage

The Detention Division, which includes the Monterey County Jail, is one of the divisions overseen by the Sheriff. Even though the Sheriff is responsible for the Jail, the daily operation for the facility is currently managed by a Deputy Chief who assumed that position in late January of 2015. Under the Deputy Chief, there are four Commanders who oversee subordinates who have day to day contact with individuals incarcerated in the facility.

The position of the Deputy Chief often changes with the election of a new Sheriff. With a new Sheriff, Undersheriff, and Deputy Chiefs, leadership styles also change. Although it may be easy to rely on current employees to maintain or improve the quality of service for the department, it is the leadership of the incumbent Sheriff and his staff that must maintain the core values stated in the Mission Statement.

Leadership

During our interviews, numerous individuals pointed out problems that they observed in the Jail, and many of those problems they attributed to deficient leadership. The MCCGJ was told by a number of people that there is a culture of resistance to change, and a feeling of "it's always been done this way, so why change it?"

The culture of resistance exists, in part, because the top leadership in the Sheriff's Office may change every four years, while the subordinates continue to work in an environment that they have become accustomed to. This resistance to change makes the task of compliance with Title 15 requirements and Jail policy that much more difficult.

In the past, the county jails, Monterey County included, were primarily operated to house inmates incarcerated for one year or less. Today county jails have become facilities which house inmates who previously would have been sent to state prisons. This has created additional demands on Jail leadership and staff.

Compounding the culture of resistance at the Jail is a lack of or ineffective use of a formal, mandatory progressive discipline system. Traditionally there have been few or no penalties for a deputy's failure to comply with Jail policies and procedures.

The MCCGJ has been told that, until recently, roll calls with deputy or staff briefings at the beginning of a shift were not conducted. Such briefings are important for the continuity of inmate and staff security. These briefings are reportedly still only occasionally conducted in the Jail.

Staffing Issues

The 2012 MCCGJ reviewed overtime issues in Monterey County, and found that nearly half (**46%**) of the overtime attributed to the Sheriff's Office was associated with the Jail. The Sheriff at that time, Scott Miller, submitted a response to address the MCCGJ's Findings and Recommendations acknowledging that overtime levels were excessive. He noted that the Sheriff's Office had lost over 70 deputy sheriff positions in the previous ten years, and that a number of employees were on leave due to long term medical issues. Sheriff Miller further noted that it was an arduous process to hire new deputies, taking a year or more, and he added, "[I]f the County exercised more initiative in managing Worker's Compensation claims, overtime use in the Sheriff's Office would not be a major issue."

Many of the staffing problems noted by the 2012 MCCGJ, and acknowledged by the Sheriff at that time, still exist. During the fiscal year of 2013-2014, the overtime expense for all of the Sheriff's departments (excluding the independent contractor CFMG) was $6,579,429. The overtime for the custody operations at the Jail during this period amounted to **46%** or $2,997,267 of the total expense; in the current fiscal year of 2014-2015, up to April 17, 2015, the overtime for the same departments totaled to $5,766,280. The overtime for the custody operations at the Jail during this period amounted to **44**% or $2,561,560 of the total expense.

A significant reason for the continuous overtime at the Jail is that as many as 10% of the Jail's sworn staff is currently or has recently been on modified duty or on leave due to medical problems or Worker's Compensation claims. The MCCGJ was told by several officials that this is one of the leading causes of short-staffing. Short staffing, in turn, leads to increased overtime.

Also, as documented by the Daily 24-Hour File Audits, short-staffing is one of the main causes of missed exercise yard time by inmates, and may contribute to skipped or missed inmate welfare checks.

Another cause of the overtime is that typically there is no relief security staff. Vacations, sick leave, and other absences result in the Jail being under-staffed. In order to deal with this problem, some deputies have recently been temporarily reassigned to the Jail instead of patrol, and there are currently a number of deputies undergoing or just finishing academy training who will be assigned to Jail duty. These efforts should alleviate at least some of the overtime costs.

FINDINGS

F1. The Monterey County Sheriff is responsible for proposing, and the Monterey County Board of Supervisors is responsible for approving, a budget for the Sheriff's Office each fiscal year.

F2. On-duty staffing levels at the Jail are inadequate.

F3. Excess overtime continues to be a problem.

F4. Numerous conditions at the Monterey County Jail are substandard, and fail to comply with the requirements of Title 15 or Title 24 of the California Code of Regulations.

F5. There is inadequate inmate programming space in the Jail.

F6. The plans for the upcoming Jail addition may not include adequate space for inmate programs and training.

F7. The inmate training and other inmate programs at the Jail are currently, and have been in recent years, inadequate.

F8. The mailroom is insufficiently staffed, and there is a lack of mail screening equipment.

F9. Inmate-to-inmate mail across units is permitted and poses a safety risk.

F10. Inmate health and welfare checks are not being consistently performed.

F11. Inmate health and welfare check logs are not being properly completed.

F12. Contraband, primarily in the form of drugs, is a serious problem at the Jail.

F13. The paint and cleanliness of many parts of the Jail are substandard.

F14. There are no windows in the doors entering into the inmate dormitory areas which poses a safety risk.

F15. The Jail is viewed through video cameras by one officer in a control tower with limited relief staff.

F16. There are too few cameras placed around the institution to give total coverage of the facility.

F17. Roll call briefings at the beginning of a shift are inconsistently conducted, and such briefings are necessary for continuity.

F18. The Chief Probation Officer has the discretion to spend and is ultimately responsible for the AB 109 funds received from the State.

F19. At least one position in the Sheriff's Office funded by AB 109 funds is not staffed as required by the MOU with the Probation Department.

F20. The Jail administration has identified and documented chronic problems in the Daily 24-Hour File Audits.

F21. The ISS staff, using nearly half of the Inmate Welfare Fund, supervises inmates in performing routine Jail cleaning and maintenance rather than providing inmate training and programs.

F22. There are financial expenditures from the Inmate Welfare Fund that do not appear to be consistent with statutory requirements.

F23. CFMG has been the sole provider of medical care at the Jail for 26 consecutive years.

F24. Approximately 10% of the sworn deputies are on modified duty or other leave that reduces the workforce at the Jail, contributing to staff shortages and overtime.

F25. There is minimal use of a formal progressive disciplinary system for staff infractions.

RECOMMENDATIONS

R1. The Sheriff should request, and the Board of Supervisors should approve, adequate funding for additional staff positions and inmate programs for the Jail.

R2. The plans for the Jail addition should include sufficient inmate program and training rooms.

R3. Install prison-strength view windows onto each door leading into an inmate area.

R4. Purchase and install additional cameras to adequately cover blind spots in the current camera system.

R5. Assign adequate relief staff to the security camera control tower.

R6. Prohibit inmate-to-inmate mail except between immediate family members.

R7. Immediate efforts should be made to correct chronic problems identified in the Daily 24-Hour File Audits

R8. The Jail administration should enforce a formal, mandatory progressive discipline system to be consistently applied for all employee disciplinary matters including not properly making or documenting inmate welfare/safety checks.

R9. Roll call briefings should be regularly conducted.

R10. The Chief Probation Officer should annually audit the Sheriff Office's use of AB 109 funds to insure that the expenditures are fulfilling the mandates of State law.

R11. Immediately provide additional adequate programming space for the current Jail facility.

R12. Undertake an outside audit of the use of the Inmate Welfare Funds to determine whether the funds are being spent in accordance with State law.

R13. Reestablish the Inmate Welfare Fund Advisory Committee and appoint at least three civilians to serve on the Committee.

R14. The ISS positions that are currently funded from the Inmate Welfare Fund should be funded from the Jail budget.

R15. Funds should be sought for an additional full-time Mailroom Clerk.

R16. Funds should be sought to purchase electronic mail scanning equipment for the mail room.

R17. When the Jail Medical Services contract next comes up for bid, it should be widely advertised and proposals should be actively solicited from as many different contractors as possible.

R18. Analyze the possibility of providing medical services run by the Sheriff's Office, in partnership with Natividad Medical Center.

R19. The Sheriff should conduct a thorough analysis of all the causes of overtime, with the purpose of providing solutions.

R20. Allocate appropriate funds for the ongoing maintenance of the current Jail facility.

R21. In addition to the regular annual inspection, the Monterey County Health Department should conduct at least one unannounced inspection of the Jail facility each year.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the Grand Jury requests a response as indicated below from the following officials or governing bodies:

Monterey County Board of Supervisors:
All Findings and Recommendations

Monterey County Sheriff:
All Findings except F18; all Recommendations except R10 and R21

Monterey County Chief Probation Officer:
Findings F18 and F19 and Recommendation R10

BIBLIOGRAPHY

— California Board of State and Community Corrections, 2014. 2012-2014 Biennial Inspection Report, August 20, 2014.
— California Code of Regulations, 2012. Title 15: Crime Prevention and Corrections. http://s3.documentcloud.org/documents/452170/title-15.pdf
— California Code of Regulations, 2013, Title 24, Part 2, Section 2131, Minimum Standards for Adult Correction Facilities. http://www.bscc.ca.gov/downloads/ADULT_Title_24_Part_2.pdf
— Monterey County Sheriff's Office Overtime Hits $5.58 Million. *Monterey Herald*, August 2, 2014. http://www.montereyherald.com/general-news/20140802/monterey-county-sheriffs-office-overtime-hits-558-million

Attachments

1—BSCC report
2—ISS job description
3—Senior ISS job description
4—Expenditures for 2013-2014 from the Inmate Welfare Fund
5—MOU between Sheriff's Office & Probation Department

STATE OF CALIFORNIA
BOARD OF STATE AND COMMUNITY CORRECTIONS
600 BERCUT DRIVE • SACRAMENTO CA 95811 • 916.445.5073 • BSCC.CA.GOV

LINDA M. PENNER
Chair

KATHLEEN T. HOWARD
Executive Director

EDMUND G. BROWN, JR.
Governor

August 20, 2014

Scott Miller, Sheriff
County of Monterey Office of the Sheriff
1414 Natividad Road
Salinas, California 93906

2012-2014 BIENNIAL INSPECTION – PENAL CODE SECTION 6031

Board of State and Community Corrections (BSSC) staff conducted the 2012-2014 biennial inspection of the Monterey County Jail, Rehabilitation Center, Salinas Superior Court Holding and Marina Traffic Court Holding pursuant to Penal Code Section 6031.1 that included an assessment of compliance with Titles 15 and 24, California Code of Regulations, Minimum Standards for Local Detention Facilities. In addition, BSCC staff conducted compliance monitoring pursuant to Welfare and Institutions Code (WIC) Section 209(f) for the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) for the separation requirements of juveniles from incarcerated adults.

The complete BSCC inspection report is enclosed and consists of:

- This transmittal letter;
- Inspection Cycle Information sheets identifying the facilities and listing any areas of non-compliance;
- Procedures Checklists for the facilities outlining applicable Title 15 sections;
- Physical Plant Evaluations outlining Title 24 requirements for design; and,
- Living Area Space Evaluations summarizing each facility's physical plant configurations.

We encourage continuing the practice of maintaining a permanent file for historical copies of all inspections and related corrective action responses. This file should be the first point of reference when preparing for all future inspections.

The Monterey County Jail and Rehabilitation Center inspections occurred on May 21, 2014 while the Salinas Superior Court and Marina Court Holdings were inspected on May 22, 2014.

Inspections of this nature create significant demands on resources already burdened by the day-to-day operations of the facilities. We appreciate the focus, assistance, patience and availability of your staff during the entire process. We especially want to thank Commander James Bass and Captain John Mihu for devoting the extra time and effort needed to prepare and complete a successful inspection.

The inspections were preceded by a desk audit of applicable sections of the Monterey County Sheriff Custody Bureau Operations Manual that govern the operation of the facilities.[1] Policy content was

[1] BSCC does not review all of your policies and procedures. We only review those policies related specifically to the applicable regulations included in Title 15, Minimum Standards for Local Detention Facilities, for issues of non-compliance. We do not "approve" your policies nor do we review them for constitutional or legal issues. We recommend agencies seek policy review through their legal advisor, risk manager, and other persons deemed appropriate.

reconciled against relevant Title 15 regulations to ensure that each subject required by regulation was addressed in policy.
A well-attended pre-inspection briefing was conducted on April 2, 2014 focusing on operational issues of the facilities, prior inspections and the upcoming inspection and expectations.

Local Inspections

In addition to a biennial inspection by the BSCC, inspections are also required annually by the County Health Officer and biennially by the State Fire Marshal or an authorized representative (Health and Safety Code Sections 101045 and 13146.1). Please consider our report in conjunction with the reports from the County Health Officer and the respective fire authorities for a comprehensive perspective of your facilities as listed in Attachment A.

BSCC Inspection – Monterey County and Rehabilitation Center

Policy, Procedure and Practices System Wide:

Our review of applicable sections of the policy manual found some areas where we recommended revision to remain compliant with Title 15. We understand your agency has contracted with Lexipol to provide the basis for a new manual which should be available soon to your staff. It is our understanding that the revisions will be included in the new manual. Refer to the Procedures Checklist for further discussion.

The inspections began with an evaluation of documentation on inmate safety checks, use of sobering cells, use of safety cells, restraint placements, exercise records, grievances, disciplinary and incident reports, along with a review of fire/life safety inspection records where applicable.

The inspections continued with a walk-through of the facility and accompanying physical plant evaluation including interviews with staff and inmates and concluded with an exit briefing with Commanders Bass and Lisa Nash and Sergeant Jasper DeFranco.

Sobering Cell, Safety Cell and Restraint Placements

Among the highest risk areas in detention, sobering cell, safety restraint and safety cell placement require careful attention to detail to provide maximum protection to the inmate involved while reducing the agency's exposure to litigation. Our review of placement documentation included an examination of incident reports prompting those placements, corresponding documentation of safety checks, staff observations of inmates with notation of condition, continued retention schedules, placement and removal times, nutrition/fluid offers, and finally, extremity exercise where applicable.

Protective placements of this type occur only at the jail. Inmates housed at the Rehabilitation Center requiring protective housing would be immediately transferred next door to the jail. Our review of documentation of protective placements at the Monterey County Jail found the sobering cell and the limited number of safety restraint placements meeting the requirements of Title 15. Of some concern was the documentation related to the use of the safety cell. Very little documentation justifying placement was found on the incidents reviewed. Also missing on a number of the incidents was verification of the watch commander's approval for placement. During the exit briefing we concluded that staff would be re-informed of the importance of more detailed incident reporting and the importance of notating watch commander approval. We requested incident reports and logs be provided to verify improvement in this area. Prior to

the submission of this report we reviewed documentation where the reason for placement was clearly indicated on the Lockdown/Inmate Movement Form and the watch commander approval was notated on the accompanying logs.

As discussed during our exit briefing, we recommend that the compliance officer position be prioritized to conduct on-going internal audits of high risk operations in the jails. This would include not only sobering cell, safety cell and restraint placements but also general inmate safety checks and other processes where appropriate. To that end we have provided contact information for other agencies with successful compliance monitoring processes in place.

System-Wide Discussion

Throughout the course of our inspection our interviews with staff found them knowledgeable on Title 15 and related issues. Interviews with inmates disclosed that they felt safe and that mandated activities such as recreation, visits, clothing exchange, etc., were being met. Inmates assured us that medical staff was responsive to their requests and expressed no substantive complaints about the grievance or disciplinary processes.

Inmate Programs – Evidence-Based Practices

A wide variety of programming is available in the jails. Programs include, but are not limited to, GED preparation and testing, Alcoholics and Narcotics Anonymous, and Criminon Way to Happiness course centering on following a code of conduct to lead to better life. Vocational courses are offered in Forklift Training, Janitorial Instruction, Kitchen Basics and Microsoft Office Training.

We encourage every effort to further pursue evidence-based practices and programs where an emphasis is placed on achieving measurable outcomes to ensure that the services provided and the resources used are effective.

BSCC Inspection – Salinas Superior Court Holding and Marina Traffic Court Holding

Monterey County has two court holding facilities that remain under the purview of BSCC, the Salinas Superior Court Holding and Marina Traffic Court. The King City Court holding closed during this inspection cycle.

The court holding inspections were conducted with Captain John Mihu who provided transportation to the sites. In addition we toured the rarely used Monterey Substation court holding and temporary holding facility built prior to 1978 and, therefore, does not fall under the purview of BSCC,

No issues of non-compliance with Title 15 regulations were identified at the inspected facilities.

Physical Plant Inspections

Monterey County Jail

Completed in 1976, the Monterey County Jail is evaluated as a Type II facility using the 1976, 1980, and 1981 physical plant standards that were in effect at the time of original construction and when various areas were remodeled or added to the facility. The facility has a rated capacity of 575 with 845 actual beds. On the day of the inspection there were 514 males and 143 female inmates totaling 657 in custody. Efforts to

mitigate crowding have resulted in a contract to house inmates in the Alameda County Jail where 58 were housed on the day of the inspection. In spite of its age, the facility was clean and appeared well maintained. Due to chronic crowding the facility will remain out of compliance with the following Title 24 Physical Plant Standards:

Title 24, Section 1231.2.6: Single Occupancy Cells. Extra bunks have added to single cells in Housing Units D, G, H, I and J and are, therefore, noncompliant with regulation.

Title 24, Section 1231.2.8: Dormitories. Extra bunks have been added to dormitories exceeding rated capacity.

Title 24, Section 1231.2.2: Temporary Holding Cell or Room. Although not observed at the time of the inspection, we were informed that the booking area and court holding cells regularly exceed capacity. When this occurs the holding cells are non-compliant with regulations.

Due to physical plant limitations, inmates that need to be re-classified to higher security levels are often housed for one or two days in intake holding cells pending appropriate cell availability. Holding cells are not designed for such purpose and the use of them for single inmates restricts the availability of intake holding cells when needed for their intended purpose.

The four safety cells located in the booking area lack variable intensity lighting as required by Title 24, Section 1231.2.5.

Monterey County Rehabilitation Center
Completed in 1971, the Rehabilitation Center is evaluated as a Type II facility using the 1963 physical plant standards that were effect at the time of construction. The facility has a RC of 250 with 492 actual beds. There were 292 inmates in custody on the day of the inspection. The facility was clean and appeared appropriately maintained for its advanced age. The Rehabilitation Center is physically connected to the Main Jail, making what appears to be seamless access between the facilities. The facility will remain out of compliance with the following Title 24 Physical Plant Standard:

Title 24, Section 470A.2.8: Dormitories. Extra bunks in dormitories exceed rated capacity.

Salinas Court Holding
Completed in 2002 and recently renovated without effect to current standards, this facility is evaluated using the 1999 physical plant standards in effect at the time of original construction. There were 25 male and 2 female inmates in custody at the time of the inspection. No issues related to physical plant standards were identified.

Marina Traffic Court Holding
Completed in 1996, this facility is evaluated using the 1994 physical plant standards that were in effect at the time of construction. No inmates were in custody at the time of the inspection. No issues related to physical plant standards were identified.

Juvenile Justice and Delinquency Prevention Act Compliance Monitoring:

In accordance with the JJDPA, BSCC monitors jail facilities for compliance with one of four core requirements of the Act - Separation of Juveniles from Incarcerated Adults. Minors are not held at the

Monterey County Jail or Rehabilitation Center, minors are not placed in cells at the Marina Court Holding; however, minors may be placed in a cell adjacent to adults in in the Salinas Superior Court Holding. Staff is to remain constantly present at all times to ensure there is no communication between adults and minors. No violations of the JJDPA were identified.

Corrective Action Plan:

Please notify this agency if any of the Title 24 issues related to crowding are corrected.

This concludes our inspection report for the 2012-2014 inspection cycle. We would like to thank all staff involved in the inspection process for the hospitality and courtesy extended during the visits. If you have questions, concerns, or if we can be of any assistance to you, please contact me at (916) 445-1322, or email at ron.bertrand@bscc.ca.gov.

Sincerely,

RONALD L. BERTRAND
Field Representative
Facilities Standards and Operations Division

Enclosures

cc: County Administrator, Monterey County*
Chair, Board of Supervisors, Monterey County*
Presiding Judge, Superior Court, Monterey County*
Grand Jury Foreman, Superior Court, Monterey County*
Chief Deputy Edward Laverone, Monterey County Sheriff's Office

* Copies of the complete report are available on request.

INMATE SERVICES SPECIALIST

DEFINITION

Under general supervision, develops the job skills of sentenced inmates by training and working directly with inmates on a variety of duties in laundry operations, janitorial, groundskeeper and general maintenance repairs and projects in a jail facility; and performs other related work as required.

DISTINGUISHING CHARACTERISTICS

This non-peace officer classification is the journey-level class in the Inmate Services Specialist series responsible for developing the job skills of sentenced inmates, coordinating the work of inmate crews and providing training, direction, guidance and feedback on work completed. Incumbents must be knowledgeable about training methods; laundry, janitorial, groundskeeper or general maintenance practices and procedures; department safety policies and procedures; and must utilize safe working practices and sound judgment while working with inmates and performing duties in a jail environment. The level of responsibility is such that errors may jeopardize the safety of self or others.

Inmate Services Specialist is distinguished from the next higher class of Senior Inmate Services Specialist in that the latter is responsible for developing the training criteria for inmate workers and for training and providing technical guidance to employees as well as inmate workers on complex specialized work.

Inmate Services Specialist is distinguished from the higher class of Building Maintenance Worker in that the latter is primarily responsible for performing a wide variety of skilled and semi-skilled work in the repair and maintenance of County buildings and equipment.

EXAMPLES OF DUTIES

1. Performs laundry, cleaning, groundskeeping, and general maintenance and repair duties and trains, directs and monitors the work of inmate workers assigned to these areas.

2. Trains and monitors inmates in the operation of facility equipment such as lawnmowers, washers, dryers, spray-washer, etc.; ensures safety equipment is used and procedures are followed.

3. Locks and secures doors for sentenced inmates entrance and exit of jail and rehabilitation facilities during and after work details.

4. Inspects the Custody Operations facilities and grounds for cleanliness, electrical fixtures, plumbing and general damage to the property.

5. Develops and maintains laundry exchange schedules; ensures there is an adequate supply of clean clothing, work boots, coats, and bedding; and maintains control and

inventory of all laundry supplies and issued items, including shirts, pants, underwear, socks, mattresses, sheets and blankets.

6. Checks clean and dirty laundry for hidden contraband; inspects and disposes of worn out and badly stained items; handles, treats or disposes of contaminated items, and orders replacement items.

7. Places repair orders; coordinates repairs of laundry items with seamstress; and conducts monthly inspections of the laundry facility and boot room.

8. Completes special projects as directed by supervising Sergeant, Commander or Captain.

9. Writes and completes a variety of forms and reports such as memos of inmate incidents, maintenance requests and supply orders.

10. Inventories, orders and stores supplies.

11. Drives County vehicles with inmates to and from Sheriff's facilities to various locations to pick up or unload supplies, donations or trash.

QUALIFICATIONS

A combination of experience, education, and/or training which substantially demonstrates the following knowledge, skills and abilities:

Working knowledge of:

1. Principles and practices of effective supervision and training

2. Cal OSHA safety practices for lifting, storing materials and use of equipment, tools, materials, and chemicals used in laundry, janitorial, groundskeeping and general maintenance functions

3. Methods and day-to-day operation of a laundry facility, including laundry equipment, cleaning chemicals, washing, drying, folding, and the preparation, issuance and exchange of laundry, clothing and bedding

4. Modern cleaning practices, chemicals and disinfectants used to clean floors, walls and fixtures, including sweeping, mopping, scrubbing, stripping wax, waxing and buffing

5. Inventory control methods

6. Routine landscaping and groundskeeping practices, including the use of common pesticides and mowing, edging, trimming, pruning and weeding of lawns, hedges and trees

7. General maintenance practices used for painting, mixing and pouring cement, building partitions or shelves, and refinishing and assembling furniture and equipment; and using and maintaining related equipment

8. Maintenance, use and basic repair of tools and equipment used in laundry, janitorial, groundskeeping and general maintenance functions

9. Monterey County Sheriff's Office operations, procedures and regulations

Skill and Ability to:

1. Supervise and train assigned inmates; and monitor, coordinate, direct and train inmates and others on the procedures and operations of the laundry, janitorial, groundskeeping and general maintenance functions

2. Follow safety precautions by checking inmate rosters and cell control panels prior to entering pods to perform general repairs or during laundry exchanges

3. Give direction and guidance on specific assignments and review and correct errors of others

4. Maintain accurate records and reports

5. Develop and implement long and short-range plans, coordinate resources and supervise the activities of inmates

6. Understand, interpret, and apply policies and procedures applicable to the laundry, janitorial, groundskeeping and general maintenance operation of the Custody Operations Bureau

7. Make decisions in procedural matters without immediate supervision

8. Operate, maintain and repair equipment and tools used in laundry, janitorial, groundskeeping and general maintenance functions

9. Adopt quick, effective and reasonable courses of action under emergency conditions

10. Understand written and oral instructions

11. Communicate clearly and effectively both verbally and in writing

12. Establish and maintain effective working relations with those contacted in the course of work, work cooperatively and exhibit customer service skills

13. Properly use radios

REQUIRED CONDITIONS OF EMPLOYMENT

As a condition of employment, the incumbent will be required to:

1. Work effectively in potentially stressful conditions in an enclosed and noisy jail environment with inmate crews and housed inmates

2. Interact with potentially violent and difficult individuals that includes exposure to potentially infectious diseases, profanity, offensive smells, lewd behavior and nudity

3. Work throughout Custody Operations Facilities that include inmate housing units, hallways, laundry room and employee break room in the presence of deputy escorted inmates and unescorted inmates

4. Successfully pass a complete background/suitability process, which includes a voice stress analysis, psychological examination and medical examination

5. Work flexible hours, shifts, weekends and holidays; and be subject to being available or called in during off-duty hours

6. Follow safety rules and procedures; and wear safety clothing and equipment

7. Possess a valid California Class C Driver's License

8. Wear a uniform

9. Provide a telephone number or means by which employee can be reached.

EXAMPLES OF EXPERIENCE, EDUCATION AND TRAINING

The knowledge, skills and abilities listed above may be acquired through various types of experience, education or training, typically:

Experience:
Two years of experience in a laundry, janitorial, groundskeeper or building maintenance position that includes inventory control and the use of related equipment or tools, including some responsibility for monitoring and coordinating the work of others.

PHYSICAL AND SENSORY REQUIREMENTS

The physical and sensory abilities required for this classification include:

1. Ability to see sufficient to inspect the Custody Operations facility and to supervise the behavior and activities of sentenced inmates

2. Ability to hear and speak sufficient to instruct and supervise inmate work crews, distinguish sounds and voices in a noisy environment and verbally communicate over a two-way radio

3. Physical strength to lift, push, pull or carry boxes, equipment or laundry carts weighing up to 50 pounds without assistance

4. Manual and finger strength and dexterity sufficient to operate laundry, janitorial, groundskeeping and maintenance equipment and tools

5. Physical stamina and mobility to walk, kneel, reach, twist, stoop, squat, and bend on irregular surfaces that may involve climbing stairs or ladders, or crawling in confined areas to inspect and perform repairs in the Custody Operations facilities and grounds and to load and unload laundry

6. Ability to walk and stand for long periods of time; work indoors and outdoors, including extreme heat and cold; tolerate extreme noise and vibrations; work in confined working spaces and work with or around chemicals, and mechanical and electrical tools

CLASS HISTORY

Class Code:	70N10
Established Date:	September 1988
Revised Date:	N/A
Consolidated Date:	May 2005
Former Title:	Correctional Aide III (80I09)
	Laundry Crew Leader (70L82)

CLASS DATA

Job Group:	SM
EEO Category:	19
Work Comp. Code:	9420
Bargaining/Employee Unit:	J
FLSA:	C
MOCO OT:	Y

Prepared by: Leanne Johnston, Associate Personnel Analyst

Approved by:

/s/ Dianne Dinsmore, Senior Personnel Analyst
County Administrative Office

5/16/05
Date

SENIOR INMATE SERVICES SPECIALIST

DEFINITION

Under direction, establishes criteria, develops and oversees formal inmate training programs in laundry, janitorial, groundskeeper and general maintenance and repair operations; and performs other related work as required.

DISTINGUISHING CHARACTERISTICS

This non-peace officer classification is the advanced working and lead worker level in the Inmate Services Specialist series responsible for establishing criteria and developing formal training programs for sentenced inmates and serving as a resource to subordinate employees on the more complex projects associated with laundry, janitorial, groundskeeper and general maintenance functions. Incumbents train, direct, guide, coordinate, and provide feedback on work completed to employees and inmate workers. The level of responsibility is such that errors may jeopardize the safety of self or others.

This class is distinguished from the lower level class of Inmate Services Specialist in that the latter is primarily responsible for directly training, working with, developing the job skills of, and overseeing the work of sentenced inmates in the Custody Operations facilities.

This class is distinguished from the class of Building Maintenance Worker in that the latter is primarily responsible for performing a wide variety of skilled and semi-skilled work in the repair and maintenance of County buildings and equipment.

EXAMPLES OF DUTIES

In addition to performing the duties of Inmate Services Specialist:

1. Plans, develops, reviews, monitors and evaluates inmate vocational training programs.

2. Recommends program policy and develops program protocols and procedures.

3. Oversees the implementation of program activities and submits training materials to the Program Sergeant for approval.

4. Coordinates inmate training program activities with outside agencies such as Salinas Adult School; and identifies and maintains community resources useful in implementing program activities.

5. Provides technical guidance to staff, other agencies and service providers as necessary to assure compliance with program policy and procedures.

QUALIFICATIONS

In addition to the knowledge, skills and abilities of an Inmate Services Specialist, a combination of experience, education, and/or training which substantially demonstrates the following knowledge, skills and abilities:

Thorough knowledge of:

1. Principles and practices of effective supervision, facility security and training methodology

2. Cal OSHA safety practices for lifting, storing materials and use of equipment, tools, materials, and chemicals used in laundry, janitorial, groundskeeping and general maintenance functions

3. Methods and day-to-day operation of a laundry facility, including laundry equipment, cleaning chemicals, washing, drying, folding, and the preparation, issuance and exchange of laundry, clothing and bedding

4. Modern cleaning practices, chemicals and disinfectants used to clean floors, walls and fixtures, including sweeping, mopping, scrubbing, stripping wax, waxing and buffing

5. Inventory control methods

6. Routine landscaping and groundskeeping practices, including the use of common pesticides and mowing, edging, trimming, pruning and weeding of lawns, hedges and trees

7. General maintenance practices used for painting, mixing and pouring cement, building partitions or shelves, and refinishing and assembling furniture and equipment; and using and maintaining related equipment

8. Maintenance, use and basic repair of tools and equipment used in laundry, janitorial, groundskeeping and general maintenance functions

9. Monterey County Sheriff's Office operations, procedures and regulations

Skill and Ability to:

1. Think creatively and develop new procedures, methods or approaches to achieve program goals

2. Exercise initiative, ingenuity and sound judgment in identifying and solving difficult problems or projects

3. Work independently with little or no supervision

REQUIRED CONDITIONS OF EMPLOYMENT

As a condition of employment, the incumbent will be required to:

1. Work effectively in potentially stressful conditions in an enclosed and noisy jail environment with inmate crews and housed inmates

2. Interact with potentially violent and difficult individuals that includes exposure to potentially infectious diseases, profanity, offensive smells, lewd behavior and nudity

3. Work throughout Custody Operations Facilities that include inmate housing units, hallways, laundry room and employee break room in the presence of deputy escorted inmates and unescorted inmates

4. Successfully pass a complete background/suitability process, which includes a voice stress analysis, psychological examination and medical examination

5. Work flexible hours, shifts, weekends and holidays; and be subject to being available or called in during off-duty hours

6. Follow safety rules and procedures; and wear safety clothing and equipment

7. Possess a valid California Class C Driver's License

8. Wear a uniform

9. Provide a telephone number or means by which employee can be reached.

EXAMPLES OF EXPERIENCE, EDUCATION AND TRAINING

The knowledge, skills and abilities listed above may be acquired through various types of experience, education or training, typically:

Experience:
Four years experience in a laundry, janitorial, groundskeeper or building maintenance position that includes inventory control and the use of related equipment and tools, including two years of responsibility for monitoring and coordinating the work of others and some training and/or experience in the development and implementation of training plans.

OR

Two years experience performing duties comparable to those of the classifications of Inmate Services Specialist or Building Maintenance Worker in Monterey County.

PHYSICAL AND SENSORY REQUIREMENTS

The physical and sensory abilities required for this classification include:

1. Ability to see sufficient to inspect the Custody Operations facility and to supervise the behavior and activities of sentenced inmates

2. Ability to hear and speak sufficient to instruct and supervise inmate work crews, distinguish sounds and voices in a noisy environment and verbally communicate over a two-way radio

3. Physical strength to lift, push, pull or carry boxes, equipment or laundry carts weighing up to 50 pounds without assistance

4. Manual and finger strength and dexterity sufficient to operate laundry, janitorial, groundskeeping and maintenance equipment and tools

5. Physical stamina and mobility to walk, kneel, reach, twist, stoop, squat, and bend on irregular surfaces that may involve climbing stairs or ladders, or crawling in confined areas to inspect and perform repairs in the Custody Operations facilities and grounds and to load and unload laundry

6. Ability to walk and stand for long periods of time; work indoors and outdoors, including extreme heat and cold; tolerate extreme noise and vibrations; work in confined working spaces and work with or around chemicals, and mechanical and electrical tools

CLASS HISTORY

Class Code:	72A40
Established Date:	May 2005
Revised Date:	(New)
Former Title:	(New)

CLASS DATA

Job Group:	SC
EEO Category:	16
Work Comp. Code:	9420
Bargaining/Employee Unit:	J
FLSA:	C
MOCO OT:	Y

Prepared by: Leanne Johnston, Associate Personnel Analyst

Approved by:

/s/ Dianne Dinsmore
County Administrative Office

5/16/05
Date

Monterey County Sheriff's Office **Attachment A**
Inmate Welfare Trust Fund
For the Period From July 1, 2013 to June 30, 2014

INCOME			
Commissary Sales	$ 365,776		
Gov Pay Commission	436		
Inmate Care Commission	72,083		
Jail Signs Commission	30,690		
Telephone Commission	436,257		
TOTAL INCOME		$ 905,241	
EXPENSES			
Bank Supplies & Fees	4,666		
Building Maintenance	2,136		
Chaplain / Religious Services	63,152		
Education, Books	2,525		
Education, GED	5,040		
Employee Costs	706,716		
Entertainment	2,940		
Equipment (sml), Purchase	16,191		
Equipment, Repair	25,738		
Health, Drug, Alcohol Progran	167,004		
Hygiene Kits	30,251		
Miscellaneous Expense	64		
Office Supplies	7		
Postage	10,094		
Printing Services	66		
Legal Services	15,101		
Employee Conference Training	784		
Utilities	2,522		
TOTAL EXPENSES		1,054,996	
Net Income (Loss)		(149,755)	
Balance on June 30, 2013		183,272	
Balance on June 30, 2014		$ 33,517	

Report ID : MC-FIN-GA-0009_PRG

Run Date 08/19/2014

Run Time 04:37 PM

County Of Monterey

YTD Expenditure Summ

For Fiscal Year 2014 Thru Accounting Period 1!

Cover Page

Parameters and Prompts

Fund	001
Department	2300
Unit	8239
Fiscal Year	2014
Accounting Period	15
Fund	001 - General
Department	2300 - Sheriff-Coroner

Object	Object Name	BFY	YTD Expenditure	
Appropriation		SHE003 - Sheriff - Custody Operations		
Major Program		- NOT ENTERED		
Program Code		- NOT ENTERED		
Unit		8239 - Inmate Programs		
6111	Regular Employees	2014	400,506.31	706,716.19
6113	Overtime	2014	16,531.11	
6121	PERS	2014	63,109.19	
6122	Other Post-Employment Benefits	2014	4,174.00	
6131	FICA	2014	17,951.61	
6132	Medicare	2014	5,981.23	
6141	Flex Co Paid Insurance-Pretax	2014	6,573.51	
6142	Life Insurance	2014	326.60	
6145	Dental Insurance	2014	2,854.39	
6147	Vision Insurance	2014	634.13	
6148	Unemployment Insurance	2014	1,198.00	
6161	Workers Compensation Insurance	2014	75,795.84	
6171	Employee Assistance Program	2014	111.14	
6173	Flex-Benefit Plan Contribution	2014	92,650.50	
6174	Special Benefits	2014	653.33	
6175	Wellness Plan	2014	487.00	
6221	Clothing and Personal Supplies	2014	30,250.83	
6232	Communication Charges - Internal	2014	2,521.77	
6251	Cleaning and Janitorial	2014	351.70	
6261	Insurance - General Liability (Non-recoverable)	2014	2,278.56	
6262	Insurance - General Liability (Recoverable)	2014	6,709.24	
6266	Insurance - Property	2014	875.00	
6268	Insurance - Other	2014	391.00	
6311	Buildings & Improvements Maintenance - External	2014	2,135.69	
6321	Equipment Maintenance	2014	24,212.65	
6361	Noncapital Equipment	2014	7,783.36	
6382	Audio-Visual Service & Supply	2014	1,525.81	
6384	Miscellaneous Supplies	2014	0.00	
6401	Books/Periodicals and Other Subscriptions	2014	2,525.06	
6406	Mail Handling Charges	2014	3,021.78	
6409	Minor Equipment and Furnishings	2014	456.82	
6410	Office Supplies	2014	7.07	

6411	Postage and Shipping	2014	7,072.07
6412	Printing, Graphics and Binding Charge - External	2014	65.97
6601	Employee Benefit Unit Allocation	2014	1,225.00
6603	Data Processing Services - Internal	2014	2,779.00
6606	Legal Service - External	2014	15,101.00
6612	Temporary Help Services	2014	2,920.50
6613	Other Professional & Special Services	2014	235,195.80
6835	Other Special Departmental Expenses	2014	6,861.14
6861	Conference/Lodging/Meals/Travel	2014	783.66
7531	Equipment	2014	8,407.80
Total for Unit 8239 - Inmate Programs			**1,054,996.17**
Total for Program Code - NOT ENTERED			**1,054,996.17**
Total for Major Program - NOT ENTERED			**1,054,996.17**
Total for Appropriation SHE003 - Sheriff - Custody Operations			**1,054,996.17**
Total for Department 2300 - Sheriff-Coroner			**1,054,996.17**
Total for Fund 001 - General			**1,054,996.17**
Grand Total			**1,054,996.17**

RECEIVED
AUG 25 2014
FINANCE OFFICE/PROBATION

MEMORANDUM OF UNDERSTANDING
between
MONTEREY COUNTY
PROBATION DEPARTMENT
and the
SHERIFF'S OFFICE
for implementation of allocated monies from the
Public Safety Realignment Act (AB 109)

PURPOSE

This Memorandum of Understanding was developed and entered into by the Monterey County Probation Department, hereafter referred to as **Probation**, and the Sheriff's Office, hereafter referred to as **Sheriff**. The purpose of this Memorandum of Understanding is to specify the services to be provided by Sheriff's Office within the framework and mandates of AB 109.

BASIC GUIDELINES

Both parties agree to follow the guidelines of AB 109 as set forth in the legislation and in the guidelines and interpretations by the California Board of Corrections as indicated in **EXHIBIT A.** It is understood between the parties that AB 109 funding must be used prior to June 30, 2015, and that all expenditures of funds must adhere to the guidelines contained in the legislation. It also is understood that Probation bears oversight responsibility for administration of these grants and must monitor each participating agency's adherence to mandated guidelines.

The target population to be served through this MOU includes all inmates affected by AB 109 - treatment, overcrowding, parolees, and healthcare.

DUTIES AND RESPONSIBILITIES

Sheriff's Office:

1. Provide offender classification services in the Sheriff's Custody Bureau for all persons housed in Monterey County jail.

2. Provide two portable training and reentry classrooms with technology equipment and materials needed to complete GED requirements, vocational and college level coursework.

3. Provide one full-time (1.00 FTE) Deputy Sheriff who will provide classification services to ensure proper programmatic and housing of inmates.

4. Provide one full-time (1.00 FTE) Deputy Sheriff who will provide transportation to and from other county jails, Community Custody Program's or Fire Camps for placement of inmates to reduce overcrowding.

5. Provide one full-time (1.00 FTE) Criminal Intelligence Specialist who will assist the Classification Unit and Probation Officers placing sentenced inmates on Involuntary

Electronic Home Monitoring, measure recidivism rates and prepare statistics for various agencies and Sheriff's command.

6. Provide two full-time (2.0 FTE) Management Analysts III's to manage the research, development and implementation of evidence-based programs, and analysis of alternatives to detention; and to act as ombudsman for the provision of mandated or expanded medical and mental health services, and to coordinate any new processes.

7. The Deputy Sheriffs' Management Analyst's and the Criminal Intelligence Specialist are employees of the Sheriff's Office, which retains supervision and assignment of duties over its staff.

8. Collaborate with Probation to develop a protocol for the identification of sentenced persons who may be eligible and suitable for alternatives to detention programs.

9. Collaborate as necessary with other agencies involved in working with this population of individuals.

10. Maintain and provide on an on-going basis to Probation, or to Probation's contracted designee, whatever records are necessary to determine the effectiveness and outcomes of Sheriff's participation in this project.

11. Provide full access to the manner and specifics of the expenditures of all allocated funds from the grant.

12. Attend collaborative meetings, when necessary, to coordinate the overall implementation of the AB 109 funding.

13. Attend team meetings when necessary.

14. Communicate regularly with Probation regarding case management and program implementation.

15. Provide the Introspect Program, which encompasses assessment, testing and substance abuse intervention, and residential alcohol and drug treatment to inmates.

16. Upon mutual agreement, provide other services.

Probation Agrees to:

1. In FY 2014-15 provide a total of **$4,168,753** in allocated funds from AB 109, to be disbursed Intra-funds Transfer **(EXHIBIT B)** on a monthly basis upon presentation, and verification of receipts, time cards, or other proofs of expenditure. **SHERIFF's** Office estimates the following:

   - **$193,400** Training and Reentry classroom #1
   - **$160,000** Training and Reentry classroom #2

- **$156,853** for one full-time (1.00 FTE) Deputy Sheriff providing custody supervision;
- **$290,479** for two full-time (2.0 FTE) Management Analyst III's to manage research and analysis of alternatives to detention; and the other to act as an ombudsman, keeping current with mandated medical and mental health care services for clients, and to coordinate new processes to manage change;
- **$270,361** for one full-time (1.00 FTE) Deputy Sheriff providing transportation supervision and one full-time (1.00 FTE) Criminal Intelligence Specialist providing data evaluation;
- **$150,000** for catastrophic medical coverage for the jail;
- **$128,068** for the Introspect program;
- **$647,842** for incarceration fees; and
- **$2,171,750** for out of County jail beds.

Reimbursement for a service area may be in an amount more than or less than estimated in this agreement. The aggregate reimbursement shall not exceed the total agreement amount of **$4,168,753**.

2. Identify a Probation staff member(s) to be the primary contact to the Deputy Sheriff (Cmdr. Jose Mendoza).

3. Provide Sheriff with a list of the specific information needed for adequate record keeping and data gathering from all individuals who are referred.

4. Maintain a referral criterion that incorporates program eligibility and suitability requirements.

5. Implement any court-ordered conditions of probation that require participation and provide accountability.

6. Continue to integrate services including, but not limited to, community programs and alternatives to incarceration.

7. Participate in and work to increase opportunities to collaborate with other providers to improve or expand services.

8. Communicate regularly with Sheriff regarding program status via monthly meetings.

FISCAL

PROBATION will serve as the fiscal agent and manage the program and service delivery to the target populations for this MOU. **PROBATION** shall reimburse **SHERIFF** for services rendered as outlined in this MOU in accordance with the budget detailed in **(EXHIBIT C)**.

SHERIFF shall invoice **PROBATION** monthly. Sheriff shall submit a monthly claim for payment, with back-up documentation, no later than the 20th day following the month of service. Failure to submit reports will be deemed non-compliance with the grant terms and conditions and

may cause reimbursement to be delayed or denied. Expenses may only be incurred prior to June 30, 2015.

INDEMNIFICATION

The parties to this MOU are Departments of Monterey County; there are no indemnification or insurance requirements.

CONFIDENTIALITY

To the extent permitted by law, both Sheriff and Probation agree to share information regarding the court-involved individuals affected by this Memorandum of Understanding. Information from the individual's history shall be used only to gain an understanding of the needs of the client and to improve the planning, delivery and evaluation of services. The sharing of information related to specific case histories, as permitted by law, is deemed essential to interagency collaboration.

EFFECTIVE DATE OF MOU

This MOU shall become effective July 1, 2014 and will terminate on June 30, 2015. If funding is available for subsequent years, this agreement will be reviewed and may be updated or revised by mutual consent. This agreement may be terminated by either party upon (30) days advance written notice to the other party.

We, the undersigned, as authorized representatives of the **MONTEREY COUNTY SHERIFF'S OFFICE** and the **MONTEREY COUNTY PROBATION DEPARTMENT,** do hereby approve this document:

Manuel Real
Chief Probation Officer
Monterey County Probation Department

Date: 8/25/14

Scott Miller
Sheriff-Coroner
Monterey County Sheriff's Office

Date: _____

APPROVED AS TO FORM:

Traci Kirkbride
Deputy County Counsel
County of Monterey

Date: 8/20/14

APPROVED AS TO FISCAL PROVISIONS:

Gary Giboney
Deputy Auditor-Controller
County of Monterey

Date: 8-20-14

INTEGRITY OF LAND RECORDS IN MONTEREY COUNTY

Photograph in the public domain.

INTEGRITY OF LAND RECORDS IN MONTEREY COUNTY

SUMMARY

During the housing boom and subsequent bust beginning in 2008, Monterey County, like the rest of the nation, experienced a high number of deed transfers from purchases and foreclosures.[1] National media investigations uncovered widespread unlawful acts by banks, mortgage companies, loan servicers, and agents where robo-signers were used to expedite the processing of documents.[2] This came to light primarily during contested foreclosures but remains an issue across many land records.

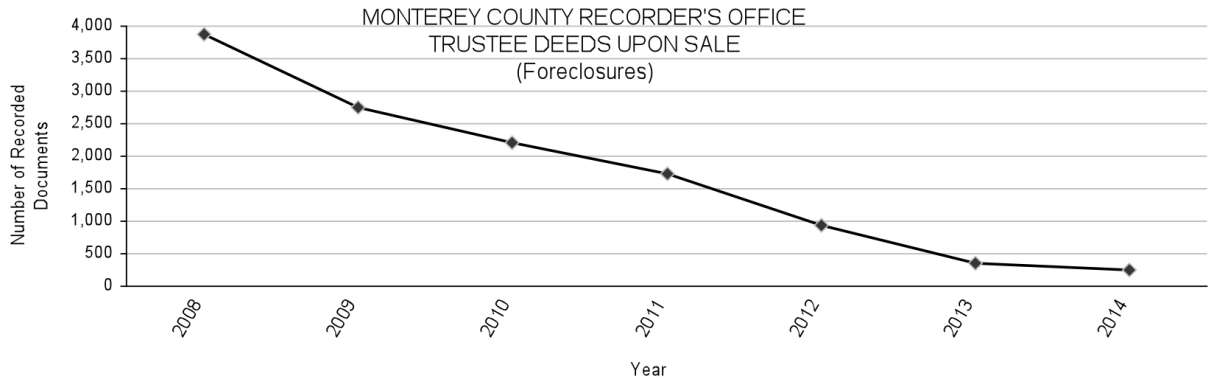

Figure 1.

As seen in Figure 1, foreclosures in Monterey County have been steadily decreasing since 2008. Unfortunately they are still a reality and have been predicted to increase due to the temporary relief measures expiring this year.[3] With the decline in foreclosures the data pool is smaller for an audit of Monterey County land records to look for robo-signing and other forms of fraud.

Preliminary investigation of selected documents indicate that robo-signing and other forms of fraud are still issues in Monterey County that should be addressed to ensure the accuracy and reliability of County land records. There are currently no systems in place at the County level to determine the validity of title transfers as authorized by legally recognized signatures. An audit of County land recordings by a real estate fraud expert would determine the extent of the problem in Monterey County.

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1 Monterey County recorded 3,875 Trustee's Deeds on foreclosure sales in 2008. See Figure 1 for the pattern of Trustee's Deeds for 2008-2014.

2 Robo-signing involves people who provide their signatures or sign for others on title transfer documents swearing to their accuracy without verifying any of the information.

3 Dayen, David (August 24, 2014). You Thought the Mortgage Crisis Was Over? It's About to Flare Up Again. New Republic. Retrieved from http://www.newrepublic.com/article/119187/mortgage-foreclosures-2015-why-crisis-will-flare-again

BACKGROUND

California is a non-judicial foreclosure state, meaning that when foreclosures are processed, homeowners can lose their homes without any court oversight. California law is designed to balance creditors' rights to an efficient remedy for default against homeowners' rights to assure lawful foreclosures. However, abuses of the system during the housing boom and bust were rampant. The California Department of Justice supposedly corrected the practices of robo-signing and other infractions in its settlements with the foreclosing institutions.[4] California's 2012 legislation, the Homeowner's Bill of Rights, was intended to offer additional protections for Californians in an effort to curb the abuses. In its investigation, the Monterey County Civil Grand Jury (MCCGJ) learned that these abuses are continuing and are evident in the land records of Monterey County.

The MCCGJ believes a system should be in place for the protection of the County's citizenry, to the extent it can be crafted and funded. With the Real Estate Fraud Prosecution Trust Fund in effect since 1995 (see discussion below), monies are available for investigations and prosecutions that can bring revenue to the County from statutory penalties of up to $75,000 per violation. *California Penal Code section 115.5 (a*).

Every person who files any false or forged document or instrument with the county recorder which affects title to, places an encumbrance on, or places an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence containing not more than four dwelling units, with knowledge that the document is false or forged, is punishable, in addition to any other punishment, by a fine not exceeding seventy five thousand dollars ($75,000). California Penal Code section 115.5(a).

INVESTIGATIVE METHODOLOGY

Researching this issue involved several different approaches including:

- Reviewing numerous recorded deeds from Monterey County public records
- Interviewing officials with the County Assessor and Clerk-Recorder Office, Monterey County District Attorney's Office, and two expert witnesses in the field
- Conducting phone interviews with staff of other County Recorders' Offices
- Examining the Monterey County District Attorney website

In addition, the following related materials were reviewed:

- Legal case reports
- Audits
- Relevant Statutory codes
- Relevant Legislative bills
- Report to the Monterey County Board of Supervisors
- Media reports

[4] In a March 3, 2015, article published in *USAToday* it was reported that one of the nation's largest banks entered into a $50 million settlement agreement with the Department of Justice for admittedly filing perjured and/or forged affidavits in 25,000 U.S. bankruptcy cases across the country. Yet, no one was apparently charged with a crime.

DISCUSSION

On April 17, 2015, California Attorney General Kamala D. Harris filed an Amicus Brief in the Supreme Court of the State of California in support of a plaintiff whose home was foreclosed upon by an institution that allegedly lacked the ownership interest in the plaintiff's mortgage and deed of trust. Because California is a non-judicial foreclosure state, the plaintiff was forced to bring litigation in order to void the sale and loss of her home. The Attorney General stated in her supporting brief that:

> [B]ecause there is no court oversight in a non-judicial foreclosure, it is important for there to be a way to challenge irregularities in that process. Empowering homeowners—who have the most at stake and the most to lose—with the ability to challenge improper loan assignments and other defects is the most direct way to accomplish that goal. Moreover, permitting such a cause of action would incentivize lending institutions to employ due diligence with respect to ensuring proper assignments and confirming who currently holds a loan.
>
> *Brief for the California Attorney General as Amicus Curiae, page 17, Tsvetana Yvanova v. New Century Mortgage et al. (2015) Case No. S218973*

HOME LOANS

Homeowners often take out a loan for the purchase or refinance of their home. A Deed of Trust is recorded in the County Recorder's Office records, which secures the lender's interest in the homeowner's obligation to pay off the note. In today's market, the loan is often sold to numerous other loan servicers over the life of the loan. Ideally, each time an Assignment of Deed of Trust occurs, notice should be given to homeowners, so they know who owns the note and whom to pay. However, California law does not require that Assignments of Deeds of Trust be recorded, with notice to the homeowners. The MCCGJ has learned that in some instances, Monterey County homeowners are contacted by different institutions for loan payments, and the homeowners have no knowledge of who actually owns the note and is entitled to the payments.

FORECLOSURES

When a homeowner falls on hard times and cannot make payments, foreclosure action is initiated, which can take as little as 120 days after the Notice of Default is recorded. Once initiated, a homeowner's only recourse to stave off foreclosure is to file a lawsuit. This is an expensive and arduous proposition unavailable to most who find themselves in these circumstances. Given that most homeowners are financially unable to retain legal counsel by the time they are faced with a pending foreclosure, the loss of the family home is almost a certainty. In addition, the language involved in these proceedings is technical and difficult to understand for most any layperson trying to navigate through the daunting procedures involving foreclosure.

Lending institutions and loan servicers continue to face litigation from state and federal agencies for industry abuses, including robo-signing. Robo-signing refers to the practice of signing deed of trust assignments, satisfactions, and other home loan related documents in an assembly-line fashion. It can mean someone forges an executive's signature, a lower-level employee signs his

or her own name with a fake title, or notary procedures are not in compliance. Robo-signing of foreclosure related documents (including Assignments of Deeds of Trust, Substitutions of Trustee, Notices of Default, Notices of Trustee Sale, and Trustee's Deeds Upon Sale) serves to cover up the fact that loan servicers and their agents cannot demonstrate the facts required to conduct a lawful foreclosure. The signature of an authorized bank or mortgage official on these legal documents is supposed to guarantee that this information is accurate. The recorded paper trail serves to ensure the legal chain of title on real property and has been the backbone of U.S. property ownership for more than 300 years. In its study of the current practice of not recording successive loan ownership interests, Harvard Law School concluded, "For the first time in the history of the nation, there is no longer an authoritative public record of interests in land in each county." [5]

For the first time in the history of the nation, there is no longer an authoratitave public record of interests in land in each county.[5]

If an unauthorized signer has executed legal documents at any time along the chain of title, over numerous sales of a loan to different institutions, the sale can be voided. However, because Assignments of Deeds of Trust are not required to be recorded, the homeowner may not know whom to contact when seeking alternatives to foreclosure, because the paper trail is not available. If the Trust Deed Assignments were available for inspection and review, robo-signing could be exposed and homeowners could be able to act appropriately. The MCCGJ learned that often Monterey County Assignments of Deeds of Trust are not recorded until *after* the foreclosure sale has taken place, further confusing the homeowner and disregarding the protection of transparency on the public record.[6]

The April 17, 2015 Amicus Brief of the California Attorney General, cited above, explains the dilemma:

> [T]he identity of the party having authority to foreclose on a homeowner matters. For example, if an invalid assignment had not occurred, the original lender may have exercised more leniency with missed payments or worked out a loan modification plan with the homeowner. And as described above, foreclosures have moved at an unprecedented pace in recent years. It is possible that another lender would have engaged in a slower process that would have given the homeowner more time to improve his financial situation or seek other alternatives to avoid foreclosure. … Although a plaintiff need not allege such facts [of defendants' deceptive practices] (which would, in many cases, be difficult if not impossible for the plaintiff to do without knowing the inner-workings of various banking institu-

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[5] Max Weinstein, Melanie Leslie, David J. Reiss, Joseph W. Singer, and Rebecca Tushnet. "MERS Litigation—Brief Of Amicus Curiae The Legal Services Center of Harvard Law School And Law Professors in Support of The Appellee, Montgomery County, Pennsylvania, Recorder Of Deeds, No. 14-4315" 2015 pg 35

[6] California Civil Code section 2932.5 provides that "Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee *if the assignment is duly acknowledged and recorded*." (Italics added for emphasis.)

tions), these examples demonstrate that being foreclosed on by the wrong party can result in tangible harm.

Brief for the California Attorney General as Amicus Curiae, page 15, Tsvetana Yvanova v. New Century Mortgage et al. (2015) Case No. S218973

Recorders' Legal Protections

The MCCGJ understands that the Monterey County Recorder's Office is working within its mandate in recording papers presented to it that appear to be facially valid, pursuant to Government Code section 27201, *et seq.*. However, upon a cursory inspection by a forensic document examiner, it was noted that these papers evidence numerous defects which are highly suspect and cast doubt on their validity and violate the public trust.

Audits Expose Violations

MCCGJ consulted with Marie McDonnell, a mortgage fraud and forensic analyst and certified fraud examiner with McDonnell Property Analytics, who has performed numerous audits exposing violations similar to those identified by her in the public records of Monterey County. Her preliminary findings identified the following:

> You have robo-signers galore; fraudulent assignments; unauthorized substitutions of trustee; MERS fraud; and a host of violations of California statutes.
>
> *McDonnell, Marie. Letter to MCCGJ. 17 January 2015. TS.*

In her expert opinion:

> Innumerable negative externalities result from this errant behavior, e.g., due process violations; wrongful foreclosure; wrongful displacement and homelessness; clouded and unmarketable titles; uncertainty in real estate transactions; devaluation in property values; erosion of the tax base; social unrest; undue burdens on social services and welfare programs; increased crime; vacancies; neighborhood blight, etc. the price of which is paid at the local level.
>
> *McDonnell, Marie. Letter to MCCGJ. 10 February 2015. TS.*

The problems addressed in this report are not limited to Monterey County. In fact they occur throughout California and the United States.

The Guilford County, North Carolina, Register of Deeds, Jeff L. Thigpen, filed a lawsuit in 2012 seeking to clean up 'the mess' in the County's property records registry which was blamed on fraudulently executed mortgage documents. He ultimately failed to prevail for lack of standing *on behalf of* Guilford County residents, but his arguments could be used by individuals personally affected by those recorded documents.

John L. O'Brien, Jr., the Register of Deeds for the Southern Essex District Registry of Deeds in Salem, Massachusetts, engaged Marie McDonnell to produce the *Forensic Examination of Essex*

Southern District Registry in 2011.[7] From that effort, a list of known robo-signers was created (see Appendix A.) Some of those listed robo-signers were also found in Monterey County land records (see Appendix B).

In February 2012 the Office of the Assessor-Recorder for San Francisco County, Phil Ting, published an independent audit called *Foreclosure in California: A Crisis of Compliance*. That audit found that 84% of the foreclosure files contained at least one clear legal filing violation and more than 66% contained multiple violations.[8]

These audits all addressed various aspects of county recording practices and the implications of numerous improprieties found throughout the process. Chain of title must be unbroken in order to ensure integrity and transparency in the land records system. It is the viewpoint of the MCCGJ that an audit of Monterey County land title records would uncover similar problems in its recorded documents. If handled proactively, best practices at the county, state and national levels can be established to ensure public trust in our land records system.

Real Estate Fraud Prosecution Trust Fund

California Government Code section 27388 provides for a Real Estate Fraud Prosecution Trust Fund to be financed by fees, up to $10 per document, charged for recording documents that do not require a documentary transfer tax (including Assignments of Deeds of Trust, Substitutions of Trustee, Notices of Default, Notices of Trustee Sale, and some Trustee's Deeds Upon Sale).[9] Monterey County now charges $9 per such document upon recording. Real Estate Fraud Prosecution Trust Fund money is earmarked for investigation and prosecution of real estate fraud. In its 2014 Annual Real Estate Report to the Board of Supervisors, the Monterey County District Attorney's Office reported that there was $508,188 in the Trust Fund for such purposes, and that it spent $446,514 in such investigative and prosecutorial activities. In that same year (2014), its actions resulted in a court judgement for approximately $180,000 in civil penalties, restitution and costs for the County and its affected Citizens, although the judgement is currently on appeal.

The County Board of Supervisors can, upon adoption of a resolution, raise the Trust Fund fee to $10 per document if the District Attorney sees fit and deems an increase is necessary. The motivation for doing so would be to more vigorously "fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes" (Government

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[7] In an effort to mitigate these problems, Southern Essex District Registry of Deeds has taken upon itself the task of notifying citizens that they will submit copies of documents of concern to the State's Attorney General's office to determine if there is a possible violation of Crime Against Property Statute—MGL Chapter 266, Section 35A (b) (4) to ensure the integrity of the land recordation system. They also support citizens by supplying an affidavit that must account for accurate signatures before they can be processed (Appendix C).

[8] This work was referenced in Max Weinstein, Melanie Leslie, David J. Reiss, Joseph W. Singer, and Rebecca Tushnet. "MERS Litigation – Brief Of Amicus Curiae The Legal Services Center of Harvard Law School And Law Professors in Support of The Appellee, Montgomery County, Pennsylvania, Recorder Of Deeds, No. 14-4315" 2015.

[9] To make matters worse, the very abusers of the system who assign the beneficial interest in a loan without notice to the homeowner do not contribute to the California Real Estate Fraud Prosecution Trust Fund, because they are not required to record their Assignments which would otherwise provide needed revenue to the County to investigate and deter those abuses

Code section 27388(b)), and would offset the cost of an audit of Monterey County land records. The law states that, "The intent of the legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims" (Government Code section 27388(f)).

From its inquiries and investigation, the MCCGJ found that the topic of real estate fraud deserves more attention than it has received. The MCCGJ has determined the need to hire a real estate forensic examination expert to work in collaboration with the District Attorney's Office to identify fraudulent elements of foreclosure documents that would be necessary to lead to successful prosecutions in Monterey County.

Increasing Awareness and Communication

Awareness of this issue and pressure to motivate change could start by simply talking about it. It was discovered that the Monterey County District Attorney's Office participates in at least two discussion groups [Tri-County Task Force and the California Consumer Protection Northern (Berkeley) Roundtable.] The newly forming Tri-County Task Force is comprised of government and private sector lawyers, realtors, lenders, title officers, notaries public and other professionals involved with real estate transactions. The Berkeley Roundtable group consists of members of the Office of the Attorney General, prosecutors and investigators from numerous District Attorneys' Offices located throughout central and northern California, and regularly invited guest speakers from a variety of state agencies, including the Department of Business Oversight, the Department of Consumer Affairs, the Bureau of Real Estate and the Contractor's State Licensing Board.

The San Francisco Recorder's office has instituted a referral website, HomeownershipSF.org, in San Francisco as a support for citizens of the city and county to seek help in negotiating the potential problems confronting homeowners faced with foreclosure. The Monterey County District Attorney's website has a link to Real Estate Fraud as they do for several other topics. This new link should make it easier for the public to access a means of communicating similar real estate concerns. (http://www.co.monterey.ca.us/da/real-estate-fraud.htm).

FINDINGS

F1. Monterey County land records contain robo-signatures.

F2. Monterey County has no system in place to identify robo-signatures.

F3. Monterey County Recorder's Office is mandated to record all documents that appear valid on their face.

F4. Monterey County collects $9 per document not requiring a documentary transfer tax for the Real Estate Fraud Prosecution Trust Fund.

F5. California Penal Code section115.5 provides for statutory penalties up to $75,000 for filing with the County Recorder fraudulent documents relating to the title of or security interest in real property.

F6. Real estate fraud concerns can be shared locally and statewide by the District Attorney's Office participation in legal network groups.

F7. Audits have spurred other states and counties to aggressively pursue and protect their residents against Real Estate Fraud.

F8. Monterey County District Attorney's Prosecution Fraud website does list a Real Estate Fraud Division: http://www.co.monterey.ca.us/da/real-estate-fraud.htm.

RECOMMENDATIONS

R1. Monterey County District Attorney's Office use its Real Estate Fraud Prosecution Trust Fund budget to immediately consult with a Certified Mortgage Fraud and Forensic Document Analyst to begin a land records audit.

R2. Monterey County District Attorney's Office pursue an increase for the Real Estate Fraud Prosecution Trust Fund fee to $10 per document, if needed, to fund the cost of a forensic examination.

R3. Monterey County District Attorney's Office, in cooperation with the Monterey County Recorder's Office, immediately create/obtain a current list of known robo-signers.

R4. The Monterey County Recorder's Office and the Monterey County District Attorney's Office work together to identify means by which fraudulent robo-signed documents can be identified early by the County and reported to the District Attorney.

R5. Monterey County District Attorney's Office research other jurisdictions' developing best practices that can be adapted to Monterey County to ensure land record documents are factually valid.

R6. The Monterey County District Attorney's Office inform the developing Tri-County Task Force and the California Consumer Protection, Northern ("Berkeley") Roundtable group about issues in land records at their next meetings.

R7. Update the Monterey County District Attorney's website to provide resources to homeowners and reflect changes in law and procedures regarding suspected fraud in land records.

RESPONSES REQUIRED

Pursuant to Penal Code § 933.05, the MCCGJ requests responses to all Findings and Recommendations R2 and R3 from the following governing body:

- Monterey County Board of Supervisors

Pursuant to Penal Code § 933.05, the MCCGJ requests responses to all Findings and Recommendations from the following elected officials:

- Monterey County District Attorney
- Monterey County Assessor/County Clerk/Recorder (R3 and R4 only)

REFERENCES

Legal Case Reports

Kathleen Lyons v. Santa Barbara County Sheriff's Office - California Court Of Appeal - Dec. 03, 2014

Jackson v. County of Amador - Cal App 4th 514 (2010)

Ann Marie DiLibero v. Mortgage Registration Systems, Inc. et al. Supreme Court No. 2013-190-Appel. (PC 11-4645)

Kristin Bain v. Metropolitan Mortgage Group INC. et al. Supreme Court of the State of Washington - No. 10-5523-JCC (2 cases)

United States of America v. Lorraine Brown - CASE No. 3:12-cr-198-J-2S - U.S. District Court Middle District of Florida, Jacksonville Division

Guilford County, North Carolina lawsuit v. LPS/DocX, MERSCORP, MERS, Inc and numerous banks, loan servicers and foreclosure specialists

Brief of the California Attorney General as Amicus Curiae, page 17, *Tsvetana Yvanova* v. *New Century Mortgage et al.* (2015) Case No. S218973. https://findsenlaw.files.wordpress.com/2015/04/final-amicus-brief-yvanova-pdf-pdf-attachment-copy.pdf.

Brief Of Amicus Curiae The Legal Services Center of Harvard Law School And Law Professors in Support of The Appellee, Montgomery County, Pennsylvania, Recorder Of Deeds, No. 14-4315" 2015 http://works.bepress.com/david_reiss/81.

Correspondence with Marie Mcdonnell

Audits and Related

Foreclosure in California: A Crisis of Compliance. www.sfassessor.org - *2013 Annual report*, San Francisco - HOMEOWNERSHIPSF - Carmen Chu, Assessor-Recorder plus support papers

Forensic Examination of Essex Southern District Registry. Notification of January 18, 2012 full scale Southern Essex District Register of Deeds fraudulent documents criminal investigation sent to Massachusetts Attorney General Martha Coakley, U.S. Attorney General Eric Holder and U.S. Attorney Carmen Ortiz.

Southern Essex District Registry of Deeds filing examples

Statutory Codes and Bills

California Government Code section 27297.7

California Government Code section 27388

California Government Code sections 27201, 27203, 27203.5, 27204

California Penal Code sections 115, 115.5, 532f

CA. Senate Rules Committee SB 1050 Chapter 197 - County of Monterey Recorder-County Clerk - new required advisory statement pursuant to Senate Bill 1050

Annual Real Estate Fraud Report for FY 2013-14 presentation to the Monterey County Board of Supervisors on September 30, 2014 - Legistar File Number 14-1060

Media Reports

April 11, 2013 States Fight Back Against MERS Mortgage Fraud - The Big Picture - Washingtons Blog.
Dec. 24, 2013 KEYT, KCOY, KKFX Santa Barbara County newscast
Nov. 21, 2014 Senka Huskic - Occupy.com
January 7, 2015, Dec. 16, 2014, Dec. 15, 2014 (2), Dec. 11, 2014, - WFTV.com - foreclosure protection news series
March 4, 2015 - *USAToday* - JPMorgan forks over $50M in 'robo-signing' pact with DOJ
Dayen, David (August 24, 2014). You Thought the Mortgage Crisis Was Over? It's About to Flare Up Again. New Republic. Retrieved from http://www.newrepublic.com/article/119187/mortgage-foreclosures-2015-why-crisis-will-flare-again.

Papers Pertaining to Office Websites and E-Recording

The Monterey County Recorder-County Clerk Website:
http://www.co.monterey.ca.us/recorder/default.asp.
Monterey County District Attorney's Website:
http://www.co.monterey.ca.us/da/.

Appendices A and B are a list of known robo-signer and just a few Monterey County land records with these robo-signers. The names on the list and their signatures are circled.

This document was generated for Southern Essex District Registry of Deeds and can be found at:
http://dtc-systems.net/2012/01/southern-essex-registry-deeds-robo-signers-list/

The Massachusetts Southern Essex Registry of Deeds provides a list of the robo-signers identified by McDonnell Property Analytics. The list of robo-signers is as follows:

Last name	First name	Last name	First name	Last name	First name	Last name	First name
ADAMS	MURIEL	BROOKS	BEVERLY	DIXON	DIANE	HICKERSON	ANISSA
AGUILAR	GREENE ANGELA	BROWN	CHINA	DOCX		HINDMAIN	BARBARA
ALAGIC	SANELA	BROWN	LORRAINE	DOKO	DHURATO	HINES	JONATHAN
ALFONSO	LUISA	BROWN	TRACEY I.	DUDDY	KAREN	HIRSCHFIELD	NANCY E.
AL-HAMMADI	WENDY ALBERTSON	BURGESS	JONATHAN	DUNNERY	JOHN A.	HIVELY	MELISSA
ALLEN	CHRISTINA	BURNETT	BRIAN	EADS	SHIRLEY	HOOD	BETHANY
ALLEN	GREG	BURTON	LINDA	ELLER	NANCY	HUANG	CHRISTINA
ALLOTEY	LIQUENDA	BUSBY	GINER	ELLIOT	KEVIN J.	HULL	DONA
ALTMAN	ROBERT	BUXTON	LAURA	ESPOSITO	THERESA	HUND	JOHN
AMICO	CHRISTOPHER	CARBIENER	JEFFREY	FLANAGAN	MELISSA	HUNTER	ROSE
ANDERSON	CHRISTINE	CARRICO	HEATHER	FOMBY	AARON	HUTCHISON	CHERYL
ANDERSON	EARITHA	CARTER	CHRISTINA	FORBES	MICHAEL	ISAACS	MARSHALL
ANDERSON	SCOTT	CASTRO	VILMA	FRENCH	KIM	IVEY	CHRIS
ANTONELLI	ANITA	CHAPMAN	CAROL	FRIEDMAN	ERIC	JACKSON	KEVIN
ARIAS	LETICIA	CHAPMAN	DORIS	FUERSTENBERGER	ANDREW	JOHNSON	ERICA A.
BACHMAN	MICALL	CHUA	JAMES	GAAL	EVA	JOHNSON	HEATHER
BACKUS	DEBORAH	CLARK	NATASHA	GAGLIONE	RENE	JOHNSON-SECK	ERICA A.
BAGGS	LORAINE	CLARK	VALERIE	GILLAND	SHAR	JONES	CHRISTOPHER
BAGLEY	BRENT	CO	DAVID	GONZALES	EILEEN	JONES	TINA
BAILEY	DENISE	COATS	KAY	GORLEWSKI	CATHERINE M.	JUSTICE	MELONEE
BAILEY	KIRSTEN	CODY	JOHN	GRAY	TINA	KAMINSKI	JOSEPH
BAILEY-SLYH	MARTHA	COFFMAN	MATTHEW	GREEN	LINDA	KEMP	KRISTEN
BALARA	LORRIANE	COLSTON	NORIKO	GREEN	MICHELLE	KENNERTY	HERMAN JOHN
BALDWIN	CHRISTIE	COOK	J.	GREENE	ALFONZO	KENNERTY	JOHN
BALDWIN	LISA	COOK	MARY	GREENE	MICHELLE	KENNERTY	JOHN HERMAN
BANASZEWSKI	MATTHEW	COOK	WHITNEY	GREENWALD	JACKIE	KERR	JOHN
BARRAZA	ASHLEY	COOK	WHITNEY K.	GUERRERO	IRENE	KINGSTON	PAT
BARTOW	HAL	CORNETT	CLAY	HALL	ROBERT G.	KIRCHNER	BAILEY
BELL	LANCE	COTTRELL	BETH	HALYARD	MICHELLE	KIRKLAND	TIFFANY
BENIO	DONNA	COTTRELL	JOHN	HANLON	CRAIG	KIRKPATRICK	DENNIS
BENIO	JENNIFER	COWEN	JEFFREY	HANNA	MICHAEL	KIST	MARY
BERZ	PAULA	CRAWCZUN	BARBARA	HARMAN	SELENA	KNISLEY	NICOLE
BESE	TERESA	CRITE	SHAWANNA	HARMON	ANDREW	KNOWLES	RITA
BISCHOF	MARK	CROFT	TOM	HARP	KORELL	KNOX	CECELIA
BISHOP	MARK	CURETON	NIKKI	HEISEL	DANA	KOCH	BILL
BLACKSTUN	NATE	DAGGS	NICOLE	HENRICKSON	CHUCK	KOWAL	VICTORIA
BLECHINGER	TONYA	DALTON	MARGARET	HERNDON	BARRETT	KRAKOVIAK	KIM
BLY	BRYAN	DAWSON	KIMBERLY	HERTZER	RENEE	KUSICH	BRYAN
BOLDUC	LORI	DHIMITRI	ALISA	HERZOG	LANCIA	LADE	JOSHUA
BORDER	TIFFANY	DIAN	MIKE	HESCOTT	LAURA	LAIRD	PAUL
BRIGNAC	DABORAH	DIETZ	DARLINE	HESSLER	WAYNE	LANDERS	VANESSA

The Massachusetts Southern Essex Registry of Deeds provides a list of the robo-signers identified by McDonnell Property Analytics. The list of robo-signers is as follows:

Last name	First name	Last name	First name	Last name	First name	Last name	First name
LANG	LUCY	PAYNE	JENNIFER	SNOW	BRITTANY	WRIGHT	KATHY
LAWRENCE	JOEL	PAYNE	LATRESA	SOBOTTA	JODI	WRIGHT	ROBERT
LAYTON	DERICK	PENDLEY	CHRISTOPHER	SORG	VICKI	WRIGHT	TRACY
LEE	PATRICIA	PEREZ	DAVID	SPOHN	STACY	WRIGHT	ROBERT
LEETE	JESSICA	PETERSON	ELENA	STEPHAN	JEFFREY	WRIGHT	TRACY
LENAIR	TOCCOA	PHIDAVANH	VIENGMOR	STEVENS	CYNTHIA		
LEONARD	SHEILA	PIRRITANO	LAURA	STOKES	COLEMAN		
LINDHORST	SUSAN	PORTER	KIMBERLY	SUAREZ	PETER		
LITTLE	KRISTI A.	PRATIKAKIS	KIM	TATE	ERIC		
LOVE	TOPAKO	PRICE	TAMARA	TAVERAS	OSCAR		
LUCAS	PATRICIA	PRINDLE	MICHAEL	THOMAS	CHERYL		
LYNCH	MARY	RAYMOND	TONY	THOMAS	HELEN		
MADEJA	NANCY	REIN	JOANN	THOMAS	TAWANNA		
MANNING	SHANNON	RHYNE	LISA	THOMAS	TYWANNA		
MARTINEZ	KIM	RICE	RHOENA	THORESEN	LINDA		
MATHIS	ELIZABETH	RIVARD	AMY	THORNE	KAREN ELIZABETH		
MCGOWAN	MARY JO	RIVERA	SILENA	TINOCO	CARLA		
MCKINNON	ELSA	RIVERS	CHRISTEL	TOLAR	BARBARA		
MCKINZEY	BRENDA	ROBERTS	HANNAH	TOPP	BRENDAN		
MEDINA	MONICA	ROBINSON	KEN	TROWBRIDGE	CHRISTINA		
MEHARG	RON	ROGERS	YVONNE	TURNER	SUSAN		
MICHIE	M. KELLY	RUFF	KELLY	TURNER	TIAQUANDA		
MILLER	SHARITA	RYBARCZYK	ROBERT	TURNER	VERONICA		
MISKELL	MEGAN	SACDOVAL	TAMERA	VADNEY	MARIA		
MOONAN	DEBBIE	SAERER	CHRISTINA ANNE	VAUGN	GARY		
MOORE	CRYSTAL	SANTOS	MONIQUE	VIVEROS	MELISSA		
MORALES	NOEMI	SCHEFFEY	SHELLY	WALSH	THOMAS		
MORCAN	LILIANA	SCHEINER	SCOTT	WARREN	VALENCIA		
MORGAN	COURTNEY	SCHILLING	THOMAS	WEINAND	GINA		
MORRIS	JAMES	SCHLEPPY	GREG	WEST	DALTON ALLISON		
MOUA	SHOUA	SCHULTZ	THEODORE	WHITE	CAROLYN		
MURAY	SUCHAN	SCROGGINS	ROBERT	WILEMAN	D. M.		
NADEAU	MICHAEL	SEIDEL	KEITH	WILKEN	RICK		
NELSON	JOYCE	SELMAN	KERI	WILLIAMS	ALICIA		
NOLAN	ANGELA	SHAW	JENNIFER	WILLIAMS	CHAMAGNE		
NOLAN	FRANCIS	SHELTON	NIKOLE	WILLIAMS	DAWN		
NORD	III HAROLD	SHPITSEK	ALLA	WILLIAMS	SANDRA		
NORIEGA	MARTI	SICILIA	JOSE	WILLIAMS	YOLANDA		
NORTH	BECKY	SIMMONS	ELLIS	WILLIS	TIMOTHY		
OHDE	JESSICA	SMITH	CINDY	WOSNAK	JILL		
PARDO	JUAN	SMITH	KATHY				

Trustee Sale No. [redacted] Loan No. [redacted] Title Order No. [redacted]

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On April 29, 2009 before me, CARLA DODD, "Notary Public", personally appeared Deborah Brignac, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla Dodd (Seal)

CARLA DODD
Commission # 1672174
Notary Public - California
Los Angeles County
My Comm. Expires Jun 3, 2010

END OF DOCUMENT

RECORDING REQUESTED BY
CALIFORNIA RECONVEYANCE COMPANY

AND WHEN RECORDED MAIL TO
CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer
CRMARIA [redacted]
11:48:34
DOCUMENT: [redacted] Titles: 1/ Pages: 2
Fees.... 13.00
Taxes...
Other....
AMT PAID $13.00

Space above this line for recorder's use only

Trustee Sale No. [redacted] Loan No. [redacted] Title Order No. [redacted]

IMPORTANT NOTICE

NOTE: After having been recorded, this Assignment should be kept with the Note and the Deed of Trust hereby assigned.

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Bank of America, National Association as Successor by merger to LaSalle Bank National Association as Trustee for WMALT 2005-AR1 all beneficial interest under that certain Deed of Trust dated 07/28/2005, executed by [redacted] as Trustor; to OLD REPUBLIC TITLE COMPANY as Trustee; and Recorded [redacted] Book , Page , Instrument [redacted] of official records in the Office of the County Recorder of MONTEREY County, California. **APN:** [redacted] **Situs:** [redacted], MARINA, CA 93933

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part, the real property described therein.

DATE: April 29, 2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Deborah Brignac
Deborah Brignac, Vice President

Recording Requested By
ServiceLink
RECORDING REQUESTED BY
CALIFORNIA RECONVEYANCE COMPANY
AND WHEN RECORDED MAIL TO
CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311
800-892-6902

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer
RANJELIQUE [redacted]
14:23:45
DOCUMENT: [redacted]
Titles: 1/ Pages: 3
Fees... 16.00
Taxes. .
Other...
AMT PAID $16.00

Trustee Sale No. [redacted]
Loan No. [redacted]
Title Order No. [redacted]

Space above this line for recorder's use only

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 07/28/2005. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 08/24/2009 at 10:00 AM, CALIFORNIA RECONVEYANCE COMPANY as the duly appointed Trustee under and pursuant to Deed of Trust Recorded [redacted] Book , Page , Instrument [redacted] of official records in the Office of the Recorder of MONTEREY County, California, executed by: [redacted] A SINGLE WOMAN, as Trustor, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,(MERS),SOLELY AS NOMINEE FOR LENDER ALLIANCE BANCORP, AND LENDER'S SUCCESSORS AND ASSIGNS., as Beneficiary, will sell at public auction sale to the highest bidder for cash, cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state. Sale will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to the Deed of Trust. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, interest thereon, estimated fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

Place of Sale: AT THE FRONT OF THE MAIN ENTRANCE OF THE ADMINISTRATION BUILDING LOCATED AT 168 W. ALISAL STREET, SALINAS, CA 93901

Legal Description: [redacted] AS SHOWN ON MAP ENTITLED, [redacted] FILED A[redacted] IN THE OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY, IN VOLUME [redacted] "CITIES AND TOWNS", AT PAGE [redacted]
EXCEPT THEREFROM ONE-HALF INTEREST IN OIL AND MINERAL RIGHTS AS RESERVED IN THE DEED FROM [redacted] RECORDED [redacted] IN VOLUME [redacted] PAGE [redacted] OFFICIAL RECORDS.

Amount of unpaid balance and other charges: $[redacted] (estimated)

Street address and other common designation of the real property: [redacted]
MARINA, CA 93933
APN Number: [redacted]

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. The property heretofore described is being sold "as is".

RECORDING REQUESTED BY
CALIFORNIA RECONVEYANCE COMPANY
AND WHEN RECORDED MAIL TO
CALIFORNIA RECONVEYANCE COMPANY
9200 Oakdale Avenue
Mail Stop: CA2-4379
Chatsworth, CA 91311

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer
CRMARIA [redacted]
11:48:34
DOCUMENT: [redacted]
Titles: 1/ Pages: 1
Fees.... 10.00
Taxes. .
Other...
AMT PAID $10.00

Space above this line for recorder's use only

Trustee Sale No [redacted] Loan No [redacted] Title Order No. [redacted]

SUBSTITUTION OF TRUSTEE

WHEREAS, [redacted] A SINGLE WOMAN, was the original Trustor, OLD REPUBLIC TITLE COMPANY, was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,(MERS),SOLELY AS NOMINEE FOR LENDER ALLIANCE BANCORP, AND LENDER'S SUCCESSORS AND ASSIGNS., was the original Beneficiary under that certain Deed of Trust dated 07/28/2005, Recorded [redacted] Book , Page , Instrument [redacted] of official records in the office of the Recorder of MONTEREY County, California, and

APN: ([redacted] Situs: [redacted], MARINA, CA 93933
WHEREAS, Bank of America, National Association as Successor by merger to LaSalle Bank National Association as Trustee for WMALT 2005-AR1, the undersigned, is the present Beneficiary under said Deed of Trust, and,
WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in the place of and stead of said original Trustee thereunder.

Now, THEREFORE, the undersigned Beneficiary hereby substitutes CALIFORNIA RECONVEYANCE COMPANY, 9200 Oakdale Avenue CA2-4379, Chatsworth, CA 91311, as Trustee of Said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number indicates the plural.

DATE: April 29, 2009
Bank of America, National Association as Successor by merger to LaSalle Bank National Association as Trustee for WMALT 2005-AR1 by JPMorgan Chase Bank, National Association, as attorney-in-fact

Deborah Brignac
Deborah Brignac, Vice President

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On April 29, 2009 before me, CARLA DODD , "Notary Public" personally appeared Deborah Brignac , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla Dodd (Seal)

END OF DOCUMENT

CARLA DODD
Commission # 1672174
Notary Public - California
Los Angeles County
My Comm. Expires Jun 3, 2010

Stephen L. Vagnini
Monterey County Recorder

CRMELISSA
[redacted]
11:20 AM

LSI TITLE CO-ER SIMPLIFILE

DOCUMENT: [redacted]

Titles:	1	Pages:	3
Fees			27.00
Taxes . . .			.00
Other . . .			.00
AMT PAID			$27.00

Recording requested by:

And when recorded mail to:

Select Portfolio Servicing, Inc.
3815 S.W. Temple
Salt Lake City, UT 84115-4412

Forward tax statements to the address given above

TS No.: [redacted]
Order No.: [redacted]

Space above this line for recorders use

Trustee's Deed Upon Sale

A.P.N.: [redacted]

Exempt pursuant to Cal Rev and Tax Code §11926

THE UNDERSIGNED GRANTOR DECLARES:
The Grantee Herein **IS** the Foreclosing Beneficiary
The amount of the unpaid debt together with costs was: [redacted]
The amount paid by the grantee at the trustee sale was: [redacted]
The documentary transfer tax is: NONE
Said property is in the City of: **MARINA**, County of **MONTEREY**

ALAW, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

U.S. Bank NA, successor trustee to Bank of America, NA, successor to LaSalle Bank NA, as trustee, for the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005- AR1 Trust

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **MONTEREY**, State of California, described as follows:

[redacted] AS SHOWN ON MAP ENTITLED, '[redacted]', FILED [redacted] IN THE OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY, IN VOLUME [redacted] "CITIES AND TOWNS", AT PAGE [redacted] EXCEPT THEREFROM ONE-HALF INTEREST IN OIL AND MINERAL RIGHTS AS RESERVED IN THE DEED FROM [redacted] RECORDED [redacted] IN VOLUME [redacted] PAGE [redacted] OFFICIAL RECORDS.

In compliance with California Civil Code 2923.5(c) the mortgagee, trustee, beneficiary, or authorized agent declares: that it has contacted the borrower(s) to assess their financial situation and to explore options to avoid foreclosure; or that it has made efforts to contact the borrower(s) to assess their financial situation and to explore options to avoid foreclosure by one of the following methods: by telephone; by United States mail; either 1st class or certified; by overnight delivery; by personal delivery; by e-mail; by face to face meeting.

DATE: 08-03-2009

SEE ATTACHED EXHIBIT

CALIFORNIA RECONVEYANCE COMPANY, as Trustee
(714) 259-7850 or www.fidelityasap.com
(714) 573-1965 or www.prioritypostingcom

DEBORAH BRIGNAC, VICE PRESIDENT
9200 OAKDALE AVE
MAILSTOP N110612
CHATSWORTH, CA 91311

CALIFORNIA RECONVEYANCE COMPANY IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

ALAW MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

TS No.: [redacted]

Date: MAR 10 2015

ALAW

By: Yadira Jimenez
Its: Authorized Signor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of: **California**)

County of: **San Diego**)

MAR 10 2015

On _____ before me, COURTNEY PATANIA a notary public, personally appeared Yadira Jimenez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under *PENALTY OF PERJURY* under the laws of the State of **California** that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. **(Seal)**

Signature
COURTNEY PATANIA

COURTNEY PATANIA
Commission # 2044156
Notary Public - California
San Diego County
My Comm. Expires Nov 1, 2017

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by [redacted], **A SINGLE WOMAN**, as trustor, dated **7/28/2005**, and recorded on [redacted] as instrument number [redacted] of Official Records in the office of the Recorder of **MONTEREY**, California, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on [redacted] instrument no [redacted], Book **N/A**, Page **N/A**, of Official records. Trustee having sent a Notice of Default and Election to Sell within ten/thirty days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

Default occurred as set forth in a Notice of Breach and Election to Sell which was recorded in the office of the Recorder of said County.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Breach and Election to Sell or the personal delivery of the copy of the Notice of Breach and Election to Sell and the posting and publication of copies of the Notice of Sale have been complied with.

Said property was sold by said Trustee at public auction on [redacted]15 at the place named in the Notice of Sale, in the County of **MONTEREY**, California, in which the property is situated. The foreclosing beneficiary, being the higgest at such sale, became the purchaser of said property and paid therefore to said trustee the amount being [redacted] in lawful money of the United States, or by the satisfaction, pro tanto, of the obligations then secured by said Deed of Trust and instructed said trustee to vest this Trustee's Deed Upon Sale to said Grantee.

THIS INSTRUMENT IS RECORDED AT THE REQUEST OF SERVICELINK AS AN ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION OR AS TO ITS EFFECTS UPON TITLE

TICOR TITLE

RECORDING REQUESTED BY
Same as below

AND WHEN RECORDED MAIL TO

OneWest Bank, F.S.B.
Foreclosure Department
888 East Walnut Street
Pasadena, CA 91101

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRREBECCA [redacted]
11:42:17

DOCUMENT: [redacted]

Titles: 1/ Pages: 1
Fees.... 12.00
Taxes...
Other...
AMT PAID $12.00

Space above this line for recorder's use only

Trustee Sale No. [redacted] Loan No. [redacted] Title Order No [redacted]

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Deutsche Bank National Trust Company as Trustee for ALLIANCE 2007-OA1 all beneficial interest under that certain Deed of Trust dated 10-25-2006, executed by [redacted] HUSBAND AND WIFE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, as Trustor, to FIRST AMERICAN TITLE as Trustee; and Recorded [redacted] Book, Page, Instrument [redacted] of official records in the Office of the County Recorder of MONTEREY County, California. **APN:** [redacted] **Situs:** [redacted] MONTEREY, CA 93940. LEGAL DESCRIPTION AS MORE FULLY DESCRIBED ON SAID DEED OF TRUST.

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part, the real property described therein.

DATE: 11-19-2009

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR ALLIANCE BANCORP

Brian Burnett Assistant Vice President

STATE OF Texas
COUNTY OF Travis

On 2-18-10 before me, Krystle Price, a Notary Public in and for said county, personally appeared Brian Burnett personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said County and State

KRYSTLE GISSELLE PRICE
Notary Public, State of Texas
My Commission Expires
June 15, 2011

END OF DOCUMENT

Exhibit

DECLARATION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 2923.54

Pursuant to California Civil Code Section 2923.54, the undersigned loan servicer declares as follows:

1. It has obtained from the commissioner a final or temporary order of exemption pursuant to Section 2923.54 that is current and valid on the date the notice of sale is filed; and

2. The timeframe for giving notice of sale specified in subdivision (a) of Section 2923.52 does not apply pursuant to Section 2923.52 or Section 2923.55.

JPMorgan Chase Bank,
National Association

Name: Ann Thom
Title: First Vice President

END OF DOCUMENT

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRLUCY [redacted]
12:29:07

DOCUMENT: [redacted]
Titles: 1/ Pages: 1
Fees.... 10.00
Taxes...
Other...
AMT PAID $10.00

Recording requested by:

When recorded mail to:

Indymac Bank FSB
6900 Beatrice Drive
Kalamazoo, MI 49009

Space above this line for recorders use

TS # [redacted] Order # [redacted] Loan # [redacted]
MERS MIN No.: [redacted] Investor No [redacted]

Assignment of Deed of Trust

For value received, the undersigned corporation hereby grants, assigns, and transfers to

IndyMac Federal Bank FSB

all beneficial interest under that certain Deed of Trust dated **12/22/2006** executed by [redacted] **A MARRIED MAN AS HIS SOLE AND SEPERATE PROPERTY**, as Trustor(s) to **OLD REPUBLIC TITLE COMPANY**, as Trustee and recorded as Instrument No. [redacted] on [redacted] in Book **xxx**, Page **xxx** of Official Records, in the office of the County Recorder of **MONTEREY** County, **CA** together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

Effective Date: 1/16/2009 8:17 PM

"MERS" MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. SOLELY AS NOMINEE FOR ALLIANCE BANCORP

By: Erica A. Johnson-Seck Vice President

State of Texas)
County of Williamson)

On 3/6/09 before me, Mai Thao a notary public ,personally appeared Erica A. Johnson-Seck, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mai Thao (Seal)

MAI LA THAO
Notary Public, State of Texas
My Commission Expires
June 15, 2011

END OF DOCUMENT

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRSUSY [redacted]
12:18:57

DOCUMENT: [redacted]
Titles: 1/ Pages: 1
Fees.... 10.00
Taxes...
Other...
AMT PAID $10.00

Recording requested by:

When recorded mail to:

Washington Mutual Bank, FA
7255 Baymeadows Way
Jacksonville, FL 32256

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: [redacted] Ln No.: [redacted] TS No.: [redacted]
Order No.: [redacted]

Assignment of Deed of Trust

For value received, the undersigned corporation hereby grants, assigns, and transfers to

Bank of America, National Associationas successor by merger to "LaSalle Bank NA as trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR2 Trust

All beneficial interest under that certain Deed of Trust dated **12/8/2005** executed by [redacted] **A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY**, as Trustor(s) to **CHICAGO TITLE COMPANY**, as Trustee and recorded as Instrument No. [redacted] on [redacted], in Book **xxx**, Page **xxx** of Official Records, in the office of the County Recorder of **MONTEREY** County, **CA** together with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of Trust.

Dated: 2/21/2009 10:27 AM

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ALLIANCE BANCORP

By: Barbara Hindman
Vice President

State of Florida)
County of Duval)

On 4/16/09 before me, Rose Hunter a notary public ,personally appeared Barbara Hindman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rose Hunter (Seal)

ROSE HUNTER
Notary Public - State of Florida
My Comm. Expires Feb 1, 2013
Commission # DD 856913

END OF DOCUMENT

BV #[redacted]

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged and sworn to and subscribed before me this 5th day of June, 2014 by ROBERT G. HALL, ASSISTANT SECRETARY, on behalf of the corporation.

PERSONALLY KNOWN ✓ OR PRODUCED IDENTIFICATION_____TYPE OF IDENTIFICATION PRODUCED _____

WITNESS my hand and official seal

By:_____
JANE R. DIAZ

JANE R. DIAZ
MY COMMISSION # FF 080595
EXPIRES: February 2, 2018
Bonded Thru Notary Public Underwriters

Prepared By: Maria Isabel Puerto
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

END OF DOCUMENT

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRDAWN [redacted]
10:49:46

DOCUMENT: [redacted]

Titles: 1/ Pages: 2
Fees.... 24.00
Taxes...
Other... 4.00
AMT PAID $28.00

WHEN RECORDED MAIL TO:
RECORD & RETURN TO 15795
CT LIEN SOLUTIONS
P.O. BOX 29071
Glendale, CA 91209-9071
43813804-CA55-Monterey

BV LOAN NO: [redacted]

LOAN AMOUNT: $[redacted]
MIN # [redacted]
Phone: 1-888-679-6377

CORRECTIVE ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS** as **("ASSIGNOR/GRANTOR")**, whose address is 1901 East Voorhees Street, Suite C., Danville, IL, 61834, hereby grants, conveys, assigns to: **The Bank of New York Mellon, fka The Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., Alternative Loan Trust 2006-OA1, Mortgage Pass-Through Certificate Series 2006-OA1, ("Assignee/Grantee")**, whose address is 101 Barclay Street, 4W., New York, NY 10286, all beneficial interest under that certain Deed of Trust dated: **01/24/2006** and executed by: [redacted] as borrower(s) to: Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successor and assigns a s Origin al Lender and certain Deed of Trust recorded o n [redacted] as Instrument # [redacted] In Monterey County, State of California

PROPERTY ADDRESS: [redacted] **CASTROVILLE, CA 95012-9702**

This Corrective Deed of Trust is being filed to correct the Assignor's name on the Assignment of Deed of Trust recorded on [redacted] in Book [redacted] of the Public Records of Monterey, County, State of California.

Dated: JUNE 5, 2014

ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC., ITS SUCCESSORS AND ASSIGNS

By:_____
ROBERT G. HALL, ASSISTANT SECRETARY

JOHN L. O'BRIEN, JR.
Register of Deeds
(978) 542-1722
Fax: (978) 744-7679
www.salemdeeds.com
jl.obrien@sec.state.ma.us

Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

SAMPLE

This is to advise you that the document submitted by your office has been recorded in the Southern Essex District Registry of Deeds at Book , Page .

Please also be advised, that I have forwarded a copy of this document to the Massachusetts Attorney General's Office for review as to whether or not there is a possible violation of the Crime Against Property Statute, specifically MGL Chapter 266, Section 35A (b) (4) that provides that:

> "Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

As the Register of Deeds and the keeper of the records for the Southern Essex District, it is my responsibility to ensure the integrity of the land recordation system. I am very concerned that some business practices that have been utilized have adversely affected homeowner's property rights.

Please be advised that this Registry intends to work diligently with not only the Massachusetts Attorney General's Office, but also with other regulatory agencies to ensure that the real property documents recorded here are not fraudulent and do not effect the homeowners of Essex County in an adverse way.

Thank you for your attention to this matter.

John O'Brien
Register of Deeds
Southern Essex District

JOHN L. O'BRIEN, JR.
Register of Deeds
(978) 542-1722
Fax: (978) 744-7679
www.salemdeeds.com
jl.obrien@sec.state.ma.us

Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

SAMPLE

RE:

We are in receipt of the document submitted by your office relating to the above property, which is in replacement of the document we returned to you on . This is to advise you that the document submitted by your office has been recorded in the Southern Essex District Registry of Deeds at Book , Page . However, based on the fact that the original document was signed by a number of known robo-signers, I have forwarded a copy of this document to the Massachusetts Attorney General's Office for review as to whether or not there is a possible violation of the Crime Against Property Statute, specifically MGL Chapter 266, Section 35A (b) (4) that provides that:

> "Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

As the Register of Deeds and the keeper of the records for the Southern Essex District, it is my responsibility to ensure the integrity of the land recordation system. I am very concerned that some business practices that have been utilized have adversely affected homeowner's property rights.

Please be advised that this Registry intends to work diligently with not only the Massachusetts Attorney General's Office, but also with other regulatory agencies to ensure that the real property documents recorded here are not fraudulent and do not effect the homeowners of Essex County in an adverse way.

Thank you for your attention to this matter.

John O'Brien
Register of Deeds
Southern Essex District

Commonwealth of Massachusetts
SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

JOHN L. O'BRIEN, JR.
Register of Deeds
(978) 542-1722
Fax: (978) 542-1721
www.salemdeeds.com

SAMPLE

RE: Request for Recording of (the "Recording")

Enclosed please find your Recording. Based upon the fact that it is signed by a number of known robo-signers, I am returning it to you. I will record it upon receipt of a signed affidavit, a copy of which I attach hereto (the "Affidavit"). The Affidavit must be signed under the pains and penalties of perjury that the Recording is accurate and the signatures of both the signatory on the Recording and notary public's signature are authentic. As I am sure you are aware, MGL Chapter 266, Section 35A (b) (4) provides that:

> "Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

Once the Affidavit is prepared and notarized, please forward it and your Recording to my attention with a recording fee of $75 for each document, so in this case $150 and I will make sure the documents are put on record forthwith.

As the Register of Deeds for the Southern Essex District of Massachusetts and the keeper of the records, I am very concerned with some lenders business practices and how they may affect homeowner's chains of title. I truly believe in the integrity of the land recordation system. Thank you for your attention to this important matter

Sincerely,

John O'Brien
Register of Deeds
Southern Essex District

Affidavit in Support of Filing

I, _____ ("Declarant"), am a resident of _____, County of _____, State of _____, and do hereby certify, swear or affirm, and declare that I am competent to give the following declaration based on my personal knowledge, and that the following facts and things are true and correct:

1. I am attorney duly licensed to practice law and in good standing in _____.

2. I am representing _____ (the "Client").

3. This Affidavit is in support of the following recording:

4. The purpose of the underlying filing(s) is/are:

5. I have personally communicated on or about _[date]_____ with an employee or employees of the Client, whose names are_____, who (A) personally reviewed the documents being submitted for filling, (B) personally reviewed all required supporting documentation of corporate and personal authority ("Supporting Documents"), and (C) confirmed the accuracy of all documents and authenticity of all signatures, including the notary.

6. I have received and reviewed all Supporting Documentation.

7. Based on such communications, review of documents and my own personal inquiry into the Client's past and current standards and practices, I affirm that underlying filing(s) contain no false or questionable statements of fact or law.

8. Should any of the statements made herein be incorrect and the Recording corrupt or cloud the homeowner's chain of title, I will indemnify and hold anyone in the chain thereafter harmless.

   PROPERTY ADDRESS: _____

9. I am fully aware of and understand M.G.L. c. 266 § 35A.

Signed under pains and penalties of perjury.

WITNESS my signature this _____ day of _____ 20__ .

_____
Signature of Declarant

STATE or Commonwealth of _____ County _____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which was _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____
Notary Public:
My commission expires: _
(Official signature and seal of notary)

SAMPLE

FAMILY AND CHILDREN'S SERVICES— A STRESSFUL WORK ENVIRONMENT

Photograph titled "Holding Hands" by rebelrhodes, in the public domain at http://i183.photobucket.com/albums/x46/rebelrhoads/hands.jpg

FAMILY AND CHILDREN'S SERVICES— A STRESSFUL WORK ENVIRONMENT

SUMMARY

The Family and Children's Services (FCS) Branch of the Monterey County Department of Social Services (DSS) provides Child Protective Services (CPS) within Monterey County. The Monterey County Civil Grand Jury (MCCGJ) received a complaint about this FCS Branch claiming that the work environment was overly stressful. The complainant also stated that morale was very poor, there was a lack of employee training prior to assignment to new positions, and there was insufficient staffing especially in certain units. Therefore the MCCGJ decided to investigate.

Based on this investigation, the MCCGJ determined that FCS *does* have a stressful work environment. Factors contributing to this environment include insufficient orientation and training prior to new assignments, low office morale, poor communication between supervisors and staff, lack of transparency, and shortage of staff.

BACKGROUND

The mission of FCS is to prevent the occurrence of child abuse and neglect. Service goals are to keep children and youth safe and within the protection of a permanent family.

FCS has several units, which cover many different facets needed to provide all components of child protective services. The agency staffs a training division that supports all of the units.

The CPS function starts at the Intake unit, where a staff social worker receives calls on an emergency hotline. The social worker determines whether the call is appropriate for FCS response. If it is not, the caller is referred to the appropriate community-based agency. If the social worker determines that FCS should handle the call, the call is referred to one of two Emergency Response (ER) units. Once a social worker in the ER unit receives the referral, he or she must determine the urgency of the response needed; that is, whether a social worker needs to go to the site immediately or if the situation can wait, in which case the social worker must respond in ten days. As part of this emergency response, there may be also be cross-notification with law enforcement.

The FCS offices are located in Salinas. Before September 2014, the Department had three offices: Salinas, Seaside and King City. The Department is now centralized and operates solely out of the Salinas office. This change of office locations in and of itself produces stress, but this type of stress should be time-limited. This reorganization was the result of an administrative decision to improve efficiency in the services provided.

METHODOLOGY

To determine the validity of the complaint, the MCCGJ conducted an investigation that included the following:

- Evaluation of procedures and protocols of FCS
- Interview of complainant
- Interviews of supervisors
- Interviews of line staff
- Review of personnel files
- Review of training records and tabulation of actual hours spent in training.

DISCUSSION

As the MCCGJ looked into the complaint received, some questions were postulated as a guide for research:

-- Does the Monterey County FCS Branch provide sufficient training and appropriate staff assignments that create a work environment that effectively supports the function of the Department and the services it provides?

-- Do all supervisors know how to work with staff, bringing out each one's talents and abilities, especially with new and inexperienced workers?

-- Do new supervisors receive similar support and assistance from their program managers?

-- Are the program managers receiving adequate and timely reviews by their own supervisor, the branch director?

In order to answer these questions, the MCCGJ reviewed the training requirements and opportunities available to the employees and evaluated how well FCS communicates information about these requirements and opportunities. The MCCGJ looked at what methods of supervision were employed by the FCS Branch; what they were doing to promote a good sense of team, and how they were working with employees whom they felt needed extra help.

GLOSSARY

Child Protective Services (CPS): The governmental function that responds to reports of child abuse or neglect. Child Protective Services are mandated by Federal and State law to investigate and respond to all allegations of suspected child abuse and neglect.

Core Training: Standardized curricula in the Core Training Program ("Core") to be used statewide for the mandatory training of child welfare social workers and supervisors.

Emergency Response (ER): Section where reports of possible child abuse are received from Intake and responded to within 10 days.

Emotional Intelligence (EI): The ability to monitor one's own and other people's emotions, label them appropriately, and use emotional information to guide thinking and behavior.

Family and Children Services (FCS): The branch of the Monterey County Department of Social Services which offers child protective services, foster care services, and adoption services to children and youth in Monterey County. The mission of FCS is to prevent the occurrence of child abuse and neglect.

Intake: Hotline where calls reporting possible child abuse or neglect are taken and evaluated against CPS standards.

Team Decision Making (TDM): Family and Staff meet to determine the appropriate means to keep the child safe and to begin the appropriate treatment program.

9-80 Work Schedule: When an employee works 80 hours over nine, rather than ten, days in a two-week period.

All line staff and supervisors that were interviewed appear to be dedicated social workers who are passionate about the work they do. They care deeply for the welfare of the children of the county.

Training

When the FCS Branch hires a social worker who is new to the field, that individual must attend standardized training, known as Core Training, which is given by the Bay Area Academy in Oakland. The Bay Area Academy is a Federal Title IV-E funded agency whose primary clients are agencies, such as FCS, that serve children in or out of the home. A six session training program is required for all social workers on a one time basis. This training is supplementary to the basic requirement for individuals to be hired into a Social Work classification which is a Bachelor's Degree, as well as a Master's in Social Work. Newly promoted supervisors go to an additional set of courses given by the Bay Area Academy.

State Law requires that every social worker receive an additional forty (40) hours of training every two years. This training can be accessed through a variety of sources including the aforementioned Bay Area Academy, the Kinship Center on River Road, UC Davis Extension, and Hartnell College. FCS employs a training supervisor who facilitates making this training available, either on-site or at one of these facilities. The training supervisor meets with other department supervisors to determine which subjects are needed in particular. That person communicates to all staff what courses are available. A list of these courses is also posted in a prominent place as a current reference point. This allows staff, including management staff, to be aware and to choose courses that are meaningful for the particular need at the time.

In the FCS Branch, training is important for both staff and supervisors as each of the diverse functions of the Branch requires specific skills and knowledge. For example, when a person is assigned to a specific unit, that person needs to know necessary protocol, tactics, and guidelines in order to manage potentially volatile crisis situations with families. FCS also has staff referred to as "floaters;" that is, personnel who go between units as needs and conditions dictate. It is even more crucial that these "floaters" have adequate training for the myriad of tasks that their jobs may involve.

In spite of this formal training, some line staff reported that they did not receive sufficient hands-on orientation when they were placed in a new position. They did not feel prepared or confident to make decisions required of them in new situations. Many felt this was a major issue in how their work proficiency was judged.

The need for adequate training applies to supervisors as well. The MCCGJ uncovered evidence that some new supervisors have inadequate experience and/or knowledge and abilities for their specific areas. Line staff stated that this added to a lack of consistency in some areas of agency performance.

Work Environment

Several factors contribute to the stressful work environment at FCS.

The Branch is short staffed. Some units have unfilled positions and/or employees out on extended leave. These leaves are due to a combination of issues. This situation can result in a very high workload for the remaining employees.

The crisis nature of the work can be stressful in and of itself. For example, if a training is scheduled in-house and a worker is needed to respond to an emergency, that emergency takes precedence over the training and the worker loses out on that particular course or team meeting. Emergency calls also interrupt lunch breaks. Employees state they frequently work through their breaks because of the nature of the work. It is incumbent on supervisors to observe whether or not their staff take their lunch breaks, and to get them the help they need so that they can get away for their half-hour respite.

In addition to the problems associated with short staffing and the nature of emergency response work, the scheduling of assignments lacks transparency. Employees in the ER units rarely know who is going to be called next to go out into the field. This makes personal client scheduling and organizing of work time very difficult for these employees. Also, the individual social workers state they are not informed as to what cases their co-workers are assigned, which leads to perceptions of unfairness and stifles open communication in a team unit that should otherwise foster camaraderie.

This transparency problem could be addressed in the team meeting that supervisors are supposed to hold monthly as a means of facilitating communication with employees. However, these meetings are not held regularly, and employees do not feel scheduling issues are adequately addressed in a way that encourages team building. Some report that they do not feel encouraged to express their opinions. They would like a give and take dialogue.

SUPERVISION

Management and supervision issues can contribute to the stressful work environment in the FCS branch. Managers (this term is being used to include all levels of supervisors) need to train and support their staff to maintain a positive work environment. Good communication between supervisors and employees is paramount in establishing a good environment.

In the FCS Branch, there is a requirement that managers meet one-on-one on a monthly basis with those they supervise. In the course of the investigation, however, the MCCGJ discovered that these meetings often do not take place on a regular basis. Information obtained through interviews revealed that the lack of regular monthly meetings leads to communication problems. During these meetings, the supervisee should receive feedback about his/her general performance. Case reviews and strategies for the individual's assignments should be addressed. At these times, the individuals should discuss with their supervisors any leave time that they may need, for any personal reasons. The schedules can be worked out at those times, so that the affected staff do not feel later that there was insufficient communication about time off, which, without sufficient planning time, can cause an inconvenience for office responsibilities. These monthly meetings provide the backbone for yearly evaluations. They also provide documentation in case any corrective action is needed.

A performance review should contain no surprises and communication throughout the review period is critical. Monthly meetings provide a forum for the employee and supervisor to resolve

any problems or conflicts developing because of such issues as the scheduling of personal time, punctuality or teamwork issues, or any workload deficiencies. If there are any problems developing, the worker will be informed in a timely manner so that he/she may get sufficient help to address any of these issues promptly. In the course of this investigation, the MCCGJ found employees who contend that they were made aware of problems only during the annual performance review.

Effective employee scheduling is a mark of good management. Today's work environment has a wide diversity of workers, as well as office functions with differing needs. The FCS Branch gives employees the option of having a "9-80" work schedule; that is, the employee works nine nine-hour days for a total of 80 hours in a two week period, and has one extra day off during that period. In the FCS Branch, there have been situations where the manager had taken away an individual's "9-80" work schedule, citing tardiness and absenteeism. Managers have threatened employees, using this schedule as reward or punishment. Scheduling should not be used as a reward nor should it be used as punishment. Putting an employee back on a traditional eight hour day work week does not cure tardiness or absenteeism. Alternative work schedules, such as "9-80," are proven management tools. They are a means of providing a flexible work environment that benefits employees, and allows the FCS offices to be open later hours and be more accommodating for the public. Although this Branch policy provides the 9-80 work schedule as an incentive and retention tool, its use is beneficial to the entire Branch function, as well as a morale builder among the line staff.

The MCCGJ uncovered multiple examples of employees leaving one supervisor's office in tears. Employees stated they were talked down to, and treated harshly and abruptly. Another supervisor was reported to have yelled at subordinates in an unacceptable manner. There was no evidence found by the MCCGJ of written plans for improvement or documented progress reports in place to address these problems.

The supervisors and their staff need better communication skills to create a more respectful and positive work environment. They can receive training in order to improve their communication techniques.

Emotions appear to be complicating communication. There seems to be a lack of understanding and practice of emotional intelligence (EI). Originally coined in the 1980's, the term EI connotes the ability to monitor one's own and other people's emotions and to adapt them to changing circumstances. In the twenty-first century, EI has rapidly become part of the mainstream, has been incorporated into numerous work environments and can be taught. It is a skill set whereby individuals who have developed it learn to keep their own emotional reactions under control, and are then able to interact with their co-workers with less conflict, more understanding, and mutual respect.

There are other specific courses and sessions that can be utilized to improve staff interactions with each other, both with co-workers and supervisors.

The more positive interactions there are among all staff in an agency, the more a coherent, efficient team is built.

Assignments

Appropriate assignment of personnel is important in any organization because it is paramount that the right person be assigned to the right job at the right place. This applies to supervisors as well. Some FCS staff expressed concern that supervisors don't have adequate experience or training to properly guide staff in casework. For example, some supervisors are assigned to assist staff although those supervisors appear to have neither the training nor the experience to be a leader in that area.

The appropriate assignment of duties can also affect workers trying to prioritize their workloads. Bi-lingual employees, for example, stated they find it difficult to schedule time to meet with clients because they are often pulled away from their assigned tasks to translate in the Intake and ER units. They then get behind in their regular work, and state they get bad evaluations from being "pushed and pulled" more than other staff.

Location

The office location, 1000 S. Main St., Salinas, is difficult to find as the building has a large sign for the entity that owns the building—"The Life Foundation"—and no signage indicating the FCS offices are housed there. This causes stress for the public. There is also very limited signage within the building, indicating the office that families may be looking for. Families then arrive to appointments set up to discuss their childrens' placement and welfare with increased anxiety in an already distressing situation for them.

FINDINGS

F1. The FCS Branch may place staff social workers in new positions without sufficient and necessary orientation and training.

F2. The FCS Branch may place supervisors in assignments without sufficient orientation or training.

F3. Conditions and priorities in the work environment make it difficult for staff to attend training sessions if the training is on site.

F4. There are some supervisors who communicate to subordinates in an unacceptable, demeaning manner.

F5. Some supervisors use the removal of the 9-80 schedule as punishment for work issues that could be handled in a less threatening manner, and in a way that wouldn't compromise office function.

F6. FCS Branch talks about team building but does not uniformly implement it in a pragmatic manner.

F7. There appears to be a lack of knowledge and application of emotional intelligence in the FCS Branch.

F8. Social workers within FCS are passionate about their work but don't feel supported or appreciated by some supervisors and management.

F9. Emergency calls often interfere with lunch breaks; often these breaks are not taken because of the amount of work required of each employee.

F10. FCS Branch and the Monterey County DSS offices are difficult for the public to locate due to lack of both exterior and interior signage.

RECOMMENDATIONS

R1. The FCS Branch implement a "Zero Tolerance Policy" for anger in the interactions between all staff.

R2. The FCS Branch provide training for emotional intelligence, work stress, and communication skills for all staff.

R3. The FCS Branch enforce the policy of requiring supervisors to meet with employees one-on-one on a monthly basis.

R4. The FCS Branch provide time for employees to devote to training without interruption.

R5. The FCS Branch assign supervisors to units only after those supervisors have had experience and training in those units.

R6. The FCS Branch assign supervisors and staff to jobs that reflect individual abilities and provide training and sufficient orientation to develop and support those abilities.

R7. The monthly supervisory meetings be used, and documented, to resolve all individual matters such as personal leave, workload efficiency, and general progress. There should be no surprises at evaluation time.

R8. Staff meetings, both for individual units, programs, and all staff be held regularly. Program managers should attend these. The agency director should also attend "all staff" meetings, and solicit input from line staff so that they maintain an awareness of the morale of the office.

R9. FCS Branch require transparency in procedures and case assignments.

R10. The FCS Branch management be observant regarding whether employees have had a half-hour respite at appropriate times.

R11. The building at 1000 South Main Street in Salinas be provided with signage to clearly inform the public that it is the location of the Monterey County Department of Social Services and the FCS Branch.

R12. The building be provided with interior signage to help guide the public to the appropriate offices.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests responses to all Findings and Recommendations as follows:

- Monterey County Board of Supervisors

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