



Orange County Grand Jury 2013 – 2014 Final Report



*“Prolific Wonderland”
cover art courtesy of the
Orange County Archives.*



ORANGE COUNTY GRAND JURY

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July 1, 2014

Honorable Gregg L. Prickett
Supervising Judge, Felony Panel
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Prickett:

On behalf of the 2013-2014 Orange County Grand Jury, I am pleased to present this report to you, the Orange County Supervisors, and the citizens of Orange County. This Final Report represents the diligent work of twenty Grand Jury members who came together to serve one year in civil oversight and criminal charging responsibilities. All Grand Jury members came to serve because of their interests and curiosity regarding County government and the criminal justice system, and because of their strong desire to improve the quality of life within the Orange County community.

This Final Report is a compilation of 14 reports dealing with a wide range of County and City governmental issues. Included in this report is a view of the County jail and juvenile facilities. Throughout the year the Grand Jury members invested hundreds of hours conducting interviews, inspections, research, and analysis in order to complete these reports. The Grand Jury heard from 35 invited speakers and toured 19 County facilities. In the course of the year the Grand Jury received and investigated complaints from Orange County citizens.

The Grand Jury participated in multiple criminal hearings during the 2013-2014 term. Indictments and subsequent charges ranged from murder, attempted murder, aggravated assault, theft of workers' wages, securities fraud, and insurance fraud. The Grand Jury presided over the largest indictment hearing in Orange County Superior Court history where 48 defendants were indicted for crimes committed in the Orange County jail at the direction of a high profile prison gang. The Grand Jury also conducted investigative hearings exploring possible criminal actions by and within City and County agencies.

2013-2014 Grand Jury Motto
Courageous Oversight Through Impartial Diligence

I was fortunate to be a part of an inspired team of citizens who demonstrated uncommon cooperation with each other in the fulfillment of their responsibilities. Commitment to a common purpose and the development of a sense of family served the Panel well throughout the year. To all my fellow Grand Jurors, thank you for your patience, flexibility, and the confidence extended to me as I carried out the duties of Foreman. It has been an honor to serve as the Foreman of the Jury and I consider it a privilege to have been associated with this group. I also want to express my gratitude and appreciation of the Grand Jury for the help and assistance provided by the following professionals who contributed to the accomplishments of the 2013-2014 Grand Jury:

- Judge Gregg Prickett, Supervising Judge of the Felony Panel for the Orange County Superior Court
- Theda Kaelin, Grand Jury Coordinator and Administrator, with assistance from Sandra Lopez
- Adriana Araneta, Court Reporter
- Michael Lubinski, Senior Assistant District Attorney
- Brock Zimmon, Deputy District Attorney
- Michael Giancola, County Executive Officer
- Karen Prather, Deputy County Counsel

The 2013–2014 Grand Jury is proud to have served the citizens of Orange County.

Best regards,



Dave Baker, Foreman

2013–2014 Orange County Grand Jury

DB:tk

Foreword

2013 – 2014 Grand Jury Review

In compliance with the California Penal Code Section 933(a), the 2013-2014 Orange County Grand Jury hereby submits its Final Report. This Final Report represents the diligent efforts and hard work of the members of the 2013-2014 Grand Jury.

The Grand Jury writes its reports with the intention of bringing to light certain issues that affect the citizens of Orange County. This year's reports provide information and commendation, as well as recommendations for substantive change, on many areas of Orange County government.

The jurors identified numerous potential investigations and vigorously debated which reports to pursue. The final topics for each report were thoroughly researched and investigated. Facilities throughout Orange County were toured and inspected. Individuals and employees were interviewed. Surveys from numerous agencies and departments were compiled. The result of this year-long effort is this Final Report which consists of the fourteen reports published throughout the year:

- **Revisiting Orange County Restaurant Food Safety: Improving Placard Visibility for the Public's Best Interest** is a review and study of the County's current placard system and a recommendation for changing the color of the placards.
- **Domestic Violence: Help is Available** showcases the many services and resources available to both victims and offenders within Orange County with the ultimate goal of breaking the cycle of violence.
- **Orange County Information Technology Management: Good Job Overall; Disaster Recovery Must Be Addressed** analyzes County IT costs, user satisfaction, and IT management in similar California counties, and makes recommendations for improvement in several key areas.
- **Juvenile Offenders and Recidivism: Orange County Solutions** commends the Probation Department on their Community Day School pilot program.
- **Sustainable and Reliable Orange County Water Supply: Another Endangered Species?** identifies local measures and infrastructure development for improving the reliability of the water supply.
- **Improving the County of Orange Government's Multi-Billion Dollar Contracting Operations** focuses on government services re-centralization and proper contract administration.
- **Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement** points out current deficiencies in these areas and calls for a stronger, consolidated program to address them, preferably through an independent ethics body with a protected budget.

- **Orange County School Districts – Dire Financial Futures** highlights the severe budget cuts to school districts and recommends a cost saving option.
- **Orange County City Pension Liabilities; Budget Transparency Critically Needed** identifies major inadequacies of Orange County city budgets in their presentation of their exposure to unfunded pension liabilities and of their plans to deal with those liabilities.
- **School Bonds – The Untold Story of Assessed Values** focuses on three northern Orange County school districts where taxpayers are potentially faced with paying higher taxes for their school bonds than anticipated because very aggressive assessed value projections were used in justifying the bond issues.
- **Community College Trustees: Responsibilities, Compensation and Transparency** studies the office of College Trustee and recommends more transparency of spending.
- **Dana Point Harbor Revitalization – 15 Years of Planning: What Has Been Learned?** examines how the harbor revitalization to modernize a recreational jewel is delayed due to detractors and bureaucratic procedures.
- **Maximizing the Benefits of John Wayne Airport to Better Serve Orange County** to meet the growing demand for air transportation services.
- **Annual Report on Jails and Juvenile Detention Facilities** inquires into the condition and management of the Orange County jail system, as well as the programs and education opportunities available to help young people.



Top Row from Left to Right: Thomas Cagley, Terry Franklin, Alfred E. Lyle, Dave Baker, Gina Phillips, Barry Durham

Middle Row from Left to Right: Tom Lucas, Michael Anzis, Rick Koppang, Ken Brose, Peter Murtough, Sandra Dunkin, Richard D. Jackson, Luis A. Castaneda

Bottom Row from Left to Right: R. David Chapel, John Gallie, Danni Murphy, Natalie Miles, April Lancaster, Steve Duron



GRAND JURY 2013-2014

**REVISITING ORANGE COUNTY
RESTAURANT FOOD SAFETY:
IMPROVING PLACARD VISIBILITY FOR
THE PUBLIC'S BEST INTEREST**



GRAND JURY 2013-2014

SUMMARY

The 2013-2014 Grand Jury believes the time has arrived to improve the visibility of restaurant inspection placards. A graphically enhanced way to communicate an establishment's inspection status at the time of its posting is now a sensible direction to pursue.

The interest in a more pronounced placard was also noted in a section of the Health Care Agency's (HCA) report, "Orange County Restaurant Inspection Public Notification System Update 2008," where it was concluded that placards had:

"No "At-a-Glance" Recognition - The current seals for compliance and reinspection are quite similar in appearance and may not be as good as other signage alternatives in informing patrons about the inspections status of a facility."¹

The Grand Jury revisited this issue, reviewed the recommendations published by the 2007-2008 Grand Jury Report, "RESTAURANT INSPECTIONS – WHAT NO ONE IS TELLING YOU,"² and noted that the current seals for compliance and reinspection are *still* quite similar in appearance. The 2007-2008 Grand Jury recommended that the HCA's procedure for notifying the public of inspection results be adapted in favor of an A-B-C letter grade system, similar to the one presently in use in Los Angeles and neighboring counties. The 2013-2014 Grand Jury has a different view.

It is important to refresh the public on the nature of Orange County's current food inspection notification system in order to arrive at a relevant present-day solution. The HCA's report, "Orange County Restaurant Inspection Public Notification System Update 2008," was submitted to the Board of Supervisors on December 16, 2008, in response to the above 2007-2008 Orange County Grand Jury Report. The Grand Jury recognized that, "Orange County Environmental Health inspectors already conduct thorough inspections of our restaurants."³

The 2013-2014 Grand Jury also gives high marks to Environmental Health, noting that the best practices displayed then by this division of the county's Health Care Agency is still an exemplary standard today. Unfortunately, the 2008 HCA response noting a need to upgrade placard visibility lacked enough Board of Supervisor votes to be implemented.

Five years out, the 2013-2014 Grand Jury has a practical modification to the HCA's proposal.

REASON FOR STUDY

As stated by the 2007-2008 Orange County Grand Jury report entitled, "RESTAURANT INSPECTIONS – WHAT NO ONE IS TELLING YOU":

¹ Board of Supervisor Meeting Archive, December 16, 2008, #34. Health Care Agency report – "Orange County Restaurant Inspection Public Notification System Update 2008," p.4: http://cams.ocgov.com/Web_Publisher_Sam/Agenda12_16_2008_files/images/O00308-001826A.PDF

² Grand Jury report 2007-2008: "RESTAURANT INSPECTIONS – WHAT NO ONE IS TELLING YOU."

³ Ibid

“The dining public is almost universally unaware that a small placard at the entrance area to each Orange County restaurant or food-vending location states the restaurant is “in substantial compliance with California food safety and sanitation standards” or that “re-inspection has been scheduled.” Even upon noting the placard, the diner does not know what the level of sanitation is at the restaurant, how many major or minor violations it has incurred, or whether it has been found to be in violation of any California health code sections, but is currently operating during the time between re-inspections.”⁴

The 2007-2008 Grand Jury Report was very comprehensive. The 2013-2014 Orange County Grand Jury wholly agrees with the 2007-2008 Grand Jury's findings that the Orange County Environmental Health Division conduct thorough food facility health inspections. As a result of the 2007-2008 Grand Jury Report on restaurant inspections, the Orange County Board of Supervisors “chose to modify”⁵ the recommendations articulated in that report, which are reflected in the current placards of today; Pass, Reinspection Due-Pass, and Closed. However, unlike the findings of the 2007-2008 Grand Jury Report that recommended upgrading inspection reports based on a letter grade format similar to Los Angeles, Riverside, San Bernardino, and San Diego counties, the current Grand Jury has considered a more practical approach.

The aforementioned counties each exercise separate autonomy, operating without any conformity amongst themselves when assigning a value to the weight of an infraction, which when tallied at the end of an inspection, determines the letter grade assessed; A, B, or C. An infraction that may carry a weight of two points for a given infraction in one jurisdiction, may have an entirely different weight assigned to it in another; *there is no consistent formulation of letter grades among all four counties.*

The 2013-2014 Grand Jury sees no valid reason to entirely scrap current inspection protocols in favor of an inconsistent letter grade. However, without changing the present-day dimensions of the placard, or how the inspection is conducted, *improving the visibility of the current unremarkable graphic to a more distinctive image is an overdue step forward.*

BACKGROUND AND FACTS

California Retail Food Codes

The Division of Environmental Health enforces the California Retail Food Code: California Code - Part 7: CALIFORNIA RETAIL FOOD CODE [113700 – 114437].⁶ This code regulates retail food facilities for food safety. Food operations typically regulated include all manner of restaurants, grocery chains, independent markets, convenience stores, and mobile food units

⁴ Grand Jury report 2007-2008: “RESTAURANT INSPECTIONS – WHAT NO ONE IS TELLING YOU.”: pg.1
<http://www.ocgrandjury.org/pdfs/restaurant-inspections/restaurant.pdf>

⁵ Orange County Board of Supervisor's response to 2007-2008 Orange County Grand Jury report entitled, “Restaurant inspections – What no one is telling you.”

⁶ CALIFORNIA RETAIL FOOD CODE [113700 – 114437]:<http://www.cdph.ca.gov/services/Documents/fdbRFC.pdf>

from full-sized trucks to small push-carts and the commissaries used for their replenishment, to name a few. *See Appendix A for a complete list.*

The following code sections are central to California public food safety:

[113703]. The purpose of this part is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented through adoption of science-based standards.

[113705]. The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for retail food facilities to assure the people of this state that the food will be pure, safe, and unadulterated. Except as provided in Section 113709, it is the intent of the Legislature to occupy the whole field of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.

[113709]. This part does not prohibit a local governing body from adopting an evaluation or grading system for food facilities, from prohibiting any type of food facility, from adopting an employee health certification program, from regulating the provision of consumer toilet and hand washing facilities, or from adopting requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon a street pursuant to its authority under subdivision (b) of Section 22455 of the Vehicle Code.⁷

It is important to note that Orange County Food Inspectors are qualified as Registered Environmental Health Specialists (REHS) and have met stringent qualifications in accordance with the California Health and Safety Code §106600-106735.

“§106610 (c) "Registered environmental health specialist" means an environmental health professional educated and trained within the field of environmental health who is registered in accordance with the provisions of this article.”⁸

The State of California mandates that REHS candidates possess a degree in the applied sciences and pass a state examination before becoming licensed.

“§106635. The requirements for registration of environmental health specialists shall be a minimum of a bachelor's degree from a department approved educational institution or an educational institution of collegiate grade listed in the directory of accredited institutions of postsecondary education compiled by the American Council on Education.”⁹ *Coursework overview – Department of Health Science, California State University, Fullerton: <http://hhd.fullerton.edu/hesc/undergrad/bs.html>*

⁷ CALIFORNIA RETAIL CODE [113700 –114437]: <http://www.cdph.ca.gov/services/Documents/fdbRFC.pdf>

⁸ California Health and Safety Code §106600-106735:

<http://www.cdph.ca.gov/certlic/occupations/Documents/REHS/REHS%20HSC%20106600-106735.pdf>

⁹ California Health and Safety Code §106600-106735:

<http://www.cdph.ca.gov/certlic/occupations/Documents/REHS/REHS%20HSC%20106600-106735.pdf>

The California Health and Safety Code also requires every restaurant or market post a statement that the most current inspection report is available on site for review if requested, and that the report must be made available upon request.¹⁰ The same state code allows local jurisdictions to provide public notifications of inspection results that exceed state standards. At the time of the 2007-2008 Grand Jury report, only twelve jurisdictions exceeded state standards; among them Orange County. Now there are sixteen as follows:

1. The counties of Los Angeles, San Diego, Riverside, San Bernardino, and Kern, require the use of a visible letter grade posted at each facility.
2. The counties of Sacramento, Alameda, Butte, and Merced require the use of a visible color coded placard posted at each facility.
3. One county (San Francisco) and three cities (Long Beach, Pasadena and Vernon) maintain separate jurisdictions and only provide an Inspection Report/Summary at each food facility for the public to examine upon request.
4. The counties of Orange, Monterey, and Ventura administer a program that includes:
 - a) an inspection seal,
 - b) acknowledges superior compliance with an Award for Excellence certificate,
 - c) a website that the public can access for general information and to view the most recent results of inspection reports.¹¹

¹⁰ Board of Supervisor's Meeting Archive, December 16, 2008, #34. Health Care Agency report – "Orange County Restaurant Inspection Public Notification System Update 2008," pg.4: http://cams.ocgov.com/Web_Publisher_Sam/Agenda12_16_2008_files/images/O00308-001826A.PDF

¹¹ Ibid with more recent data

Prominently Displayed Placard Notification Systems

The counties of Los Angeles, San Diego, Riverside, San Bernardino, and Kern display an A, B, or C letter grade inspection placard. Example below: Figure 1, Riverside County.¹²

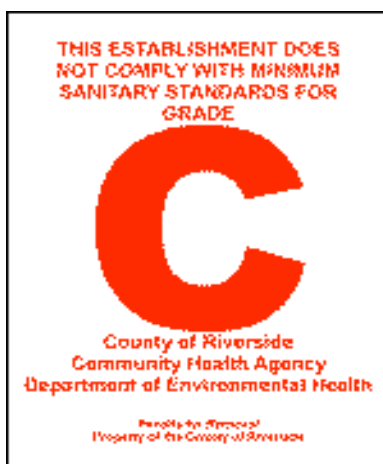
Fig. 1



An "A" signifies that the facility **PASSED** their inspection and the facility has received a score from 90 to 100 points on the unannounced inspection. Unlike the grades you got in school, this is the only passing grade that a facility can get for an inspection.



A "B" signifies that the facility **DID NOT PASS** the unannounced inspection and received a score from 80 to 89 points. If one looks closely at this grade card, one will note that at the top of the card it states: "THIS ESTABLISHMENT DOES NOT COMPLY WITH MINIMUM SANITARY STANDARDS." Facilities that have received a "B" or lower grade are posted on the [Food Facility Downgrades webpage](#) and are required to raise their grade back up to an "A" within a short period of time.



A "C" signifies that the facility **DID NOT PASS** the unannounced inspection and received a score from 0 to 79 points. If one looks closely at this grade card, one will note that at the top of the card it states: "THIS ESTABLISHMENT DOES NOT COMPLY WITH MINIMUM SANITARY STANDARDS." Facilities that have received a "C" or lower grade are posted on the [Food Facility Downgrades webpage](#). These facilities also may present a potential or immediate threat to the public's health and safety and may be closed as a result of the inspection and are required to raise their grade back up to an "A" within a short period of time.

¹² Riverside County Environmental Health: http://www.rivcoeh.org/opencms/rivcoeh/ProgServices/Food_Program/Restaurant_Grading.html

The counties of Sacramento, Alameda, Butte, and Merced have a colored placard notification system based on the universally accepted traffic signal approach that interprets *Green* for go, *Yellow* for caution, and *Red* for stop. See Figure 2.

1. *Green* signifies **PASS**, which is an acceptable level of compliance.
2. *Yellow* signifies **CONDITIONAL PASS**; violations were observed that required immediate correction. A reinspection will be conducted within 24 to 72 hours.
3. *Red* signifies facility **CLOSED**; closure is required when an imminent danger to public health or safety is observed.¹³

Fig. 2



Orange County Public Notification System

The current Orange County inspection placard in Figure 3 consists of a **PASS**, **REINSPECTION DUE-PASS**, and **CLOSED**. This orange-colored graphic is historically significant; it honors our cultural heritage as a major grower of Valencia oranges.¹⁴

Posting requirements:

The following 8"x8" placard examples (*Figure 3 next page*) are provided by Environmental Health and must be posted in an area clearly visible to patrons/public, as determined by the inspector.

¹³ Sacramento County Environmental Health: http://www.emd.sacounty.net/EnvHealth/FoodProtect/GYR_Placards.html

¹⁴ Orange County Inspection Notification Seals: <http://ocfoodinfo.com/retail/pass>

Fig. 3



The Orange County HCA fully complies with the California Health and Safety Code, a mandated statewide standard for all jurisdictions, which was updated and strengthened in 2007 to be consistent with U.S. Food and Drug Administration standards. The Code update included the following “major” violations that were identified by the Centers for Disease Control and Prevention (CDC) which pose an imminent risk to public health and are the leading causes of foodborne illnesses.

1. Improper employee hygiene and hand washing.
2. Contaminated food items.
3. Improper sanitizing procedures.
4. Improper food temperatures.
5. Food from unapproved sources.¹⁵

The Health and Safety Code also defines “minor” violations that do not pose an imminent risk to the public but do warrant correction, such as structural issues and general cleanliness.¹⁶ Minor infractions or major violations corrected during the inspection, form the basis for the current Orange County **REINSPECTION DUE-PASS** placard, in the same way the more visible *Yellow* denotes a **CONDITIONAL PASS**; the standard in the counties of Sacramento, Alameda, Butte, and Merced. Both the **REINSPECTION DUE-PASS** and the **CONDITIONAL PASS** require a follow-up inspection to make sure the facility has resolved all noted minor violations and have continued with the correction of all cited major violations before a **PASS** can be posted. Minor violations do not pose an immediate health risk on the same order as would be found in “major” violations such as vermin infestation or sewage overflow. The facility is permitted to continue to operate while it awaits re-inspection. However, if by the time the inspector returns for the re-inspection and the facility has failed to resolve minor violations, or has new major violations, the facility can be issued a formal Notice of Violation, or it may progress through an enforcement process and can be closed for non-compliance by the HCA.

¹⁵ Orange County Inspection Notification Seals: <http://ocfoodinfo.com/retail/pass>

¹⁶ Ibid

In order to keep the public informed about food safety and sanitation at Orange County's restaurants and markets, the Environmental Health Food Program provides a comprehensive Public Notification System with four components.¹⁷

1. **Inspection Reports** – onsite results provided by the inspector in a user-friendly format for not only facility operators, but to anyone who wishes to view it. The report distinguishes violations that can cause foodborne illness (Major Violations) from those that do not (Minor Violations), and is required to be available to read during business hours. It is also posted online, providing a summary of the violations issued at each inspection and a copy of the actual inspection report. An online report will also note if the facility was closed due to major violations and when/if the facility has reopened in the event the violation was corrected.
2. **Inspection Notification Seal** – facility posted (*page 7*)
 - 1) **PASS:** An acceptable level of compliance was achieved. No re-inspection is required.
 - 2) **REINSPECTION DUE-PASS:** Violations that may cause foodborne illness were observed and corrected. A follow-up inspection will be conducted on the date posted on the seal to ensure continued compliance.
 - 3) **CLOSED:** Closures or “Permit Suspensions” are performed in response to Imminent Health Hazards present in a food facility that poses a serious health hazard if not immediately corrected. Such Imminent Health Hazards include, but are not limited to:
 - a) vermin (*cockroaches, rats, mice*) in critical food areas,
 - b) sewage overflow,
 - c) no water available,
 - d) lack of “warm” (100°F or greater) water for adequate hand washing,
 - e) power outages,
 - f) no operable bathrooms,
 - g) fire or other disaster.
3. **Award of Excellence** – an incentive program that awards a certificate to food establishments that consistently exhibit excellent food safety and sanitation practices. Certificates are issued to facilities that have met all of the following criteria for the prior calendar year:
 - a) a minimum of two inspections were conducted,
 - b) there were no Major Violations,
 - c) Minor Violations averaged no more than six per inspection,
 - d) at least one individual passed an approved food safety exam.

Fig. 4



¹⁷ Online public access to Orange County Public Notification System: <http://ocfoodinfo.com/retail>

4. **Retail Food Safety Program Website** – The website <http://ocfoodinfo.com/retail> provides the public access to three components of the public notification system.
 1. Inspection Reports – inspection report information for each food facility is available at the retail food safety program website. Anyone can conduct a search of every retail food facility and view a two year history for any facility. The public can also review an inspection report by clicking onto the PDF icon located next to each entry.
 2. Award of Excellence Listing – the list of facilities that received the Award of Excellence for the previous year is posted online for review.
 3. Food Facility Closure Lists – all food facilities that have been closed are posted monthly. The list shows the facility's name, address, the reason it was closed, date it was closed, and the date it safely reopened.

The above website also posts useful information on recalls and food safety tips.

METHOD OF STUDY

The 2013-2014 Orange County Grand Jury:

- a) conducted several interviews with top executives of Environmental Health, a division of Orange County's Health Care Agency, with numerous follow-up phone calls for clarification on key elements of this report,
- b) participated in ride-a-longs with Health Inspectors to various food facilities to observe inspections and gather relevant information,
- c) interviewed a member of the Orange County Board of Supervisors,
- d) researched the Orange County Food Inspection website for information reflected in this report,
- e) conducted numerous web searches gathering information on California State jurisdictions that currently exceed the state mandated health code,
- f) visited twenty-six food facilities to observe where Orange County placards are displayed and verified if the most recent inspection report was available for public review,
- g) checked each of the twenty-six food facilities to confirm if the facility was a recipient of the "Award of Excellence" and confirmed it online as well,
- h) randomly surveyed patrons on placard visibility and noted the opinions expressed, and
- i) collected information from all California public health codes specific to this report.

ANALYSIS

The Orange County Environmental Health Division already has an excellent inspection format. The addition of multi-colored placards will significantly enhance the inspection outcome and serve the public's best interest in visually identifying concerns. Upgrading the current graphic to a colored border – Green, Yellow, Red – just makes sense, and there is a current standing precedent in use for this model in the northern counties of Sacramento, Alameda, Butte, and

Merced. Many surveyed patrons also agreed that a multi-colored placard would help determine their restaurant of choice.

In the Health Care Agency's report submitted to the Board of Supervisor meeting, December 16, 2008, entitled; "Orange County Restaurant Inspection Public Notification System Update 2008,"¹⁸ the HCA stated:

"HCA is prepared to implement any of the proposed options as directed by the Board. Each has advantages and drawbacks. However, after reviewing all factors, the Health Care Agency recommends the adoption of the Color Coded Notification System.

Compared to the current system, the color coding option would include an inspection placard that is easily recognized, and would provide at-a-glance compliance status of each facility for the public. Patrons would be quickly informed of any violations, such as food safety and sanitation.

Color coded notification criteria would focus primarily on gaining compliance with major violations that are most associated with public health risk, compared to a letter grading process that focuses on points related to major and minor violations. Color coding would also maintain much of the educational emphasis of the current inspection process while promoting compliance. Additionally, color coding would be less expensive to implement than letter grading."

To concur with the HCA's original 2008 recommendation to the Board of Supervisors, the use of multi-colored placards for Orange County would clearly reflect the status of the inspection without the disruption and burden consequential to converting to a letter grade system. The letter grade conversion is problematic, taking considerable time and effort to reeducate all concerned, as well as the negative impact the change would have on county budget considerations. The Orange County Health Care Agency is mindful of its budget constraints – as are all Orange County agencies in general – *it's simply not necessary to convert to a letter grading system nor is it a practical approach in light of the importance to be fiscally resourceful.*

However, compared to the cost of implementing a grading system, the introduction of a more visible placard with color, *as the most desirable alternative mentioned in the HCA report of 2008*, will unquestionably clarify at-a-glance inspection issues for the public. The Grand Jury believes a need exists to modify the current graphic to one that reflects a:

- a) colored border,
- b) minimal change in wording from the ambiguity in **"REINSPECTION DUE-PASS,"** to **"CONDITIONAL PASS."**

¹⁸ Board of Supervisor's Meeting Archive, December 16, 2008, #34. Health Care Agency report – "Orange County Restaurant Inspection Public Notification System Update 2008," Attachment II: http://cams.ocgov.com/Web_Publisher_Sam/Agenda12_16_2008_files/images/O00308-001826A.PDF

No changes are considered necessary as to:

- a) how the inspection process is conducted,
- b) the dimensions of the placard and consequently the sleeve it is slipped into for public viewing.

Though these modifications represent very little cost to the county, there is one consideration. The usual re-inspection may possibly be pushed up from the customary period that falls within two weeks, to a shorter period of 24 to 72 hours as seen in the northern counties of Sacramento, Alameda, Butte, and Merced. This is in order to accommodate a food facility's heightened desire to secure a passing Green placard sooner than later. To offset the change in turnaround, re-inspection costs can be met with a minimal increase in fees noted by the HCA in their report submitted to the Orange County Board of Supervisors in 2008.¹⁹

The most important takeaway for this practical change is a twofold win/win.

1. Improved, at-a-glance, unambiguous placards will increase public awareness of food safety at restaurants.
2. In turn, greater public scrutiny will motivate food facilities to quickly achieve and maintain a Green status.

Comparison of Current Placard and Proposed Change.

Current Orange County **PASS**, **REINSPECTION DUE-PASS**, and **CLOSED**.

Fig. 5



Next pages: Figures 6, 7, and 8.

¹⁹ Board of Supervisor's Meeting Archive, December 16, 2008, #34. Health Care Agency report – "Orange County Restaurant Inspection Public Notification System Update 2008," Attachment II: http://cams.ocgov.com/Web_Publisher_Sam/Agenda12_16_2008_files/images/O00308-001826A.PDF

Fig. 6 Proposed color enhancements with change to **CONDITIONAL PASS** (Fig.7).



Fig. 7



Fig. 8



FINDINGS

In accordance with California Penal code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation to enhance the Health Care Agency's restaurant placard visibility in Orange County, the 2013-2014 Orange County Grand Jury has arrived at two findings, as follows:

F.1. The present Orange County Environmental Health Inspection Placard does not have *At-a-Glance* distinction that assists the public awareness of restaurant inspection status.

F.2. The current placard that notes a re-inspection entitled, "REINSPECTION DUE-PASS," is ambiguous and sends a vague message to the public.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation to enhance the Health Care Agency's restaurant placard visibility in Orange County, the 2013-2014 Orange County Grand Jury makes the following recommendations:

R.1. Implement the proposed color enhanced placards suggested in this report. **(F.1.)**

R.2. Delete the ambiguity in "REINSPECTION DUE-PASS." Replace with "CONDITIONAL PASS." **(F.2.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official

(e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses to Findings **F.1.** and **F.2.** are requested from the Health Care Agency.

Responses to Findings **F.1.** and **F.2.** are required from the Orange County Board of Supervisors.

Responses to Recommendations **R.1.** and **R.2.** are requested from the Health Care Agency.
Responses to Recommendations **R.1.** and **R.2.** are required from the Orange County Board of Supervisors.

Appendix A — complete list of all levels of operating establishments.

[113789].

(a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged non-potentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code that comply with Section 118375, for the purposes of beer tasting, if no other beverage, except for beer and prepackaged non-potentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.²⁰

²⁰ CALIFORNIA RETAIL FOOD CODE [113700 – 114437]: <http://www.cdph.ca.gov/services/Documents/fdbRFC.pdf>

**DOMESTIC VIOLENCE:
HELP IS AVAILABLE**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
What is Domestic Violence?	5
What is Orange County’s Role in Addressing Domestic Violence?	6
What Happens to Victims in the Aftermath of a Domestic Violence Dispute?	6
<i>The Hotline – A Lifeline for Victims</i>	<i>6</i>
<i>The First Responders to the Scene</i>	<i>7</i>
<i>The Emergency Shelter – Getting a Victim to a Safe Haven</i>	<i>8</i>
<i>Shelter Summary</i>	<i>14</i>
<i>The Restraining Order – Providing a Victim with Continued Safety</i>	<i>15</i>
<i>On-Going Legal and Counseling Services – The Orange County Family Justice Center</i>	<i>16</i>
What Happens to Batterers in the Aftermath of a Domestic Violence Dispute?	17
<i>The Investigation by Law Enforcement – The Family Protection Unit of the Sheriff’s</i> <i>Department</i>	<i>17</i>
<i>The Criminal Justice System</i>	<i>18</i>
<i>Convicted Batterers on Probation</i>	<i>20</i>
<i>Convicted Batterers in Treatment</i>	<i>22</i>
Access to Mental Health Programs	23
METHOD OF STUDY	25
ANALYSIS	26
Domestic Violence Data	26
Is Orange County Government Involved in Addressing Domestic Violence?	27
FINDINGS	31
RECOMMENDATIONS	32
REQUIRED RESPONSES	33
APPENDIX	35

SUMMARY

My husband and I have been married for over 18 years. I work at a local hospital. One night, after returning home, I sat on the sofa to watch television. Without warning, my husband came from behind and struck me in the head at least three or four times. I screamed, feeling as though I was passing out. Suddenly, I realized he was hitting me with a wooden baseball bat. I was able to grab the bat and open the front door and throw it outside. When my husband went to retrieve the bat, I was able to close and lock the door. Neighbors heard my screams and came over to find me covered in blood. I ended up with a broken right hand and a two inch laceration on my head that required five sutures.¹

This is an all-too-frequent incident that plays out in households nationwide. Indeed, this scenario happened in Orange County! It could have happened in a Newport Beach mansion overlooking the ocean, an urban home, an apartment, or a mobile home park. Domestic violence cuts across all socio/economic and racial backgrounds.

The 2013-2014 Orange County Grand Jury initiated this study to determine what role Orange County government agencies play in addressing domestic violence. The Grand Jury considered the plight of both the victim and the batterer. The Grand Jury interviewed a number of County government officials and non-profit organizations. In addition, the Grand Jury visited several resource sites in the County, including four domestic violence emergency shelters, and four businesses that operate domestic violence batterer intervention programs. The following are key findings of this study.

1. Domestic violence is a problem in every Orange County community.
2. Victims of domestic violence have a wide variety of available services and resources to help them break from the cycle of violence.
3. County governance is actively involved in all aspects of domestic violence disputes.
4. Most notably, this study showed that employees of the County government, non-profit sector, and business sector that provide programs and services to victims and batterers do so with a high level of sensitivity and respect for the individuals involved in these emotionally charged disputes.
5. This study uncovered some gaps in communication and coordination within the County government and between County agency officials and those with whom they partner; however, these can be easily corrected.
6. The impact of domestic violence cannot be ignored. While there is a cost to the County in the form of resource expenditures to handle domestic violence incidences; nonetheless, these behaviors are against the law and contribute to human depression, low self-esteem, chronic disorders, job loss, and the abuse of children.
7. By implementing the Grand Jury recommendations, Orange County responsiveness to domestic violence victims and batterers can be raised to even higher levels.

¹ Interview: the Orange County District Attorney's office.

REASON FOR THE STUDY

The Grand Jury began this study by asking, “What is the nature of domestic violence?” The preliminary information showed the following:²

- a) one in four women have experienced severe physical violence by an intimate partner sometime during their lifetime,
- b) women are disproportionately more likely to be victims of domestic violence than men,
- c) women are four times more likely to be beaten,
- d) women are six times more likely to be slammed against something and nine times more likely to be strangled, and
- e) more than 80% of women who experienced physical violence by an intimate partner reported significant short or long term emotional impact related to the experience.

Additional research showed the results of a national survey on domestic violence conducted on a *single* day in September, 2012. This survey was sponsored by the National Census of Domestic Violence Services and involved over 1,600 domestic violence providers in the United States. The results posted for this *one 24 hour period* included the following national statistics.³

1. Over 20,800 domestic violence hotline calls were answered by local, state and national services.
2. Over 29,000 domestic violence victims received non-residential assistance in the form of counseling.
3. Over 35,000 domestic violence victims found refuge in emergency shelters.

At the state level, research showed that for the year 2012, California law enforcement agencies received over 157,000 domestic violence-related calls in the state. Of these calls, *10,988* were from Orange County victims.⁴ This represents .35% of the County population. In comparison, data for the same year indicated that San Diego County received 16,400 calls (.51% of the population) and Riverside County received 5,947 calls (.26% of the population).

In spite of these findings and the fact that domestic violence is a crime, the Grand Jury discovered that there has been no study of domestic violence as a distinct and separate issue in Orange County by a Grand Jury in more than 15 years.

The scope of this study is limited to identifying Orange County government’s responsiveness to domestic violence including its partnerships formed with the non-profit and business sectors. The purpose is two-fold: to determine what role Orange County government agencies play in addressing domestic violence; and to raise public awareness of the County government programs and services available to assist both victims of domestic violence and batterers.

² California Partnership to End Domestic Violence: <http://www.epedv.org/Statistics>.

³ National Network to End Domestic Violence, 2012 Domestic Violence Counts: <http://nmedv.org/resources/census/3418-2012-report>.

⁴ CJSC Statistics: Domestic Violence-Related Calls for Assistance: <http://oag.ca.gov/crime/cjsc/stats/domestic-violence>.

BACKGROUND AND FACTS

What is Domestic Violence?

Domestic violence is defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.⁵

For most of the twentieth century, domestic violence was *not* recognized as a crime. Domestic violence incidents were considered a private matter whereby victims often felt shame and blamed themselves. There were few laws or avenues of recourse to protect victims. Battered women's shelters or domestic violence safe havens were mostly non-existent. Indeed, cultural mores made it difficult for women to leave an abusive relationship. It was a struggle for a woman to work outside her home, earn her own money, get credit, or divorce her spouse.

This situation began to change with the advent of the women's movement in the 1970s followed by an extensive grassroots effort in the 1980s and 1990s. By the mid 1990s, society and the government finally began acknowledging that domestic violence was a public health issue, a public safety issue and human rights concern. The following is key legislation regarding domestic violence that impacts Orange County residents.

Violence Against Women Act⁶ – The Act provides federal funding toward investigation and prosecution of violent crimes against women, imposes automatic and mandatory restitution on those convicted, and allows civil redress in cases prosecutors chose to leave un-prosecuted.

Domestic Violence Prevention Act⁷ – This state legislation defines domestic violence under California Code Sections 6200 – 6219.

California Welfare and Institutions Code Sections 18290 - 18309⁸ – This state legislation lists the requirements for state funding of domestic violence shelters.

California Penal Code Sections 13700 - 13702⁹ – This state legislation requires every law enforcement agency in the state to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls.

⁵ The United States Department of Justice: <http://www.ovw.usdoj.gov/domviolence.htm>

⁶ Violence Against Women Act of 1994: <https://www.govtrack.us/congress/bills/112/hr4970/text>

⁷ Domestic Violence Prevention Act, California Code Sections 6200 – 6219: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=06001-07000&file=6200-6219>

⁸ California Welfare and Institutions Code Sections 18290-18309.8: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=18001-19000&file=18290-18309.8>

⁹ California Penal Code Sections 13700-13702: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=13001-14000&file=13700-13702>

California Penal Code Sections 1203.097 and 1203.098¹⁰ – This state legislation establishes the minimum course requirements for Batterer Intervention Programs.

What is Orange County’s Role in Addressing Domestic Violence?

During this study, the Grand Jury determined that there are a number of Orange County government agencies and departments involved in addressing the consequences of domestic violence. County entities such as law enforcement, health care, social services, community resources, probation and the criminal justice system have devoted significant staff resources to domestic violence cases and issues. The Grand Jury interviewed selected representatives from each of these entities to gain information and an understanding of the County’s domestic violence programs and services.

In addition, the Orange County government has established partnerships with County non-profit organizations and for-profit businesses to assist both victims and batterers involved in abusive relationships. The County has formal contracts with four domestic violence emergency shelters for victims and has memoranda of understanding with 14 Batterer Intervention Program (BIP) businesses.

A list of contacts made with County government agencies, city police departments, non-profit organizations and the business sector is contained in the *Appendix*.

The following is a discussion of programs and services available to Orange County residents affected by domestic abuse. This information is presented in a sequence of actions that unfolds following a dispute similar to the scene of domestic violence described at the opening of this report.

What Happens to Victims in the Aftermath of a Domestic Violence Dispute?

The Hotline – A Lifeline for Victims

The first reaction to a violent attack is usually to call 911; however, there are other crisis hotlines that are available to assist victims of domestic violence in Orange County.

The Orange County District Attorney’s office has prepared the Domestic Violence Prevention and Resource Handbook that lists several hotline numbers as referenced in Table 1.

Table 1: Orange County Domestic Violence Hotlines

National Emergency Number	911
National Domestic Violence Hotline	1-800-799-SAFE
Domestic Violence Safety Plan Hotline	1-800-978-3600

¹⁰ California Penal Code Sections 1203.097 and 1203.098: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=01001-02000&file=1191-1210.5>

The First Responders to the Scene

In Orange County, local police departments respond to hotline distress calls (911) received within their jurisdiction. The Orange County Sheriff's Department responds to calls from unincorporated areas within the County as well as to cities with which it contracts.

Based on recommendations, the Grand Jury visited the Irvine Police Department to review *how one local police force responds* to scenes of domestic violence. The Grand Jury learned that in 2012, the Irvine Police Department responded to nearly *one thousand* calls involving domestic violence within its city jurisdiction. According to department officials, domestic violence scenes can be very challenging, in particular those involving family members and children. Domestic violence related calls are considered to be one of the most dangerous for law enforcement responders due to the escalating emotions involved.

As part of a County-wide established protocol, it is required that at least two peace officers respond to calls involving suspected domestic violence. Additional units may be sent depending on the circumstances involved.

As first responders, the work and effort by the police at the scene is critical to any future criminal charges or possible prosecutions involving domestic violence. As such, all Irvine police officers carry Domestic Violence Response Kits to assist them at the scene. These kits consist of the following:

- a) checklist of forms and information that may be relevant to the scene,
- b) victim's waiver to release information to a trained victim's advocate,
- c) victim's resource guide with contact information and legal advice,
- d) domestic violence crime report sheet, and an
- e) emergency restraining order form.

There is a small window of opportunity to get the investigation right, starting at the scene of the crime. Officers try to do a thorough job of interviewing all witnesses, including children and neighbors. Officers always prepare written reports. Subsequently, report summaries are uploaded to the Department of Justice system which can be accessed by all County and city law enforcement agencies. All Irvine police officers receive special training on domestic violence issues every two years for the purpose of providing updates on new regulations, policies and evidence gathering techniques.

Following the first response, police reports are forwarded to Irvine Police Department Domestic Violence Investigators for further development. Once these investigations are concluded, the case files are forwarded to the Orange County District Attorney's office for filing consideration.

In 2012, the department forwarded 317 cases to the District Attorney. The Irvine Police Department also has a court liaison on staff who follows-up with the District Attorney's office on the status of case files.

The Irvine Police Department stresses the importance of providing immediate support to victims. This engenders trust and subsequent empowerment so that victims can move forward and serve as witnesses in eventual criminal court cases. In addition to domestic violence investigators, the Irvine Police Department has access to a full-time Domestic Violence Victim's Advocate. This individual is employed by the Community Services Programs, Inc. (CSP), although assigned to the Irvine Police Department facility. This advocate sometimes accompanies officers to the alleged crime scene and always follows up with victims to get them support and resources to meet their immediate needs.

The Grand Jury also learned that the Irvine Police Department has initiated and participates in a number of community outreach programs aimed at preventing domestic violence. Most notably, the department has been recognized for its Family Violence Program with a national award in 2009. This program emphasizes building community relationships with substantial efforts in:

- a) working with the local domestic violence emergency shelter to escort victims to the facility,
- b) partnering with emergency shelters to make presentations to local high school students on teen dating violence,
- c) hosting the holiday "Shop with a Cop"¹¹ program to build trust with children traumatized by domestic violence, and
- d) issuing public service announcements to reach culturally diverse communities.

In addition to visiting the Irvine Police Department, the Grand Jury conducted telephone interviews with the police departments from Anaheim, Fullerton, Huntington Beach, and Santa Ana to obtain information as to how these departments handle domestic violence cases. The Grand Jury learned that similar to the Irvine Police Department, each has established separate Family Violence Units to handle domestic violence related calls. Police officers assigned to these units have been provided special training to assist them in handling these volatile situations. In particular, Anaheim and Fullerton Family Violence Units indicated that domestic violence advocates are included on some first response calls in order to provide immediate assistance to victims.

The Emergency Shelter – Getting a Victim to a Safe Haven

After making the initial distress call, a victim of domestic violence usually has an urgent need to find a safe place away from the attacker. In Orange County, there are a number of shelters to serve victims and their children, some culturally based and some faith-based. Four of these emergency shelters which are listed in Table 2 have formal funding contracts with Orange

¹¹ Interview with Irvine Police Department.

County Community Resources Department and are strategically located to serve different areas of the County.¹²

Table 2: Orange County Shelter Hotlines

Laura’s House (South Orange County)	(949) 498-1511
Human Options (South/Central OC)	(877) 854-3594
Interval House (West/Central OC)	(714) 891-8121
Women’s Transitional Living Center (Central/North OC)	(714) 992-1931

The Orange County government’s relationship with the organizations in Table 2 stems from the California Welfare and Institution Code Sections 18290 - 18309.5, which provides for state funding of domestic violence emergency shelters. All funding is derived from portions of marriage license fees and batterer court fees paid to the County. In Orange County, the Community Resources Department oversees this funding by utilizing a formal contracting process, the Request for Proposal (RFP). The RFP process is initiated every five years to solicit applications from domestic violence shelters that could qualify for government support. In addition, the Orange County Board of Supervisors reviews and reapproves contracts and funding annually.

The Grand Jury reviewed the most recent RFP for domestic violence shelters which was conducted in 2012. The Grand Jury also interviewed the Orange County Community Resources staff responsible for the evaluation of RFP applications. *Only four domestic violence shelters in Orange County responded to the RFP. Each met the comprehensive requirements outlined in California Welfare and Institutions Code Sections 18290 - 18309.5.* After rating scores were assigned by an RFP evaluation committee, the four shelters, Laura’s House, Human Options, Interval House, and Women’s Transitional Living Center, were selected for County funding.

The Grand Jury toured all four domestic violence emergency shelters and interviewed shelter officials. At one organization, the Grand Jury had the opportunity to speak with current and past client/victims that were now serving as volunteers for the shelter’s counseling and educational programs. The following is a summary of the Grand Jury’s observations of the programs and services offered at each shelter.

Laura’s House

This organization is the only women’s domestic violence emergency shelter under contract with Orange County that is serving the southernmost communities. It was founded almost 20 years

¹² Orange County Office of the District Attorney Domestic Abuse Prevention and Resource Handbook: <http://www.orangecountyda.com/home/index.asp?page=90>

ago as a result of the tragic death of a woman, a victim of on-going physical abuse by her husband. Since its inception, Laura's House has assisted over 25,000 victims of domestic violence in South Orange County.

Laura's House has a staff of 26 full and part-time employees. In 2012, 497 volunteers contributed over 8,100 hours to the shelter. Most notably, this shelter has a full-time legal advocate on site that advises and supports victims through the restraining order process as well as other legal proceedings.

Services and programs are offered in a variety of languages. There are multi-lingual speaking therapists and hotline advocates as well as translation services as needed. The facility meets ADA (Americans with Disabilities Act) requirements.

Laura's House emergency shelter has a total of 42 beds. There are large living spaces including a full-service kitchen and a play yard for children. Clients can eventually transition to a longer term smaller facility for up to a year.

In 2012, this shelter provided the following assistance to victims of domestic violence:

- a) 24-Hour Hotline – approximately, 2,234 calls were received; a 21% increase from the prior year, and
- b) 304 individuals were provided emergency shelter.

During the Grand Jury's interview with shelter officials, it was observed that this organization actively promotes domestic violence awareness to County communities in a variety of ways. These include: a Speakers Bureau where in 2012, 176 outreach events were conducted reaching over 10,800 audience members; and the Healthy Emotions and Attitudes in Relationships for Teens (H.E.A.R.T.) program in local high schools aimed at raising awareness of teen dating violence. This shelter also advertises its services by placing its business cards in public women's restrooms as way to reach victims of domestic violence.

During the Grand Jury's visit to Laura's House, the issue of how restraining orders are initiated was discussed at length. Under current procedures, the shelter's clients must travel more than 25 miles to request an order at the Lamoreaux Justice Center in the city of Orange. Often, the clients lack sufficient transportation and thus the shelter legal advocate personally drives them to the center. The net effect of this process is that clients must allocate a full day to request a restraining order, which often requires childcare if the client has children.

Because of the extenuating circumstances involved in requesting restraining orders for clients at Laura's House, both the Grand Jury and the shelter representatives recognized the benefits of being able to FAX these requests directly to the Lamoreaux Center. This procedure is already available to clients at the Orange County Family Justice Center but not to any of the County emergency shelters.

The shelter representatives offered the following suggestions to improve services for victims in Orange County:

- a) increase funding to better serve additional victims,
- b) increase awareness of domestic violence issues through outreach and a greater availability of resources available from print and media, and
- c) provide victims of domestic violence support and uncomplicated access to on-going mental health counseling after leaving a shelter.

Human Options

This organization's emergency shelter is located to serve the central communities in the County. It opened over 30 years ago and has grown and evolved to include comprehensive counseling, outreach, and educational programs.

Human Options' emergency shelter has 36 beds and is ADA compliant with large living areas and a separate suite of rooms for victims with particular needs.

A detached smaller structure contains a large classroom and play yard used for children's counseling and educational programs. Notably, children's counseling at Human Options' is extensive and is aimed at assisting youths exposed to domestic violence, cope with their emotions and trauma.

Human Options has 52 full-time staff members and over 80 volunteers that provide multi-lingual services to victims and their children. Adult counseling programs include one-on-one and group sessions. Clinical counseling services range from 4 to 24 sessions depending on the client's history of abuse and trauma.

Human Options also sponsors second and third level transitional living facilities following the initial emergency shelter stay of 45 days. In 2012, 25 families were housed in the second-step transitional housing facility.

This emergency shelter has extensive referral services that include assistance with legal issues, housing and medical issues. Legal advocates assist clients in obtaining temporary and permanent restraining orders, powers of attorney, conservatorship and assistance with financial abuse.

In 2012, this shelter provided the following assistance to victims of domestic violence:

- a) 24-Hour Hotline – 2,379 callers were provided with crisis intervention, and
- b) 300 individuals were provided emergency shelter.

Human Options has fostered a close relationship with the local police department; a police officer always escorts the victim to the emergency shelter in order to ensure absolute safety of client/victims.

The Grand Jury observed that this organization is engaged in a variety of community outreach programs. Shelter advocates work with youth organizations to provide programs aimed at building positive role models for children. Advocates also participate in presentations to area school students on teen dating violence as well as on developing healthy relationships. Partnerships are forged with local law enforcement and local hospitals to raise awareness of domestic violence issues and resources.

The Human Options' staff made the following suggestions to improve services for domestic violence victims:

- a) increase funding to better serve victims and their children,
- b) increase public awareness regarding the resources available in the County to help victims of domestic violence,
- c) the County should be proactive in screening and identifying victims of domestic violence on all County intake forms,
- d) create a liaison between emergency shelters and the mental health programs sponsored by the County,
- e) enlist shelter personnel to help train first responders, and
- f) utilize school health classes to help train students on preventing abuse and developing healthy relationships beginning at a young age.

Interval House

This shelter is strategically located to support the northern and western areas of the County where most domestic violence victims have very diverse multi-cultural backgrounds. Over 70 languages are spoken by the staff at Interval House, including Spanish, Farsi, Vietnamese, Chinese, Slavic, Russian, to name a few. The shelter's décor and art work depict multiple cultures.

Interval House opened over 30 years ago in Orange County. Currently, there are three separate facilities that provide shelter and services to victims of domestic violence including, two home sites that provide longer term transitional housing. The main shelter facility was remodeled in 1999 and includes large common living spaces, a large children's play yard and a first floor bedroom and bathroom that are ADA accessible. This shelter has a total of 71 beds, with almost 100% occupancy throughout the year. In 2012, this shelter provided emergency housing for 372 individuals.

Interval House first opened with only four staff members, most of whom had personally experienced domestic violence. There was no public funding at the time. Currently, there are 22 full-time and 39 part-time staff members and over 300 volunteers. *Many of the staff members and volunteers are former clients of the shelter and therefore have a keen understanding of family issues and what causes and leads to abuse.* One former client assisted with the passage of

the Violence Against Women Act in 1994 and now assists local law firms in understanding this legislation.

A variety of classes and referral services are provided to meet victims' needs. During the Grand Jury's visit to the emergency shelter, a Personal Empowerment Program (P.E.P.) class was in session for about 15 clients. In addition, the shelter has a Health and Wellness program through partnerships with local clinics. A shelter staff member arranges and coordinates attendance at the local schools for all school-aged children of clients. Also, there is a Teen Program that focusses on developing and maintaining healthy relationships.

The shelter's staff partners with a local law firm within the County and local law schools to assist their clients in obtaining restraining orders and preparing for court trials.

Local police who encounter a domestic violence situation follow a protocol to notify the shelter. Some police departments have a domestic violence advocate on-site or on-call who can help with investigations, victims' questions, and offer assistance.

At Interval House there are multi-cultural programs including the SALAAM ("peace" in Arabic) program that works with middle-eastern groups to help victims who cannot leave an abusive situation due to religious beliefs. "Creating a Safe Environment" is another outreach program aimed at faith based groups, primarily the African American community, focused on educating boys and men.

Because this organization's clients are so diverse, and many are new immigrants to the United States, the shelter is closely linked to local colleges and evening programs to assist victims with learning the English language.

Interval House staff made the following suggestions to improve services for domestic violence victims:

- a) improve the collection of earmarked funds (such as batterers' fees) that support the comprehensive domestic violence programs offered by the four emergency shelters in the County receiving these funds,
- b) consider standardizing protocols to collect, record, and follow-up on batterer fees, and
- c) continue to provide funding to the four domestic violence shelters that offer comprehensive services to victims.

Women's Transitional Living Center (WTLC)

This shelter is located in North Orange County and opened over 35 years ago. There are two facilities – an emergency shelter for stays up to 45 days, and a transitional living home for longer periods. Approximately 50% of victims arrive at the shelter with dependent children.

The Grand Jury toured the emergency shelter and interviewed a staff member. There are 30 full-time and part-time employees and about 100 volunteers at the emergency shelter. In 2012, this emergency shelter provided the following assistance to victims of domestic violence:

- a) 24-Hour Hotline – over 1,900 callers were provided with crisis intervention, and
- b) 403 individuals were provided with emergency shelter.

This particular shelter distinguishes itself by offering services and counseling to victims with substance abuse issues.

WTLC places particular emphasis on reaching out to victims of domestic violence that may not want or need emergency shelter housing. In this regard, the shelter staff teaches Personal Empowerment Program (PEP) classes and offers counseling at faith based organizations, family resource centers and at other non-profit organizations in the community. The emergency shelter personnel work closely with the Orange County Family Justice Center to obtain legal assistance for clients, including help with requesting restraining orders. The Grand Jury subsequently learned that the Family Crimes Unit within a local police department works closely with WTLC and the community to provide assistance and guidance for victims of domestic violence.

During the Grand Jury's visit to this emergency shelter, the organization's staff member offered the following suggestions to improve County services to domestic violence victims:

- a) increase transparency in the County agencies sponsoring mental health programs,
- b) create a liaison between the County Health Care Agency and the domestic violence shelters to coordinate and guide victims in accessing information, and
- c) increase more affordable housing when victims leave the shelter.

Shelter Summary

All four emergency shelters that receive County funds have crisis hotlines staffed 24 hours a day, seven days a week. Typically, when calls for help are received at a domestic violence emergency shelter, the staff will conduct a short interview to obtain key information to determine the victims' needs such as medical treatment, housing, and/or legal assistance. The immediate goal is to move the victim out of harm's way to a safe haven for the night. A more in-depth interview is held the next day to assess the victim's options and long term needs. If necessary, the victim is assigned to an emergency shelter for up to 45 days before transitioning to a long-term housing arrangement.

The emergency shelters' staff recognize that each family and domestic violence situation is different. Multiple considerations are given to determine the most appropriate response to meet individual and family needs. If a shelter is unable to accommodate a particular hotline caller, at least three resources are provided. If a shelter happens to be at capacity, callers in need of a safe haven will be referred to another shelter or a hotel for the night.

All four shelters operate additional walk-in centers separate from their emergency shelters. These centers provide counseling, legal assistance and an array of comprehensive services. At all four shelters visited, the Grand Jury observed activities and facilities designed to provide life skill tools to victims, their families, and the community, to break the continuing cycle of violence.

The Grand Jury observed that each shelter has designated staff members assigned to arrange and coordinate the continued education of school age children with the local school districts. This includes providing daily transportation to schools during stays at the domestic violence shelters.

Finally, it is noted that the portion of funds from marriage licenses and batterer court fees directed to the four emergency shelters discussed in this report represents a small percentage of the revenue needed to properly operate these facilities. As charitable organizations, all of these shelters depend mainly on public donations for revenue.

The Restraining Order – Providing a Victim with Continued Safety

In addition to reaching a safe location, victims of domestic violence have a need to protect themselves and their children from further abuse. In Orange County, victims have several options.¹³

1. Emergency Orders – These are issued by law enforcement first responders at the scene and are good for five days.
2. Temporary Restraining Orders – These are issued by the Orange County Superior Court for approximately 25 days until a formal hearing is held. Victims can petition the court for relief in the following ways:
 - a. restrain the perpetrator from hurting the victim involved,
 - b. direct the perpetrator to leave the home,
 - c. prevent the perpetrator from going to the victim’s workplace, school or other location based on the situation,
 - d. award custody of or visitation with a minor child,
 - e. direct child support for minor children and or other financial responsibilities, and
 - f. direct that either or both parties participate in counseling.
3. Restraining Order – These are issued by the Orange County Superior Court and can last for approximately five years.

In Orange County, the Lamoreaux Justice Center in the city of Orange serves as the central location where temporary restraining order requests are processed by the presiding judge/commissioner. While it is recognized that the Grand Jury has no jurisdiction over the courts, the Grand Jury visited this justice center and observed restraining order proceedings in Courtroom 63 to gain an understanding of the process.

¹³ Extended Restraining Order: accessed, August 17, 2013, <http://www.occourts.org/self-help/restrainingorders/domesticviolence.html>

Victims of domestic violence must appear in person before the presiding judge/commissioner in Courtroom 63 to obtain a restraining order. Accused offenders may choose to appear or not to plead their side of the issue. If a restraining order is granted, the order is transmitted to the Sheriff's Department to be served on the offender. In 2012, over 5,100 petitions were requested by Orange County citizens from this venue.

The Grand Jury also interviewed a representative from the Community Services Programs, Inc. (CSP), a non-profit organization that is on-site at the Lamoreaux Justice Center to assist victims with restraining order applications. CSP sponsors the Domestic Violence Assistance Program (DVAP) that provides support to victims as their cases move through the legal system. In addition, CSP interacts with Lamoreaux court personnel to transmit approved restraining orders to the Sheriff's Department for processing. Approximately 4,000 victims of domestic abuse in the County utilize the CSP advocates annually.¹⁴

The current justice system policy requires victims of domestic violence to appear in person to request a restraining order; however, there is one exception to this requirement. The Orange County Family Justice Center (OCFJC), located in Anaheim, has had a "pilot" program in place for the past seven years that allows requests for restraining orders to be faxed to the Lamoreaux courthouse. A legal advocate is on-site at OCFJC who assists the victim with the application which is then faxed to the Lamoreaux courthouse. In this way, victims do not have to be concerned with arranging transportation to court. See Table 3 for *contact numbers*.

Table 3: Restraining Order Assistance

Community Service Programs, Inc.	949-250-0488
Domestic Violence Assistance Program	714-935-7956
The Orange County Family Justice Center	714-765-1645

On-Going Legal and Counseling Services – The Orange County Family Justice Center

To further serve victims of domestic violence, assistance is available at the Orange County Family Justice Center (OCFJC). This is a collaborative non-profit organization that opened in 2006 through the efforts of the city of Anaheim. The mission of OCFJC is to provide direct assistance to victims and families whose lives have been impacted by domestic violence, child abuse, sexual assault or elder abuse.

There are 15 partnership organizations with the OCFJC which co-locate employees of law enforcement and social services under one roof. In addition, representatives from the Orange County District Attorney's office actively participate in OCFJC's programs to help victims. The Grand Jury visited the OCFJC and interviewed representatives from law enforcement, the

¹⁴ Interview: Community Services Program, Inc.

District Attorney's office and the Community Service Programs, Inc. (CSP). The following are some of the programs and services offered:

- a) a pilot program that allows restraining order requests to be faxed directly to the Lamoreaux Justice Center in lieu of a personal appearance,
- b) coordination with local domestic violence shelters to assist victims through legal proceedings,
- c) a partnership with the Chapman University legal clinic to help prepare witnesses in domestic violence cases for court appearances, and
- d) training classes for domestic violence advocates who are required to receive 40 hours of professional education.

Although the Grand Jury lacks jurisdiction over the courts, the courts are an integral part of the team that also includes law enforcement, prosecutors, legal and victim advocates that provides services at the OCFJC. In particular, Anaheim Police Department's Family Protection Unit is located on-site. These police investigators have special skills in handling domestic violence issues and crimes. Deputy district attorneys from the Orange County District Attorney's office work at the OCFJC to prepare victims who are witnesses in felony domestic violence cases. CSP advocates assist victims with crisis intervention and referrals to community resources, such as, housing and medical treatment. In 2012, the OCFJC provided services to 2,000 victims of abuse.

What Happens to Batterers in the Aftermath of a Domestic Violence Dispute?

The Investigation by Law Enforcement – The Family Protection Unit of the Sheriff's Department

As noted earlier, if a local police department officer responds to a domestic violence call, the matter is subsequently investigated by that department's personnel. If Orange County Sheriff's Department deputies respond to a domestic violence call, the required written reports are forwarded to the Orange County Family Protection Unit within the Sheriff's Department.

The Family Protection Unit is a group of case investigators that focus exclusively on domestic violence, elder abuse and child abuse cases. It consists of a supervising sergeant, six deputy investigators, two administrative assistants and a full time victims' advocate. The Grand Jury interviewed the sergeant and four staff members including the victims' advocate to gain an understanding of how the Sheriff's Department investigators handle domestic violence cases.

The Family Protection Unit has compiled and distributed a leaflet to all Sheriff's Department first responders with a checklist of items and information needed for subsequent investigations. This leaflet contains pertinent penal code sections as well as guidance for gathering evidence at the scene. When Sheriff's deputies enter reports into a County data base system, the Family Protection Unit retrieves these reports and initiates a formal investigation by visiting the victim's home, record statements from the victim, alleged batterer and any witnesses. All unit

investigators have received additional training that enables them to handle sensitive issues and unique circumstances involved in human abuse crimes. All investigations are documented and then forwarded to the District Attorney's office that determines whether to charge the offender.

Approximately 1,300 domestic violence cases are investigated each year by the Sheriff's Department Family Protection Unit. Many of these investigations involve repeat offenders.¹⁵

The Family Protection Unit employs a full-time victim's advocate on its staff. The advocate reviews investigative reports and works with victims to refer them to services. These services can include shelter, counseling or medical treatment clinics. The advocate provides support to victims as their domestic violence cases move through the court system. The advocate utilizes a comprehensive packet of information on domestic violence which includes the following:

- a) a copy of Marsy's Law,¹⁶
- b) a victim's bill of rights,
- c) victim counseling support and safety information,
- d) a list of Orange County shelters and contact numbers, and
- e) guidelines on court proceedings.

The Family Protection Unit also handles requests for U-VISA's.¹⁷ The U-VISA is a non-immigrant visa and its purpose is to give victims of certain crimes temporary legal status and work eligibility in the U.S. for up to four years. Only 10,000 U-VISA requests are approved by the U.S. Immigration Service annually. To qualify, an applicant must have suffered substantial physical or mental abuse due to criminal activity. In addition, applicants must agree to assist government officials and local law enforcement with investigations and prosecution of the attacker. In Orange County, approximately 100 U-VISA requests are received each year and all are screened by the Family Protection Unit to validate that the undocumented victims are truly victims and not just trying to use the system to stay in the United States. On average, five percent of U-VISA requests received by the County are denied each year.

The Criminal Justice System

In Orange County, law enforcement investigations involving domestic violence are forwarded to the District Attorney's office for evaluation and potential prosecution of the alleged batterers. This includes investigations conducted by local police departments as well as the Sheriff's Department. The Grand Jury met with members of the District Attorney's office to discuss their role in domestic violence matters within the County.

The District Attorney's office is staffed with six deputy district attorneys who specialize in domestic violence crimes and determine if and how charges will be filed. Felony domestic

¹⁵Interview: Family Protection Unit, Orange County Sheriff's Department.

¹⁶California Department of Corrections and Rehabilitation: http://www.cdcr.ca.gov/victimservices/marsys_law.html

¹⁷UVISA for Immigrants who are Victims of Crime, US Immigration Support, accessed December 15, 2013, <http://www.usimmigrationsupport.org/visa-u.html>.

violence is defined as a serious act of violence against another member of the household. Misdemeanor domestic violence crimes are described as *an act or a threat of violence* against another in the household. Alleged domestic violence crimes charged as felonies are assigned in a *vertical* manner i.e., all actions on a case are handled by a single deputy district attorney from start to finish. Misdemeanor domestic violence cases are assigned in a *horizontal* manner i.e., several deputy district attorneys may handle various aspects of the matter from start to finish. The Grand Jury obtained the information in Table 4 concerning felonies and misdemeanor charges filed in Orange County from the District Attorney’s office.

Table 4				Orange County District Attorney				
DOMESTIC VIOLENCE CASE DISPOSITIONS				DOMESTIC VIOLENCE CASE DISPOSITIONS				
Misdemeanors			Felonies			Felonies		
Fiscal Year	2011-2012	2012-2013	Fiscal Year	2011-2012	2012-2013	Fiscal Year	2011-2012	2012-2013
Reviewed	4071	3849	Reviewed	1101	988	Reviewed	1101	988
Rejected	2512	2566	Rejected	719	679	Rejected	719	679
Filed	1559	1283	Filed	382	309	Filed	382	309
Dismissal	377	310	Dismissal	9	17	Dismissal	9	17
Not Guilty	7	9	Not Guilty	1	2	Not Guilty	1	2
Guilty Misdemeanor	1134	993	Guilty Felony	266	235	Guilty Felony	266	235
Guilty Infraction Only	5	2	Guilty Infraction Only	86	61	Guilty Infraction Only	86	61
Total Closed	1523	1314	Total Closed	362	315	Total Closed	362	315
Convictions	2011-2012	2012-2013	Convictions	2011-2012	2012-2013	Convictions	2011-2012	2012-2013
Total Convictions	1139	995	Total Convictions	352	296	Total Convictions	352	296
Convicted / Dismissed/Acquitted	1523	1314	Convicted / Dismissed/Acquitted	362	315	Convicted / Dismissed/Acquitted	362	315
% Convicted	75%	76%	% Convicted	95%	96%	% Convicted	95%	96%
<i>Consolidated cases are not used to calculate conviction rates</i>			<i>Consolidated cases are not used to calculate conviction rates</i>			<i>Consolidated cases are not used to calculate conviction rates</i>		

During interviews with the District Attorney’s staff, the Grand Jury learned that the large number of case rejections, dismissals, or reduced charges stems from the hidden nature of most domestic violence issues. Obtaining evidence can be very difficult as many domestic violence victims recant their stories or are unwilling to serve as witnesses at trial. They fear repeated abuse, are concerned about the impact on their children and/or depend on their spouse/partner for financial support. Also, under recent legislation, victims cannot be forced to testify; however, this does not necessarily preclude prosecution.

In spite of the challenges, the Orange County District Attorney’s office obtained convictions for 2,782 domestic violence offenders for the fiscal years 2011-2012 and 2012-2013.

The Grand Jury also learned that the Orange County District Attorney’s office participates in a number of community outreach and educational programs aimed at raising awareness of

domestic violence services to help victims and families break the cycle of violence and move forward including the following.

1. The Domestic Abuse Prevention and Resource Handbook was prepared and distributed by the District Attorney and includes a Q&A on domestic violence issues, contact numbers for shelters, lists of County legal aid clinics, 24-hour hotlines, County medical aid clinics, and counseling centers.¹⁸
2. Safe from the Start is a public health campaign aimed at protecting children from being exposed to violence.¹⁹
3. Deputy district attorneys participate in teaching classes for domestic violence advocates that work in the County shelters.
4. Deputy district attorneys give presentations at *brown bag* lunch training seminars.
5. The District Attorney's staff serves on the Orange County Family Violence Council and the Family Violence Project (FVP).

In addition to the above, the Orange County District Attorney's office is one of several County agencies that partners with the Orange County Family Justice Center in Anaheim. Deputy district attorneys assist domestic violence victims in preparing for court trials.

Convicted Batterers on Probation

Most offenders convicted of felony domestic violence in Orange County end up under the jurisdiction of the Orange County Probation Department. The overall mission of the Orange County Probation Department is to maintain a safe community environment by ensuring that offenders on formal supervision comply with court orders and remain law abiding citizens.

The Orange County Probation Department has two major roles pertaining to domestic violence crimes. First, the department supervises all offenders assigned by the court as well as offenders released from prison on Post-Release Community Supervision (PCS). Secondly, the department oversees the administration of the Batterers' Intervention Program (BIP). The Grand Jury met with officials from the two divisions that carry out these responsibilities to gain an understanding of the work and protocols involved.

The Probation Department has established a Special Supervision Division that includes a Domestic Violence Unit. This unit's ten Deputy Probation Officers (DPO), along with two DPO's from the Post-Release Community Supervision are tasked with monitoring and supervising offenders with domestic violence related offenses. The probation officers administering these caseloads have received unique training in the domestic violence cycle of behaviors. Examples of this training include classes in the following:

¹⁸ Orange County District Attorney: <http://www.orangecountyda.com/home/index.asp?page=90>.

¹⁹ Orange County Department of Education: <http://www.ocde.us/OCSFSTS/Pages/default.aspx>.

- a) autism awareness,
- b) child/elder abuse,
- c) addict recovery,
- d) bullying, and
- e) mental health issues.

According to the unit officials, the additional training enables the probation staff to better understand and assess the needs of their assigned probationers.

Because of specific training, officers assigned to the Domestic Violence Supervision Unit have been able to determine that many domestic violence offenders suffer from mental health issues that require treatment. These officers estimate that 15% to 25% of offenders on probation, at any given time, suffer from acute mental health issues that pose additional complications for rehabilitation.

Probation officers also work with victims of the offenders under their supervision. This allows the officers to establish restitution and to enforce restraining orders.

The Domestic Violence Supervision Unit reported that between October, 2012 and October, 2013, a total of 888 cases concerning felony domestic violence were assigned to Probation's caseloads. Generally, offenders report to this supervisory unit twice a month. Probation officers assigned to this unit reported that there has been an increase in the overall violent nature of the crimes as well as crimes involving the use of weapons.

With regard to recidivism, the Probation Department does not calculate separate rates for domestic violence offenders. Department staff estimates that the recidivism rates for domestic violence offenders is less than the general supervision average rate of 37%. Similar to other statistics regarding domestic violence, exact calculations are difficult since family-related domestic violence tends to be under-reported.

In addition, the Grand Jury learned that the Probation Department Domestic Violence Supervision Unit is involved in several initiatives as follows.

1. Global Positioning System (GPS) Monitoring – The Probation Department began a Continuously Electronic Monitoring Center program in April, 2010 for adults and juveniles. The approximate cost of supervising an individual with GPS equipment per day is \$13.31 compared to \$420 cost per day for incarceration.
2. Tablet Technology – This initiative allows probation officers access to the department's case management system while working in the field. The features include the ability to pull up pictures of probationers as well as a history of contacts and concerns.
3. Death Review Teams – This team meets quarterly to review domestic violence death cases. Representatives from county law enforcement, health care agency, and the courts

also participate on these teams. A methodology is used to identify key points in a relationship where intervention might have prevented the death.²⁰

Convicted Batterers in Treatment

In the state of California, convicted and sentenced domestic violence batterers are ordered by the court to attend a Batterer Intervention Program (BIP) as a condition of probation. This usually applies to offenders convicted of felonies as well as misdemeanors.²¹

The goal of the BIP treatment is to eliminate or reduce domestic violence behavior by getting batterers to be accountable for their actions and change their abusiveness. The BIP treatment is 52 weeks in duration and is highly regulated under California Penal code 1203.097 and 1203.098.²² Convicted batterers are required to attend one 2-hour group session per week, consisting of 10 to 15 participants. The BIP treatments are conducted by trained facilitators that have met the state educational requirements.

Cost for the BIP treatment is borne by the batterer who pays a fee based on an economic sliding scale. Many offenders complete the program but do not receive certification for failure to pay the required program fees. The penal code indicates that services cannot be denied to batterers; however, certification can be refused for failure to pay agreed upon fees. Table 5 provides information regarding the BIP treatments in Orange County for 2012:

Total Enrollees	8,531
Gender	82% male 18% female
Prior Domestic Violence Offenses	27%
Misdemeanor Convictions	86%
Felony Convictions	14%

In Orange County, the Programs Division of the Probation Department is responsible for the administration of the Batterer Intervention Program for convicted offenders, including the selection of facilitators who provide the BIP. Initially, the BIP providers are selected through the Request for Proposal (RFP) process. Then, the Programs Divisions solicits renewals of BIP providers annually, usually in March, from the County’s non-profit and business sectors. Prior to this solicitation, the division hosts an open informational meeting for the prospective providers to discuss the criteria of the selection process and the needs of the County program. Thereafter, applicants submit binders with detailed descriptions of their credentials and their treatment programs.

²⁰ Interview with Orange County Probation Department.

²¹ California Penal Code section 1203.097 (a) (1) & (6), accessed, January 13, 2013.

²² California Penal Code section 1203.097, California code, accessed January 9, 2014, <http://codes.lp.findlaw.com/cacode/PEN/3/2/8/1s11203.097>.

Final selections of BIP providers are made in May of each year. While the BIP providers do not receive County funding; nonetheless, formal memoranda of understanding are signed between BIP providers and the County Probation Department, Programs Division. These formal memoranda of understanding are a way to hold the BIP providers accountable and responsible for following the state requirement outlined in California Penal Code 1203.097. In 2013, there were 14 BIP providers in Orange County.

The Grand Jury visited and interviewed four of the current Orange County providers of the BIP treatment. The purpose of these visits was not to evaluate the providers' specific programs per se, but rather to obtain input and recommendations on the County's overall administration of the BIP program related to domestic violence and to view the other side of the issue. Several observations and concerns were expressed by this group as follows.

1. Collaborative Courts - All providers indicated that the collaborative courts that were utilized in the past in Orange County were very beneficial to the citizens. The court personnel understood the domestic violence issues from both the victim and offender viewpoints and were well versed in the various services and treatment programs available in the County. (Subsequent to the interviews, the Grand Jury learned that these collaborative courts for domestic violence cases were discontinued due to court funding issues.)
2. BIP Fee Collection – All providers reported experiencing great difficulty with the collection of program fees from BIP participants. The fees are the only source of revenue for services, and providers receive no County funds. The treatment providers estimated that 30% to 40% of program participants fail to pay fees. There is no recourse for failure to pay other than non-receipt of certification for course completion.
3. CADVOC Meetings – All providers discussed the Coalition Against Domestic Violence in Orange County (CADVOC) meetings held quarterly with the Probation Department Programs Division. There was a strong sentiment that these meetings could be improved. Most providers wanted more in-depth and meaningful agendas, workshops with guest speakers, and more opportunities for interaction and communication among the attendees.
4. Mental Health Needs – Most providers indicated that their client offenders have a need for more extensive mental health services beyond the 52 week BIP. The providers; however, indicated that there was not much awareness of County sponsored programs for referrals and it is generally very difficult to navigate the County government systems.

Access to Mental Health Programs

The Grand Jury interviewed officials from Behavioral Health Services, a department of the Orange County Health Care Agency. This department has primary responsibility for overseeing the Orange County behavioral health programs for adults and children. The purpose of this was to gain an understanding of County sponsored mental health programs that could benefit victims of domestic violence as well as assist batterers with long term changes in violent behavior.

The Grand Jury also reviewed the Fiscal Years 2012-2013 and 2013-2014 Orange County Mental Health Services Act (MHSA) Plans that list the mental health programs that have been funded for the County. Orange County mental health services and programs have grown exponentially during the past 10 years. Since the passage of the California Mental Health Services Act (MHSA) in 2004, Orange County has received over *\$100 million* annually to fund mental health programs for adults and children.²³

The Grand Jury learned that Orange County has over 30 mental health programs underway that could address the needs of domestic violence victims and batterers. Most of these programs are part of the Prevention and Early Intervention section of the MHSA plan that targets trauma exposed individuals. Per the Behavioral Health Services officials, domestic violence is a common problem that is addressed in veteran's programs, child abuse programs, parenting classes and family crisis interventions.

The following is a partial list of programs overseen by the Behavioral Health Services Department that assist (or could assist) in addressing needs of domestic violence victims and batterers.

1. Children's Support and Parenting Program (CSPP)
2. Orange County Postpartum Wellness (OCPPW)
3. Youth as Parents
4. Stress Free Families
5. Outreach & Engagement Collaborative
6. Violence Prevention
7. Veteran's Services Court Programs

The Behavioral Health Services officials also stated that in the past, County citizens with mild and moderate mental health problems could not qualify for County services under Medi-Cal; however, with the implementation of the National Affordable Care Act, these individuals will now be covered.

The Grand Jury also discussed ways to establish communication forums between Behavioral Health Services and the domestic violence emergency shelters and batterer intervention programs for the purpose of raising awareness of available mental health services. As referenced in Table 6, Behavioral Health Services officials advised that Orange County recently initiated a separate telephone access line for information on behavioral health services.

²³ Mental Health Services Act Plans, Orange County, accessed January 14, 2014, <http://ochealthinfo.com/bhs/about/pi/mhsa>

Table 6: Behavioral Health Services Telephone Number

OC Links @1-855-625-4657 or 1-855-OC-LINKS

Monday - Friday 8:00 a.m. to 6:00 p.m.

Justice is Served

With regard to the domestic violence incident described in the opening scenario of this report, the offender was convicted and sentenced to eight years in state prison.

METHOD OF STUDY

The various resources utilized by the Grand Jury to study the Orange County government's response to the issue of domestic violence are as follows.

Confidential interviews were conducted with officials and representatives from the following Orange County government agencies.

1. District Attorney's Office
2. Public Defender's Office
3. Irvine Police Department
4. Orange County Sheriff's Department, Family Protection Detail
5. Orange County Community Resources Department, Community Services
6. Orange County Auditor-Controller's Office, County Budget Office
7. Orange County Probation Department, Special Supervision Division
8. Orange County Probation Department, Programs Division
9. Orange County Health Care Agency, Behavioral Health Services

Confidential interviews were conducted with representatives from the following Orange County *non-profit* organizations.

1. The Four Orange Domestic Violence Emergency Shelters that receive County funds:
Laura's House, Human Options, Interval House and Women's Transitional Living Center
2. Batterer Intervention Program Provider, La Habra
3. Community Services Provider, Inc., Domestic Violence Assistance Program
4. Orange County Family Justice Center, Anaheim

Confidential interviews were conducted with representatives from the following Orange County *for-profit* businesses.

1. Batterer Intervention Program Provider, North Costa Mesa
2. Batterer Intervention Program Provider, South Costa Mesa
3. Batterer Intervention Program Provider, Orange

Written questionnaires were sent and responses were received from the following four Domestic Violence Emergency Shelters that receive County funds.

1. Laura's House
2. Human Options
3. Interval House
4. Women's Transitional Living Center

Site tours were taken at the following Orange County facilities.

1. The Four Domestic Violence Emergency Shelters that receive County funds
2. Lamoreaux Justice Center, Courtroom, Orange
3. Orange County Family Justice Center, Anaheim

The following legislation was studied and reviewed.

1. National Violence Against Women Act (VAWA), 1994
2. California Penal Code Sections 13700 - 13702 – Definitions of domestic violence crimes
3. California Penal Code Section 1203.097 – Conditions of probation for crimes of domestic violence
4. California Family Code Section 6218 – Domestic violence protective orders
5. California Welfare and Institutions Code Sections 18290 - 18309.5 – Procedures for state funding of domestic violence emergency shelters

ANALYSIS

Domestic Violence Data

The issue of domestic violence cuts across all races, nationalities, and socio-economic levels with an overwhelming number of victims who are women.

The Grand Jury has concluded that domestic violence is a serious problem in Orange County. This is evident from the domestic violence data collected during the study for the year 2012 as follows.

1. Batterers Assigned to Supervised Probation	888
2. Emergency Shelter Stays by Victims	1,679
3. Felony/Misdemeanor Convictions (2011/2012)	2,782
4. Temporary Restraining Orders Requested	5,100
5. Crisis calls to Emergency Shelters	6,500
6. Batterer Intervention Program Enrollees	8,500
7. Hotline Calls to Police and First Responders	10,300

The above listed statistics for emergency shelter-stays and crisis calls to shelters reflect data for *only* the four emergency shelters that receive County funds. Hotline calls to law enforcement reflect that Orange County is slightly lower than San Diego County and slightly higher than Riverside County experienced in 2012. In addition to these statistics, it is known that many more victims of domestic violence utilize other non-county government services. There are also an untold number of victims who do not report abuse. This indicates that domestic violence is greater than what the basic data shows.

Is Orange County Government Involved in Addressing Domestic Violence?

The answer to this question is a resounding, *Yes!* The Grand Jury determined that the County of Orange is pro-actively addressing the issues of domestic violence through a number of constructive programs and services. County functions, such as law enforcement, the criminal justice system, Health Care Agency, Social Services, Community Resources and the Probation Department have devoted significant staff resources to domestic violence cases and issues. County agencies have recognized that domestic violence cases require sensitive treatment and as such, special units have been established in law enforcement departments, the criminal justice system and the Probation Department. Employees in these unique units have received individualized training to better deal with the highly emotional and challenging situations created by domestic violence.

The County has partnered with excellent non-profit organizations to assist victims. Efforts have also been made to provide convicted batterers the opportunity to change their criminal behavior and become more accountable for their actions. Notably, several County agencies have been actively engaged in efforts to reduce and prevent domestic violence behaviors through outreach programs at community resource centers and school districts.

The following was noted during this study.

1. Hotlines – County citizens have excellent access to immediate help in a domestic violence situation. County hotline numbers appear to be well publicized on County websites and by resource materials distributed by law enforcement, emergency shelters, and County sponsored community organizations.

2. First Responders – The Grand Jury also studied the batterer/offender side in the aftermath of a domestic violence situation by visiting a local police agency and the Orange County Sheriff’s Department. The Grand Jury made note of the high level and quality of responsiveness by the Irvine Police Department as a first responder. Particularly noteworthy was the investigative work performed by the Sheriff’s Department, Family Protection Unit. Contact with additional police departments in Anaheim, Fullerton, Huntington Beach, and Santa Ana revealed that all of these entities consider domestic violence a very serious crime requiring sensitive handling. All police agencies contacted have established special units and trained their employees to handle the highly charged domestic violence scenes. Each interview they conduct, beginning with the initial visit to the scene and continuing throughout the investigation, is captured on an audio recording and maintained with the file to ensure accuracy and verify consistency of statements. All agencies have access to full-time victim’s advocates. In short, the Grand Jury concluded that the Police Departments contacted and the Orange County Sheriff’s Department Family Protection Unit have demonstrated a high level of responsiveness and sensitivity to domestic violence in the County.

3. Emergency Shelters – After completing on-site visits and interviews at four domestic violence emergency shelters, the Grand Jury has determined that County citizens have excellent options for getting to a safe haven if necessary. From the Grand Jury’s interviews and tours, the emergency shelters that receive County funds are all very well managed operations providing a full complement of needed assistance and resources to domestic violence victims, many of whom arrive in the middle of the night with children and few possessions. In addition to providing emergency shelter, the four organizations offer extensive counseling, legal assistance and referrals to social services to both shelter residents and to those living in their own homes or other housing. It is evident that the funding allowed to local shelters by the California Welfare and Institutions Code is being effectively utilized for County citizens in need.

The Grand Jury observed that all four emergency shelters make every effort to accommodate victims and address their needs. Shelters’ staff regularly collaborate and if necessary, will refer clients to one another’s facilities where there are vacant beds and space. *During visits to the emergency shelters, the Grand Jury observed that each organization is dedicated to ensuring the safety, security and anonymity of all client victims.*

4. Requests for Restraining Orders – *This is a concern that the Grand Jury determined needs to be addressed, even though the Grand Jury recognizes that it does not have jurisdiction over the courts.* Current policy requires a personal appearance by the victim at the Lamoreaux Justice Center in the city of Orange. This is burdensome for a victim who is physically located in the southern communities of the County. Because of

extenuating circumstances involved in requesting restraining orders for clients located at great distances from the Lamoreaux Justice Center, both the Grand Jury and emergency shelter representatives recognized the benefits of being able to FAX these requests directly to the Lamoreaux Justice Center. Currently, this procedure is only available to clients at the Orange County Family Justice Center and not to any of the four emergency shelters that receive County funds. The shelter located the greatest distance from the Lamoreaux Justice Center has a full-time legal advocate on staff that could easily oversee the faxing process to ensure that all procedures are followed.

5. Legal Assistance for Victims – The Grand Jury determined that victims of domestic violence have access to a significant number of services from County sponsored partnerships and outreach programs to meet their needs. The Orange County Family Justice Center and the Community Services Program, Inc. are excellent examples of County government agencies partnering with the non-profit sector to provide a convenient *one stop shop* of legal and counseling services. This support is critical to empowering victims to stay safe and serve as witnesses in criminal trials.
6. Criminal Justice System – The Orange County District Attorney’s office has taken the initiative to establish a unit of prosecutors who specialize in domestic violence cases. Deputy district attorneys assigned domestic violence felony cases handle these in a *vertical* manner which allows them to become very knowledgeable of all aspects of the crime including the victim’s and batterer’s particular circumstances. The Orange County District Attorney’s office has taken the time to review over 10,000 misdemeanor and felony domestic violence referrals during the 2011 and 2012 fiscal years. Of the cases actually filed in court, 75% of the misdemeanors and 95% of the felonies resulted in convictions.

Especially noteworthy, are the various outreach efforts to the Orange County communities by the District Attorney’s office. These efforts include, among others, the participation at the Orange County Family Justice Center, participation on the Family Violence Council, presentations at the *brown bag* lunch forums, and presentations during the 40 hour certification classes for domestic violence advocates.

7. Probation Department, Special Supervision Division – The establishment of the Domestic Violence Unit has given necessary focus to domestic violence issues. Trained probation officers have become adept at identifying behaviors and elements associated with cycles of violence, as well as the common mental health problems associated with domestic violence offenses. As such, the Probation Department staff needs the assistance of the Behavioral Health Services to refer the supervised batterers to appropriate treatments in order to promote long term wellness, change violent behavior traits and reduce recidivism.

The Grand Jury commends the department for several initiatives involving the Domestic Violence Unit. These include the following: the use of GPS tracking devices to monitor probationers; the use of tablet technology to provide instant information for probation officers in the field; and the use of the Orange County Death Review team to try to learn the cause of a domestic violence fatality and how to avoid it in the future.

8. Probation Department, Programs Division – The Programs Division carries out all administrative responsibilities for the Batterers’ Intervention Program (BIP) oversight. Of significance, 8,531 Orange County citizens were enrolled in the BIP during 2012. Through discussions with BIP providers, the Grand Jury concluded that these programs appear to operate in accordance with the state penal code as required.

The Grand Jury also determined that the *Programs Division would improve the relationship between the County and the BIP providers by taking the following step:*

- a. in addition to initiating surveys of the BIP participants and their assigned probation officers, the BIP providers should also be surveyed as well to obtain input on how to improve the process and program, and
- b. although CADVOC is not a County government entity, the CADVOC meetings (mentioned on page 23) would clearly benefit from a more active leadership role from the Programs Division.

Mental Health Needs of Victims and Batterers

Throughout this study, members of the Grand Jury heard a consistent message from representatives of both victims and batterers; that many victims who endure long term domestic violence (or are the perpetrators of domestic violence), suffer from mental health illnesses, such as severe depression and a sense of powerlessness. The representatives from the County government, non-profit and business sectors clearly indicated that there is a need to provide access to mental health services beyond the initial treatments offered at emergency shelters or at batterer intervention program sessions.

The Grand Jury determined that there are existing forums in the County that could allow for Behavioral Health Services to collaborate and communicate with representatives of both domestic violence victims and batterer intervention program facilitators. The four emergency shelters meet regularly during the year. The batterer intervention program facilitators meet quarterly along with the County Probation Department officials at the Coalition Against Domestic Violence in Orange County (CADVOC). Both forums provide opportunities for Behavioral Health Services to make presentations, answer questions and *cut through red tape* on information concerning County mental health services.

The Probation Department, Special Supervision Unit would benefit from the establishment of formal liaison arrangements with Behavioral Health Services. The Special Supervision Unit staff has daily contact with hundreds of convicted batterers that are deemed in need of mental health resources. Linking these two County offices together by creating a more direct connection, would be positive.

Finally, each year the Behavioral Health Services officials oversee the comprehensive planning process for distributing Mental Health Services Act (MHSA) funds. The emergency shelters and the batterer intervention program facilitators should join the Probation Department in participating as stakeholders in the MHSA planning process.

FINDINGS

In accordance with California Penal code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Domestic Violence in Orange County, the 2013-2014 Orange County Grand Jury has arrived at ten findings, as follows:

Penal Code Sections 933 and 933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

F.1. Instances of domestic violence are prevalent in Orange County. The evidence indicates that thousands seek help through crises hotlines, emergency shelters and counseling programs in locations throughout the County.

F.2 There are many Orange County government agencies that are actively addressing domestic violence issues involving both victim and batterer.

F.3. Orange County has established effective partnerships with domestic violence emergency shelters for victims.

F.4. Orange County has established effective partnerships with non-profit organizations that offer victims support and resources through the legal justice system.

F.5. There is a lack of constructive communication regarding the Batterer Intervention Program (BIP) between the Probation Department, Programs Division and the BIP facilitators that have formal Memoranda of Understanding with Orange County.

F.6. Orange County Health Care Agency, Behavioral Health Services receives substantial annual funding from the Mental Health Services Act (MHSA) from the state of California, some of which could be applied to the problem of domestic abuse.

F.7. Orange County Health Care Agency, Behavioral Health Services staff hosts an annual meeting of County stakeholders to receive input on how best to distribute and spend MHSA funding. Agencies and non-profit organizations that deal primarily with domestic violence have not been included in the collaboration.

F.8. Advocates and representatives of domestic violence victims and their batterers need additional information and understanding of Orange County sponsored mental health programs and services that can provide assistance for clients with long term mental health illnesses.

F.9. There is a gap in coordination and collaboration between the Orange County Health Care Agency, Behavioral Health Services, and the Orange County Probation Department, Special Supervision Division, in addressing the mental health issues of convicted batterers under court ordered supervision.

F.10. The process for requesting a temporary restraining order from the Lamoreaux Justice Center in the city of Orange is burdensome for domestic violence victims living in southern Orange County communities.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Domestic Violence in Orange County, the 2013-2014 Orange County Grand Jury makes the following seven recommendations:

R.1. Orange County Probation Department, Programs Division should begin to conduct written surveys of Batterer Intervention Program (BIP) participants and the probation staff that supervise them to obtain input and suggestions on improving the program. (F.5.)

R.2. Orange County Probation Department, Programs Division should begin to conduct written surveys of the BIP facilitators to obtain input on the effectiveness of BIP and recommendations for improvement. (F.5.)

R.3. Probation Department, Programs Division should promote more in-depth agendas for the CADVOC quarterly meetings that include attendee interactions and County government guest speakers such as the Behavioral Health Services. (F.5.)

R.4. Health Care Agency, Behavioral Health Services should appoint a liaison between its office and the four domestic violence emergency shelters that receive County funds. The liaison will contact these four organizations and offer to attend their collaborative meetings as well as assist with understanding the available County mental health programs and services. (F.8.)

R.5. Health Care Agency, Behavioral Health Services should appoint a liaison with the Probation Department to assist the probation staff with identifying mental health issues of convicted batterers under probation supervision. (F.8.), (F.9.)

R.6. Health Care Agency, Behavioral Health Services should include representatives from the Probation Department, Batterers Intervention Program facilitators and the four domestic violence shelters in the participation of the annual Mental Health Services Act planning process as stakeholders. (F.7.), (F.8.), (F.9.)

R.7. Orange County District Attorney should request the Orange County Superior Court to consider allowing requests for restraining orders to be faxed to the Lamoreaux Justice Center from the domestic violence shelter that receives County funds and is located 25 miles away. (F.10.)

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff-Coroner, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Requested:

Orange County Probation Department: F-5, F-8, F-9

Orange County Health Care Agency: F-6, F-7, F-9

Responses Required:

Orange County District Attorney's Office: F-10

Responses Requested:

Orange County Probation Department: R-1, R-2, R-3,

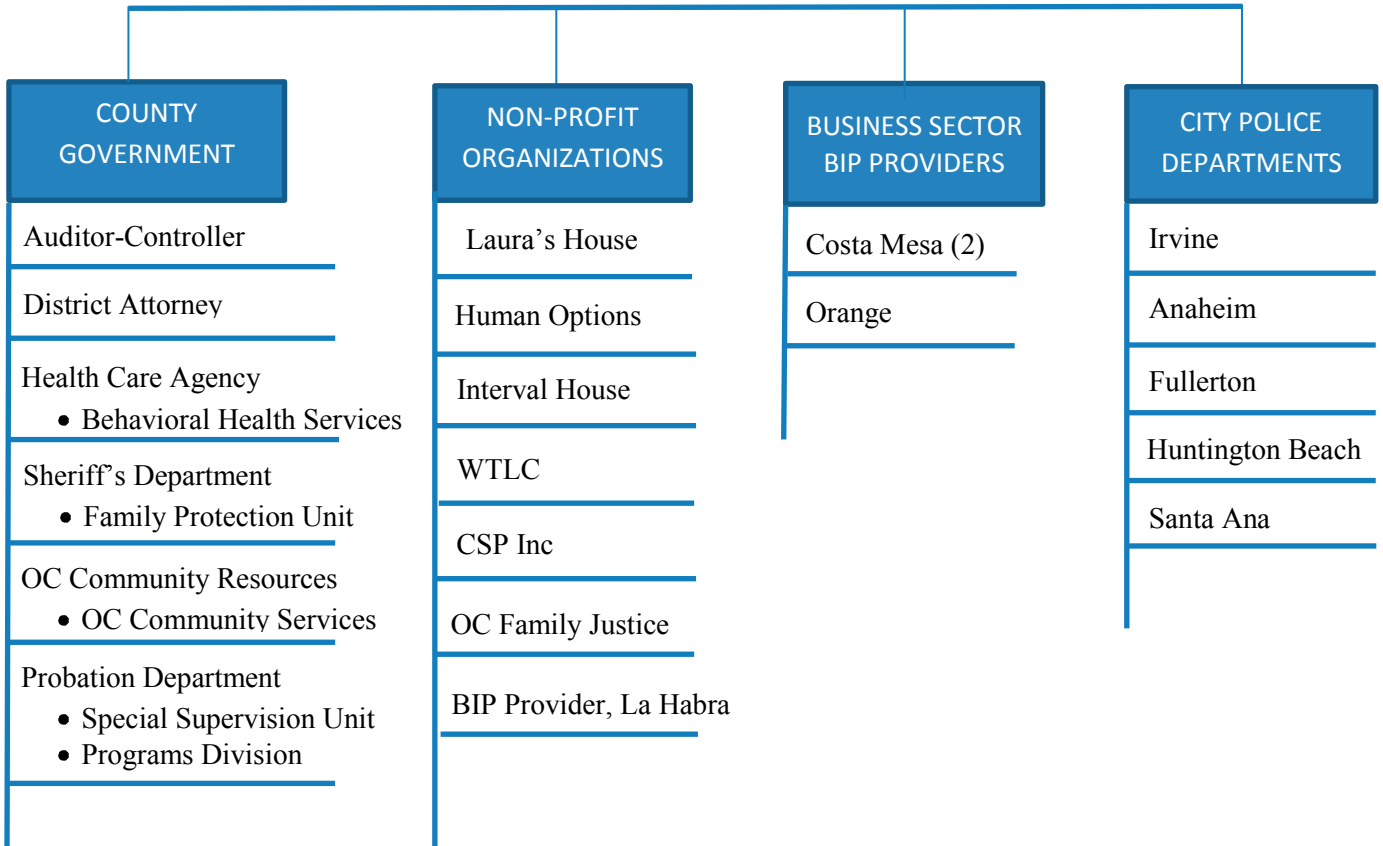
Orange County Health Care Agency: R-4, R-5, R-6

Responses Required:

Orange County District Attorney's Office: R-7

APPENDIX

STUDY CONTACTS IN ORANGE COUNTY



**ORANGE COUNTY INFORMATION
TECHNOLOGY MANAGEMENT:**

**GOOD JOB OVERALL;
DISASTER RECOVERY MUST BE ADDRESSED**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
REASON FOR THE STUDY	3
BACKGROUND AND FACTS	4
METHOD OF STUDY	6
ANALYSIS	8
Costs of IT	8
<i>Cost Comparison with California Counties of Similar Population Size</i>	<i>10</i>
<i>Cost Overruns</i>	<i>11</i>
Governance and Oversight of IT Projects	14
Comparison with California Counties of Similar Population Size	16
Disaster Recovery	17
<i>CEO/IT Disaster Recovery</i>	<i>17</i>
<i>Sheriff's Department Disaster Recovery</i>	<i>19</i>
User Satisfaction Surveys	20
System Development Methodology	22
<i>Agile Versus Waterfall Methodologies</i>	<i>24</i>
<i>CEO/IT Current Methodology</i>	<i>25</i>
The New Managed Services Model and Centralization	26
FINDINGS	28
RECOMMENDATIONS	29
REQUIRED RESPONSES	31
GLOSSARY OF TERMS	33
APPENDICES	35
Appendix A - Sample of CIO Survey Questions	36
Appendix B – CIO Survey Results	37
Appendix C – Agency Disaster Recovery Summary	38

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

SUMMARY

The 2013-2014 Orange County Grand Jury studied seven key areas of Information Technology (IT) Management in Orange County government. The Grand Jury found that central IT (known as CEO/IT) and agency/department IT organizations are delivering services that are highly rated by users, and IT costs, organization, and governance are very comparable to other California counties with similar population size.

The Grand Jury is concerned, however, that the County has not demonstrated a current capability to recover critical computing resources in the event of a major disaster. Of particular note is the lack of a backup datacenter for Sheriff's Department functions that are vital to the Department's law enforcement and public protection responsibilities.

The other key areas that currently need attention are as follows:

1. Evaluation of the achievement of business objectives of IT projects
2. Scope and frequency of IT user satisfaction surveys
3. Adoption and use by CEO/IT of Agile methodologies in system development

The Grand Jury also found that the new outsourced services contracts offer a significant opportunity for future cost control and predictability. Under these contracts, increased consolidation and centralization of IT services ought to result in cost savings, but should only be undertaken on a case by case basis after careful analysis and collaboration with affected agencies/departments.

REASON FOR THE STUDY

Information Technology¹ is critically important to the functioning of Orange County government. Virtually all departments in the County are highly dependent on IT to conduct day-to-day operations, as is the case with almost any business or organization today. County spending on IT equipment, services, and related activities is budgeted for Fiscal Year 2013-14 at approximately \$180 million.² This is 3.4% of the County's overall budgeted expenditures for 2013-14, and 26.6% of the County's budgeted discretionary spending.³ The County's Internal Audit Department considers IT of such importance and potential risk that IT audits and assessments are among the department's designated core (regular yearly) activities. Also, a

¹ In this report, Information Technology means the use of computer and telecommunications equipment to store, manipulate, analyze, retrieve, and transmit data and information to conduct County business.

² "Countywide IT Spend, FY 2012-13"

³ "All funds Summary, 2013-14", accessed Jan. 6, 2014, <http://ac.ocgov.com/civicax/filebank/blobload.aspx?BlobID=31274>. Discretionary spending does not include earmarked funds such as grants or State programs.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

recent study of CEO/IT by the Performance Audit Director was of such importance that it required two years and encompassed five major Tasks and three separate reports.⁴

Recently, County IT operations have been in an especially critical spotlight. One reason is the controversial awarding of major contracts for outsourcing datacenter and network operations in 2013. These contracts are worth a total of \$206 million over a five year period. Also in 2013 the County filed a highly publicized lawsuit alleging fraud against a consulting company for failing to deliver a Property Tax Management System that was to have cost over \$24 million.⁵

A broad independent study of Information Technology in the County has not been undertaken by the Grand Jury since 2003.⁶ Although Internal Audit and the Performance Auditor have done studies since that time, these studies cannot be considered truly independent since both Internal Audit and the Performance Auditor are under the control of the Board of Supervisors. The Grand Jury chose to undertake this study because of

- a. the importance of and dependence of the County on IT,
- b. the significant amount of expenditures directed to IT,
- c. some of the controversial and highly publicized recent issues relating to IT, and
- d. IT has not been studied by the Grand Jury since 2003.

BACKGROUND AND FACTS

Since approximately the time of the Orange County bankruptcy in 1994, Information Technology in the County has been organized and managed under what has been called a “Federated” model. In this model, the Office of Information Technology under the County CEO (CEO/IT) provides services, including shared services such as datacenter hosting and voice and data networks. CEO/IT is headed by the Chief Information Officer (CIO) and provides leadership on strategic IT initiatives. Agencies/departments largely retain autonomy over procuring and managing IT services and resources that support their programs and operations. Under this model, agencies/departments may have their own data and network centers, varying in size and capabilities depending on the degree to which they use CEO/IT services.

Autonomy over IT by agencies/departments is lessened by three factors:

1. The Board of Supervisors retains control of agencies/departments’ budgets for non-earmarked funds, including budgets and contracts for IT related expenditures.
2. The Board of Supervisors, through the County CEO, appoints and manages those agency/department heads who are not elected by the voters.

⁴ See <http://ocgov.com/gov/opad/reports/> and note Performance Audit of CEO/Office of Information Technology Task I, Task II, & Tasks III-IV

⁵ “Quarterly IT Project Status Report, Q1 2012”, accessed Jan. 6, 2014, <http://ocgov.com/civicax/filebank/blobdload.aspx?BlobID=21147>

⁶ See “Cost Saving Opportunities for County Information Technology” at <http://www.ocgrandjury.org/pdfs/gjcostsave.pdf>

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

3. Agencies/departments participate in and to some extent agree to be governed by decisions of the IT governance bodies noted below.

In the County organizational reporting structure, CEO/IT reports and is responsible to the County CEO, and IT managers report through their agency/department structures and are responsible to their agency/department head. In addition, four governance boards are designated to oversee Information Technology:

1. The **IT Executive Council**, which is advisory to the County Executive Office, and has final review and approval responsibility over IT direction and plans
2. The **Technology Council**, which has technical oversight and is technical advisor to the CIO and IT Executive Council
3. The **Enterprise Architecture Group**, which ensures alignment with the County IT Architecture and sets minimum datacenter standards
4. The **IT Investment Review Board**, which reviews all IT projects and expenditures over \$150,000 and is advisory to the IT Executive Council

With the exception of the Enterprise Architecture Group, these bodies consist of a mixture of agency/department staff and CEO/IT staff, and meet regularly. The Enterprise Architecture Group is not currently staffed or holding meetings.

The County has a long history of outsourcing management and delivery of core IT services to outside providers. Core services have at various times included datacenter management, voice and data network management, desktop support, help desk support, application software maintenance, etc. As far back as 1973, when the County outsourced services to Computer Sciences Corporation (CSC) on a seven-year contract, such outsourcing has been the norm, and various other outsource companies have been used.

In 2013, the County approved and completed outsource agreements with Science Applications International Corporation (SAIC) for datacenter and help desk management and desktop support, and with Xerox for voice and data network management. Each agreement is for five years, with two optional one-year extensions. The five year costs of the contracts are approximately \$74 million for SAIC and \$132 million for Xerox. These agreements replaced an expiring agreement with Xerox for datacenter and network services.

Overall costs for IT in the County were approximately \$137 million in FY 2011-12, and \$150 million in FY 2012-13, including all agencies, departments, and CEO/IT. For FY 2012-13, the top agencies/departments for IT spending are shown below.⁷

⁷ "Countywide IT Spend" and "Countywide IT Cost" furnished by CEO/IT office

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Table 1

HIGHEST IT SPENDING AGENCIES/DEPARTMENTS, 2012-13

AGENCY	2012-13 IT EXPENDITURES*	% OF TOTAL 2012- 13 IT EXPENDITURES
1) Social Services Agency	\$27,454,082	18.3%
2) Health Care Agency	\$14,664,448	9.8%
3) Sheriff-Coroner	\$13,007,835	8.7%
4) Probation	\$4,671,643	3.1%
5) CAPS Program (Auditor/Controller)	\$4,113,171	2.7%
6) OC Public Works	\$3,151,126	2.1%
7) Child Support Services	\$3,022,124	2.0%
8) Assessor	\$3,005,793	2.0%
9) District Attorney	\$2,906,136	1.9%
10) Public Defender	\$2,390,599	1.6%

* Does not include staffing costs reported in agency/department budgets

In 2009 the Board of Supervisors requested that the Office of the Performance Audit Director audit the efforts and activities of CEO/IT. The audit results were presented in three reports in 2009 and 2010, covering five tasks. The reports included 48 Findings and Recommendations.⁸

In November, 2013 the Board of Supervisors accepted the CEO/IT Audit Follow-up Report from the Performance Auditor, covering all three reports.⁹ The follow-up report noted that “Overall, CEO/IT has made significant progress in implementing the audit’s recommendations. As of the date of this report, CEO/IT has completed 27 of the 48 recommendations (56%) and plans on completing the remaining 21 recommendations (44%) over the next 6-12 months... The majority of the recommendations that have not yet been implemented are those that will be addressed during and following the transition to the new model” (referring to the Managed Services model).

METHOD OF STUDY

Management, delivery, and use of IT in the County are very broad topics. The number of County departments using IT (virtually all), and the corresponding number of users, application systems, networks, datacenters, etc., is very large. There could be an almost limitless number of

⁸ See <http://ocgov.com/gov/opad/reports/>

⁹ See http://cams.ocgov.com/Web_Publisher_Sam/Agenda11_05_2013_files/images/O00113-001422A.PDF

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

study topics relating to IT. The Grand Jury chose to examine the following seven high impact and high profile topics:

1. Costs of IT
2. Governance and Oversight of IT Projects
3. Comparison with Similar California Counties
4. Disaster Recovery
5. User Satisfaction Surveys
6. System Development Methodology
7. The New Managed Services Model and Centralization

In this report, not all of these topics are addressed with respect to all of the agencies/departments studied. In some cases where IT management of the topic area was deemed satisfactory, there is no comment about it in the report. For example, planning for Disaster Recovery by the County Assessor appears to be acceptable based upon the relative criticality of their applications and the likelihood of recovery. Therefore, it is not specifically mentioned in the report.

The Grand Jury performed the following tasks in the completion of this study:

1. Interviewed management and staff of CEO/IT and of the following agencies/departments, which are seven of the top eight IT spending agencies/departments:

Social Services Agency
Health Care Agency
Sheriff-Coroner
Probation
Auditor/Controller
OC Public Works
Assessor

2. Toured the primary County datacenter and separate datacenters managed by OC Public Works, the Sheriff's Department, and the Assessor
3. Reviewed and analyzed:
 - a) material and information provided as the result of interviews,
 - b) publicly available County financial data,
 - c) documentation and minutes of IT governance bodies,
 - d) contracts with SAIC and Xerox for outsourced IT services (Master Services Agreements, Schedules, Appendices, Attachments),
 - e) CEO/IT materials on the County Intranet site,

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

- f) Board of Supervisors meeting minutes and support material relating to IT matters from May, 2012 to Oct. 2013, and
 - g) Quarterly IT Project Status reports from the first quarter of FY 2012-13 through the first quarter of FY 2013-2014, which is provided to the Board of Supervisors by the Project Management Office of CEO/IT.
4. Sent a survey questionnaire to the Chief Information Officers (CIO's) of seven other counties with populations over 1 million, (excluding Los Angeles County)
 5. Reviewed IT industry best practices from textbooks and trade journals

ANALYSIS

Costs of IT

The costs of IT in the County can be considered in different ways. One way is to look at the amounts budgeted to CEO/IT for annual operating expenses. These funds go to “Internal Service Fund” 289.¹⁰ The following table shows amounts budgeted for CEO/IT in Fund 289 for the past three complete fiscal years, broken down by general spending category.¹¹

**Table 2
FUND 289 IT BUDGET, FY '10-11 THROUGH FY '12-13 (\$000's)**

Fund 289 History	FY 2010-11	FY 2011-12	FY 2012-13
	BUDGET	BUDGET	BUDGET
Total Salaries & Benefits	7,293,226	7,401,310	7,393,452
Total Services & Supplies	37,044,722	34,587,703	35,441,376
Total Other Charges	6,861	-	-
Total Equipment	2,784,630	3,964,960	4,857,000
Total Structures & Improvements	450,000	997,040	1,771,190
Total Miscellaneous	3,550,803	2,628,307	935,579
Total Appropriations	51,130,242	49,579,320	50,398,597

¹⁰ CEO/IT also receives appropriations to Fund 297 for publishing, printing, and reprographic services, which are not addressed in this report.

¹¹ Figures provided by the CEO/IT

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Note that Services & Supplies includes costs for contractors, which, along with services such as networks and datacenter management, are the bulk of expenditures in this category. According to information provided by the CEO/IT Office, the office currently has a staff of 50 County employees, and 111 contractors. Under the new Managed Services outsource contracts currently being implemented, for the most part the number of contractors will not be tracked as part of the aggregate number of staff.

The CEO/IT Office offsets expenses by charging back services it provides to agencies/departments. Chargeback amounts and where that revenue must be allocated, is strictly governed by the fact CEO/IT operates as an Internal Service Fund to cover its costs.¹²

Another way to look at County IT expenditures is to examine each agency's or department's spending. In addition to allocating funds to CEO/IT for services it receives, a department or agency may contract for and pay for services from outside providers such as network providers, consultants and contractors, equipment vendors, etc. Expenditures listed by department for 2012-13 for the top spending agencies/departments are shown above in Table 1 on page 6.

A third aspect is spending on new software development projects, which, for larger projects, typically extends over more than one year. Projects costing between \$150,000 and \$1 million per year that are funded out of the County General Fund are charged to Fund 038 (Data Systems Development Projects). General Fund projects are those that are usually used county-wide (i.e., across multiple agencies/departments). Projects under \$150,000 per year, and those costing over \$1 million per year, as well as some agency/department specific projects funded from outside the General Fund are reflected in the sponsoring agency/department budget and financial reporting. The IT Investment Review Board reviews and makes recommendations on requests for all IT development projects between \$150,000 and \$1 million.

A report combining CEO/IT and agency/department spending may be misleading in terms of overall County spending because some amounts remitted by agencies to CEO/IT are also spent by CEO/IT for outside services. Thus, the same amounts could be counted twice. In 2009, the Performance auditor addressed this double counting problem in its Audit Report of IT, Task I. It found that "Information Technology is a major County cost center, but no detailed framework has been consistently implemented for the collection, analysis, and reporting of these costs, both budgeted and actual, in order to inform policy makers as they allocate scarce resources." The report recommended that "CEO/IT should work with County agencies/departments to develop a budget versus actual comparison to track all information technology costs in the County."¹³ That recommendation was implemented by the CEO/IT, and all IT costs in the County are now consolidated into one "Countywide IT Spend" report, in which double counting is eliminated.

¹² See www.dof.ca.gov/FISA/PROSWCAP/ISFs/INTERN_1.PPT

¹³ "Performance Audit of CEO/Office of Information Technology", Task 1 Report, pp.7-8

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Cost Comparison with California Counties of Similar Population Size

One of the questions in the CIO survey questionnaire (noted above and summarized in Appendix A on page 36) was “What is the approximate annual operating budget for all IT services in your county, including employee staff, contractors, hardware, software, data and voice networks, facilities, and other services?” Tables 3 and 4, below, include a summary of the responses to this question.

IT COST COMPARISON OF CALIFORNIA COUNTIES^{14,15}

Table 3

Counties with All IT Costs Included

COUNTY	2012 POPULATION	2012-13 IT BUDGET (000's)	IT COST PER RESIDENT	2012-13 COUNTY BUDGET (000's)	IT % OF COUNTY BUDGET
Riverside	2,268,783	\$205,000	\$90	\$5,114,000	4.0%
Sacramento	1,450,121	\$92,000	\$63	\$3,515,327	2.6%
Orange	3,090,132	\$150,000	\$49	\$5,627,561	2.7%
Santa Clara	1,837,504	\$76,000	\$41	\$4,159,183	1.8%

Table 4

Counties with Significant IT Costs Excluded

COUNTY	2012 POPULATION	2012-13 IT BUDGET (000's)	IT COST PER RESIDENT	2012-13 COUNTY BUDGET (000's)	IT % OF COUNTY BUDGET
San Diego	3,177,163	\$130,000	\$41	\$4,845,200	2.7%
San Bernardino	2,081,313	\$71,000	\$34	\$4,306,819	1.6%
Alameda	1,554,720	\$48,000	\$31	\$2,694,500	1.8%
Contra Costa	1,079,597	\$25,000	\$23	\$2,840,548	0.9%

The IT budgeted amounts shown are those reported by the CIO of each county. Table 3 shows those counties for which all IT budget costs were reported. Table 4 shows counties for which

¹⁴ Population from U.S. Census, 2012 estimate, <http://quickfacts.census.gov/qfd/states/06/06059.html>

¹⁵ Approved 2012-13 budgets from county websites

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

reported IT budgeted costs do not include IT costs of major independent departments and agencies. For example, IT costs reported for Contra Costa County do not include Health and Social Services, Fire, Child Support, District Attorney, Public Defender, Recorder, and Elections. IT costs reported for Alameda County do not include Social Services., Sheriff, Health Care, Child Support Services, Probation, District Attorney, and Public Works. San Bernardino reported IT costs do not include Sheriff, Tax Collector, Welfare, Assessor, and Hospital. (Apparently, these counties have not taken the extra step to identify and report in a consolidated manner all IT costs in the county; it is notable that Orange County has done so.)

The tables analyze IT costs per county resident, and as a percentage of the total county budget, not including unreported costs. This comparison of IT costs would indicate that IT costs in Orange County are at least commensurate with, if not lower than, IT costs in the other California counties with similar populations. Other comparisons, such as by number of county employees or types or number of systems, may not be meaningful. For example, higher IT costs per county staff member may be reflected in higher productivity and result in lower overall costs in the county.

Cost Overruns

A great deal of publicity has surrounded recent contracts awarded for outsourcing Orange County datacenter and network operations, and the County's recent suit against a consulting company for failing to complete the Property Tax Management System (PTMS). Both contracts involved significant increases in costs after the initial bids, and, in the case of the network management, an increase in the final contract costs after the Best And Final Offer (BAFO) by Xerox.

One widely read Orange County news blog titled an article in May 2013 "IT Contract Cost Overruns Still Plague County Government." The article asserts that "In the last three months alone, supervisors approved nine IT contract extensions and overruns totaling \$26 million..."¹⁶ It continues to be referenced by the blog in subsequent articles alleging continued IT cost overruns.^{17,18}

The Grand Jury studied whether IT cost overruns are indeed extensive and widely spread. First, the Grand Jury analyzed the Board of Supervisors meeting minutes for the 12 month period from May 2012 to May 2013 (which includes the period referenced by the blog) to evaluate amendments to existing contracts for IT services. With the exception of the four projects noted

¹⁶ Voice of OC, May 7, 2012, accessed Feb. 3, 2014, http://www.voiceofoc.org/countywide/county_government/article_26e76198-b3fb-11e2-ac84-0019bb2963f4.html

¹⁷ Voice of OC, May 24, 2013, accessed Feb. 3, 2014, http://www.voiceofoc.org/countywide/this_just_in/article_619132b8-d77f-11e2-b467-0019bb2963f4.html

¹⁸ Voice of OC, February 12, 2014, accessed Feb. 12, 2014, http://www.voiceofoc.org/countywide/county_government/article_2dd72892-9412-11e3-9650-0019bb2963f4.html

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

below in Table 5 and the Xerox network management contract, the Grand Jury concluded that the large majority of these amendments were to extend IT maintenance and on-going service contracts for additional periods of time and were not related to cost overruns.

Regarding the network management contract with Xerox, two factors contributed to the increase of \$25.7 million above the BAFO, resulting in a final contract amount of \$132.7 million. An increase of \$10.9 million was for additions to the scope of work driven by new County business requirements and new locations. An increase of \$14.8 million was for provision of services not previously considered, including responsibility for transformed circuits, an extended transition schedule, performance of subcontractors, and governance. It is doubtful that this could be called a cost overrun since the contract was not approved until after the increase.

Next, the Grand Jury analyzed all IT development projects on the quarterly IT Project Status reports provided to the Board of Supervisors by the Project Management Office of CEO/IT. These reports cover all County IT projects costing over \$150,000, including those managed by agencies/departments. The Grand Jury examined the reports from the first quarter of FY 2012-13 through the first quarter of FY 2013-14 (covering the period from July 1, 2012 through September 30, 2013).¹⁹ Table 5, below, lists the IT projects for which additional costs were approved for that period.

Table 5

APPROVED IT PROJECT OVERRUNS Q1 FY'12-13 THROUGH Q1 FY '13-14

PROJECT	AGENCY	ORIGINAL COST ESTIMATE	LATEST COST ESTIMATE	COST OVERRUN	OVERRUN % OF ESTIMATE	Reasons for Overrun
Identity Management	CEO	\$728,030	\$908,127	\$180,097	24.7%	Technical difficulties and project delay
Correctional Health Records	HCA	\$2,724,000	\$3,000,000	\$276,000	10.1%	Increased staffing requirement
e Government	CEO	\$622,450	\$801,823	\$179,373	28.8%	Increased testing, aggressive schedule
Assessment Tax System II*	Assessor	N.A.	\$27,963,840	N.A.	N.A.	Scope enhancement, project extension

*Note that budgets for the Assessment Tax System II (ATS II) are approved yearly, and, therefore, do not have an original cost estimate. It was completed successfully in 2011. Scope enhancements have been added since completion, and the cost estimate includes original development plus enhancements and extensions. ATS II is discussed further on page 23.

¹⁹ Quarterly IT Project Status Reports, accessed Jan 6, 2014, http://ocgov.com/gov/ceo/cio/initiatives/quarterly_it_project_reports

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Table 6 lists development projects over the same time period that were on or estimated to be on their original approved budget.

Table 6

IT PROJECTS AT OR UNDER BUDGET, Q1 FY'12-13 THROUGH Q1 FY 13-14

PROJECT	AGENCY	ORIGINAL BASELINE BUDGET	LATEST COST ESTIMATE
BRASS (budgeting system)	CEO	\$1,700,000	On-budget
Enterprise SharePoint	CEO/IT	\$497,730	On-budget
IT Sourcing transition	CEO/IT	\$3,572,510	On-budget
Behavioral Health Records	HCA	\$12,312,194	On-budget
Asset Mgmt	OCPW	\$578,476	On-budget
Disposal Website	W & R	\$500,000	On-budget
Auto Indexing	CR	\$175,000	On-budget
A/R replacement	W & R	\$450,000	On-budget
VM refresh	CEO	\$551,600	On-budget
Virtual Mail Imaging	CSS	\$199,000	On-budget

While the cost overruns identified are a concern, and their reasons should be investigated thoroughly, they do not appear excessive or unusual. A well-known IT project management textbook published in 2010 notes that:

“Information Technology projects have a poor track record in managing budget goals...For example, three separate surveys of software project cost overruns, done by Jenkins, Phan, and Bergeron, in 1984, 1988, and 1999, respectively, found that the average cost overrun for all of the projects in their survey samples (not just unsuccessful projects) was 33-34%.”²⁰

More recently, a 2011 Harvard Business Review study of 1,471 IT development projects, stated as “the largest global study ever of IT change initiatives”, found a cost overrun average of 27% of original budget and noted a particularly large incidence of projects with a cost overrun of 200% on average.²¹ In the study, the two predominant reasons for cost overruns were failure to terminate unsuccessful projects, and major conflicts between project and line organizations.

²⁰ Information Technology Project Management, Sixth Edition Kathy Schwalbe, Course Technology, Boston, MA, 2010, p. 254,

²¹ Harvard Business Review, accessed Jan. 6, 2014, <http://hbr.org/2011/09/why-your-it-project-may-be-riskier-than-you-think>

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

The cost overruns identified by the Grand Jury for the period studied total 2.6% of the total project budget for the period.

The Grand Jury's conclusion is that, while a concern, IT cost overruns have not plagued the County in the period examined, and such allegations are a misrepresentation of the facts. Cost overruns appear to be below industry and government norms.

Governance and Oversight of IT Projects

The "other side of the coin" of IT project costs is project benefits, including goals and objectives and the business case supporting the project.

The governance process for new IT projects includes reviews and approvals by the Technology Council, the IT Investment Review Board, and the IT Executive Council before final approval by the Board of Supervisors. Expenditures for new IT projects estimated at less than \$150,000 are approved within the respective agency or department. For projects with estimated costs of \$150,000 or more, the IT Investment Review Board requires an extensive and detailed cost-benefit plan and business case. Required information includes projected costs per year by specific category, expected cost savings such as labor efficiency, cost avoidance, and other business benefits. Projects are then scored based on these and other criteria, and ranked for final approval. Projects considered "strategic" require additional review and approval under the County's Strategic Project review process.

As noted above, the costs and progress of IT projects over \$150,000 are tracked and reported to the Board of Supervisors quarterly by the CEO/IT Project Management Office.

The IT Strategic Plan developed in 2009 calls for "Lessons Learned" to be presented to the Technology Council after implementation of new systems.²² That process, including a required Lessons Learned form, has been underway for a number of years for projects costing over \$150,000 and initially approved by the IT Investment Review Board. However, the process is not always followed, or followed in the prescribed format, by agencies/departments.

The 2010 Performance Audit of CEO/IT Tasks III-IV Report found that "CEO/IT does not measure IT project performance beyond schedule and budget metrics. Specifically, CEO/IT does not measure actual vs. projected benefits anticipated from project business case analyses." The Performance report noted "It is important from both a project performance and a learning perspective that CEO/IT compares the business case and project plan against actual results. By conducting this validation and tracking actual savings or benefits, CEO/IT can better estimate the costs and benefits of future projects and measure the actual success of its projects and

²² IT Strategic Plan at <http://OCintranet.ocgov.com> (accessible through Orange County Intranet), accessed Dec. 11, 2014.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

initiatives.” The audit recommended “a more rigorous project performance measurement process.”²³

CEO/IT’s response was to agree with the finding and to concur with the recommendation, stating “CEO/IT will enforce project post-implementation reviews for its projects. Agency managed projects should be evaluated for benefit by the business unit.”²⁴ In other words, CEO/IT disagreed with and declined to follow the recommendation that their post-implementation reviews include an evaluation of whether the originally stated business case and objectives were achieved. CEO/IT said that this should be the responsibility of the business unit.

Information Technology and project management best practices generally recommend that post implementation reviews or audits of projects include evaluation of the achievement of project goals. For example, see the practices prescribed by the Project Management Institute in their Project Management Body of Knowledge (PMBOK) best practices guidelines.²⁵ Government and industry practices consistently include such reviews.²⁶ The U.S. Department of Justice Systems Development Life Cycle Guidance Document of January 2003 states that “A post-implementation review shall be conducted ... to verify that the intended benefits are derived as projected.”²⁷ The Grand Jury agrees with these best practices and with the recommendation of the Performance Auditor.

Some agencies/departments do conduct their own limited post-implementation reviews. However, none of the agencies the Grand Jury studied have formal reviews or reports on achievement of project business case or business goal achievement. In a governance model, giving business units (agencies/departments) the responsibility to perform and report their own evaluations is asking them to audit themselves. Clearly, there is not much incentive for an agency/department to report that a project it sponsored and for which it estimated costs and associated benefits, did not meet the goals which the County gave it money to achieve.

The Grand Jury believes that this is an area where proper IT governance is lacking. CEO/IT should include in their post-implementation reviews of IT projects an evaluation of the achievement of project goals and the business case, as originally presented by the agency/department in their request for funding. Reviews of achievement of business objectives should continue over the period of time for which business goals were projected to be achieved, and over the period of time covered by the business case.

²³ “Performance Audit of CEO/Office of Information Technology, Tasks III-IV Report, pp. 58-59, <http://ocgov.com/civicax/filebank/blobdload.aspx?BlobID=10730>

²⁴ Response to Performance Audit of CEO/IT – Task III - V Report, p. 15, <http://ocgov.com/civicax/filebank/blobdload.aspx?BlobID=10731>

²⁵ A Guide to Project Management Body of Knowledge (PMBOK Guide), Fifth Edition, Project Management Institute, Newton Square, PA 2013, p. 533.

²⁶ See, e.g., Post-Implementation Reviews of Information System Development Projects, accessed Jan. 6, 2014, <http://www.sao.state.tx.us/reports/main/96-055.pdf>

²⁷ Accessed Jan. 6, 2014, <http://www.justice.gov/jmd/irm/lifecycle/ch10.htm>

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Comparison with California Counties of Similar Population Size

As mentioned, the Grand Jury sent survey questionnaires to the Chief Information Officers (CIOs) of the seven other California counties with populations over 1 million (excluding Los Angeles County). The survey went to CIOs in the counties of:

- Alameda
- Contra Costa
- Riverside
- Sacramento
- San Bernardino
- San Diego
- Santa Clara

Cost comparisons are discussed beginning on page 9 and shown in Table 3 and 4 on page 10. Appendix B on page 37 summarizes the results of the survey and shows that there are many more similarities in the management and use of Information Technology in these counties and in Orange County than there are differences.

In all but two of the counties IT reports to a County Executive or Administrative Officer. In San Bernardino IT reports through Human Resources. In Alameda, the Registrar of Voters is also the IT Director and is an appointed position. In all counties except Santa Clara, departments can freely contract with outside service providers for IT services, with some degree of consultation with or approval by IT required. Santa Clara responded to this question by saying such contracting is “politically not encouraged”, and requires prior union review. All counties except San Diego provide IT services to outside organizations, particularly local law enforcement. Only Sacramento stated that it provides datacenter space and services to a private company, as does Orange County.

Most of the counties, like Orange, have a central datacenter. Large departments in other counties, which usually include most of the departments of elected officials, run their own IT. How much to centralize has attracted substantial attention lately, and the trend is toward more centralization, especially of “commodity” services such as help desk, desktop support, and network management. Attempts at centralization are generally meeting with resistance from elected officials and from large departments.

With the new outsourced contracts in Orange County, it will become the second-most heavily outsourced county among the eight. San Diego County is unique with its complete outsourcing of IT services. All the counties, with the exception of San Diego, are unionized. Also, Orange County IT appears to have a higher degree of governance and oversight than many other counties, with four specific councils or boards assigned that function. Santa Clara, Sacramento,

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

and San Diego approach Orange County's level of governance. Contra Costa reported no IT oversight at this time.

Disaster Recovery

Of particular concern to the Grand Jury is the current capability of CEO/IT, as well as a number of County agencies, to recover computer servers, networks, and other resources supporting critical business processes in the event of a major disaster. Such a disaster could include physical events such as a major earthquake, fire, or terrorist attack, or a cyber-attack, making these resources inoperable.

Disaster Recovery (DR) has come to be defined as recovering computing related resources from a disaster, and "Business Continuity" refers to recovering all aspects of an organization, including computing resources. The Disaster Recovery Institute in the United States²⁸, and the Business Continuity Institute²⁹ based in Great Britain, publish best practices in the disciplines and confer professional certifications based on experience and passing a certification exam.

DR best practices call for successfully testing recovery procedures, resources, and outcomes in order to verify the workability of a DR solution. Quoting from the Disaster Recovery Journal, the most widely circulated publication in the discipline, "Most experts will agree that running tests and exercises are the best way to ensure preparedness."³⁰ Successful completion of tests means that users, who will have to rely on computer resources to meet their business needs, are able to complete test business transactions to their satisfaction.

Setting up and completing such tests usually involves prior setup of an alternate datacenter, and prior setup of the ability to re-route data network connections so users will quickly connect to the alternate datacenter in a disaster. During testing (or in a real disaster) the alternate datacenter and production applications must be activated, current production data must be loaded or activated, and user network connections re-routed. Then pre-selected sample business transactions are run by business users and the results (e.g., invoice formatting and amounts, accounting listings and totals, etc.) are compared to expected results. This is called regression testing.

CEO/IT Disaster Recovery

CEO/IT offers Business Continuity and DR services as part of its Service Catalog. As part of Business Continuity Planning, the recovery priorities of business processes are ranked as "A", "B", or "C" based on a number of factors such as cost of downtime and recovery, and regulatory consequences. The primary DR service from CEO/IT is for agencies/departments to recover

²⁸ See www.drii.org

²⁹ See www.thebci.org

³⁰ "The State of IT Resiliency and Preparedness", Disaster Recovery Journal, Winter 2014, Vol. 27, No. 1, p. 16.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

critical applications which run at the main County datacenter. Currently, that service relies on using backup computer platforms at the Solano County government datacenter under a mutual backup agreement. Most large agencies in Orange County use this service for some or all of their applications. Some also have their own IT departments and have established differing DR plans. Some rely on multiple datacenter locations within their own agency, some rely on agreements with outside vendors to provide DR services, and some have no outside datacenter arrangements and simply back up at their local site.

Appendix C on page 38 summarizes current DR plans and testing accomplishments of the seven agencies/departments the Jury analyzed.

The Grand Jury identified four key agencies/departments that rely on the County datacenter which have not successfully completed DR test exercises of their DR solution currently in place. These agencies are the Social Services Agency, the Health Care Agency, the Probation Department, and the Auditor/Controller.

The last test of the Solano County site, which these business units use, was in August of 2013. In that exercise, many of the required testing steps were done, including recovering data, connecting to the alternate facility, and running applications, however, transactions were not completed or verified. Such incremental testing is not uncommon, where testing is planned to reach certain milestones, and accomplish further milestones in subsequent years. Such testing also requires agency/department cooperation and support. The Grand Jury understands that the Solano arrangement is still active, and that transaction completion and verification had been planned by CEO/IT for the 2014 test. However, this plan has been cancelled because the new managed services outsource contracts call for a new DR solution.

This means that if a major disaster were to occur today disabling the primary Orange County datacenter or agency or department datacenters, there is a high degree of uncertainty regarding the time and cost of recovery, or whether a reasonably acceptable recovery is even possible.

The new DR solution for CEO/IT hosted systems (now SAIC hosted) calls for use of a Recovery Center in Scottsdale, Arizona, run by the largest commercial provider of DR solutions in the U.S. (The Auditor/Controller had a previous contract with this company for recovery of its Property Tax Management System and successfully tested it.) Planning for this solution has just begun and must be integrated with the entire transition process to the SAIC and Xerox managed environment. The Grand Jury understands that the target is to conduct initial test exercises in fall of 2014.

Since some agencies/departments are currently operating without adequately tested DR plans, and, in some cases without adequately defined DR arrangements, CEO/IT and the Board of Supervisors should place a high priority on completing new arrangements for disaster recovery

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

of the County datacenter and corresponding network connections. High priority should also be placed on planning for and conducting test exercises of these arrangements which verify the ability to complete critical business transactions.

Sheriff's Department Disaster Recovery

The Grand Jury noted that the Orange County Sheriff's Department has significant deficiencies in its DR plans. The Sheriff's Department backs up its production mainframe and server platforms with a similarly configured mainframe and servers. Both mainframes as well as critical servers are in the Sheriff's main datacenter. The Sheriff's critical systems, including Jail, Field, Criminal History, and Records applications run on these platforms. While the Sheriff's IT staff reports establishing standard physical security and cyber security provisions, clearly major disruptions and disasters happen despite standard protections being in place.

The Sheriff's IT staff recognizes that there is no off-site backup capability in place for a major disaster event that disables the datacenter and therefore both of the mainframes and critical servers. Such an event would cripple numerous public safety functions of the Sheriff's department, including, access to Warrants, the Criminal Justice Information System and the Department of Motor Vehicles, Criminal History, inmate bookings and tracking, etc. One of the reasons for the lack of an offsite DR solution is the Sheriff's Department's plan to modernize and replace most of its critical systems within five years, and the desire to wait until that plan is better defined. Another is the lack of funding for a shorter-term solution. Three possible shorter term solutions have been proposed by the Sheriff's Department:

1. Relocate the second Unisys mainframe computer to the County Emergency Operations Center (EOC), and construct a second, more secure underground data line from the current Sheriff datacenter to the EOC. This second line would be for replicating data synchronously to be immediately available in a disaster. (There is currently a data line from the Sheriff's datacenter to the EOC. However it is not completely underground and is not adequately secured or physically protected. The current line has experienced failures, one as recently as January of 2014.)
2. Relocate the second mainframe to the EOC, and construct facilities for microwave communication to the Sheriff's datacenter. This would be less expensive and faster to construct than Option 1 because the Sheriff currently has microwave equipment that could be utilized, and has microwave expertise on staff.
3. Plan a DR capability to integrate with CEO/IT's planned Managed Services solution. This option is dependent upon implementation of the CEO/IT solution with the Managed Services outsource provider. It also presents some challenges in obtaining the appropriate law enforcement security certifications for non-Sheriff department staff supporting this solution.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

The Sheriff's Department submitted a 2014-15 Information System Service Request to the IT Investment Review Board for \$2.3 million for a redundant disaster recovery location. The specific solution proposed is unclear from the request. In February the IT Investment Review Board declined approving the request for the 2014-15 budget, and instead recommended waiting until the new Managed Services solution is in place and using that solution. The final outcome of the request is undetermined at this time.

Because critical law enforcement, public protection and safety functions are currently at risk, the Sheriff's Department and the Board of Supervisors should place the highest possible priority on studying the alternatives for a short-term DR solution for the Sheriff's critical systems, selecting and funding one of the alternatives, and implementing and testing it as soon as possible.

Regarding County Disaster Recovery overall, it should be noted that the Grand Jury is not asserting that recovery from a disaster cannot be accomplished by CEO/IT and the agencies/departments mentioned. Certainly, if a disaster happened today, County staff would work tirelessly until the job of recovery was done. However, improvising, rather than operating with established and tested plans, is like operating without insurance. The accepted way to verify the costs and time required for recovery, and to verify whether recovery is possible, is to establish adequate plans and test them, and that has not been completed successfully in the instances noted above.

User Satisfaction Surveys

The contract for outsourced services that ended in 2013 required a semi-annual user satisfaction survey of agencies/departments using these services. The survey was developed jointly by the outsource vendor and CEO/IT, and asked 30 questions relating to performance of networks and systems, responsiveness and knowledge of outsource staff, and resolution of problems. The annual average of the survey results determined whether the vendor received a performance incentive or was assessed a performance penalty. Generally, users have expressed high satisfaction with these services. As shown in Table 7, on a scale of 1 to 4, with 4 being the highest level of satisfaction, overall average scores for the past three years have been 3.59, 3.54 and 3.66.³¹

³¹ Survey results provided by CEO/IT

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Table 7

Outsource Vendor User Satisfaction Survey Summary			
Category / Fiscal Year	FY '10-11	FY '11-12	FY '12-13
General	3.53	3.49	3.63
Application Support Services	3.63	3.59	3.79
Network, Platform & Server Support	3.56	3.49	3.61
Data Center Services Desk	3.60	3.56	3.63
Phone Services	3.70	3.75	3.77
IT Enterprise Services	3.50	3.40	3.58
Average	3.59	3.54	3.66
<i>Ratings are on a scale of 1 - 4, with 4 the highest level of satisfaction</i>			

The 2010 Performance Audit of CEO/Office of Information Technology Tasks III-IV Report includes a survey of CEO/IT customers.³² Of 49 respondents, 24 (~50%) rated their overall satisfaction as a customer of CEO/IT as good or excellent, with another 14 (29%) rating it as average.

The 2013 contracts with XEROX and SAIC for managed services both specify that the County shall “conduct satisfaction surveys semi-annually...or more frequently, and Vendor shall provide reasonable assistance.” The contracts call for these surveys as part of a “balanced scorecard... to gauge service performance, relationship quality and business alignment on an ongoing basis.” The contract also specifies that, from the results of the surveys, the “County, with Vendor’s assistance, shall develop an IT improvement plan, which shall propose changes to the County’s and Vendor’s IT policies and practices”.³³ Unlike the previous outsource contract, neither of the new contracts provides incentives based on the results of these surveys. The contracts allow the County to establish penalties, however, the County has chosen not to do so at this time. (Incentives and penalties in the new contracts relate to pre-defined and measured service levels. See **The New Managed Services model and Centralization**, page 25.)

The agencies/departments which the Grand Jury studied conduct limited surveys to determine user satisfaction with IT. For example, the Health Care Agency conducts an annual survey of its staff “to assess their satisfaction with services received in the past year from the various Administrative Services divisions in the Agency”, including IT. In the most recent HCA survey, with 856 respondents, HCA IT received the highest service area rating of over 83%. Also, the

³² The 2010 Performance Audit of CEO/Office of Information Technology Tasks III-IV Report, Appendix A, <http://ocgov.com/civicax/filebank/blobdload.aspx?BlobID=10730>

³³ Master Services Agreements, section 4.13 Satisfaction and Communications

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Sheriff's Department IT Help Desk surveys individuals after a problem incident regarding their satisfaction with the resolution.

The Grand Jury was not able to identify any reference to user satisfaction surveys in the County of Orange IT Strategic Plan or the IT governance model. The Grand Jury found no guidelines for the contents of IT user satisfaction surveys, or CEO/IT policies or procedures for conducting such surveys. CEO/IT could identify no regular, comprehensive survey programs in agencies or departments.

It has become a maxim that IT only exists in an organization to serve the organization's goals and needs, not for its own sake. User (or customer) satisfaction is a key measurement of how well an organization (or business) is delivering its products or services. According to the research and consulting firm Gartner Group, "End-user satisfaction can make or break IT's credibility and future success... When it comes to the IT's reputation, the importance of customer satisfaction cannot be overestimated."³⁴ Regular user satisfaction surveys have been widely adopted as an IT best practice throughout industry.³⁵

The Grand Jury believes that CEO/IT should establish policies regarding the regular use of IT user satisfaction surveys. Such policies should be incorporated into the IT governance model, and associated guidelines and procedures should be developed. CEO/IT should strongly encourage departments and agencies which have their own IT organizations and sets of users to follow these policies and procedures. It would also be a useful tool and quality incentive to conduct and publish the results of surveys at least yearly and make them available to all County agencies/departments.

System Development Methodology

Motivated partly by the highly publicized alleged failure of the County's Property Tax Management System (PTMS) project,³⁶ the Grand Jury investigated system development methods that have been used successfully for major IT projects in the County. The goal was to identify factors leading to successful implementation and achievement of business and operational objectives.

NOTE: The Grand Jury did not investigate in detail the circumstances leading to the current status of PTMS, and the Grand Jury renders no opinion regarding fault or liability relative to the current litigation.

³⁴ Accessed Jan. 6, 2014, <http://www.gartner.com/technology/consulting/benchmarking/it-customer-satisfaction.jsp>

³⁵ Accessed Jan. 6, 2014 <http://www.computereconomics.com/article.cfm?id=1715>

³⁶ See "County's Lawsuit Alleges Fraud by Software Contractor", Accessed Jan. 6, 2014 at http://www.voiceofoc.org/countywide/county_government/article_aaf1cd04-1f33-11e3-96c2-0019bb2963f4.html

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

A number of agencies/departments in the County appear to have achieved notable success in recent systems development projects. For example:

1. The Assessor Department re-engineered the County's Assessment Tax System (ATS), replacing the 23 year old legacy mainframe application with ATS II. ATS II enables assessment services, including property valuation, production of assessment rolls, compliance with revised California law and regulations, and helping property owners understand their property valuations. The Assessor contracted with two vendors for consulting and support services on the project. The ATS II System was successfully deployed to production in August 2011 and was used to develop and deliver the 2012 Annual Rolls of Value in July 2012. Implementing ATS II was a seven-plus year project, and was a major accomplishment, such that Los Angeles, Santa Clara, and Fresno counties have expressed interest in purchasing licenses to use ATS II.
2. OC Public Works has had a number of recent successful software development projects. One is "OC WORKS", which allows citizens to take photos on their portable phone of potholes, graffiti, and other problems on County property requiring attention by Public Works. Another is a fixed asset inventory system, also using mobile phones and QR codes to scan and input data from remote locations. In addition, the Department's Progress Payment (ProgPay) System was selected for a 2013 Merit Award by the California State Association of Counties (CSAC).
3. The Task Management System developed by the Social Services Agency was recognized with a 2012 Challenge Award from CSAC. This award recognizes especially innovative county projects utilizing best practices. The system integrates information and management of SSA cases into one system, allowing detailed tracking of case related tasks and facilitating better communication between clients and the agency.

In addition, the Health Care Agency's new Behavioral Health System appears as of this writing to be headed for a successful implementation, starting in the spring of 2014. It will modernize the current ten year old outdated system and create a completely integrated and interoperable Electronic Health Records (EHR) system for Behavioral Health Services. This has been the largest recent system development project in the County with a cost of over \$12 million for the first phase and total funding of approximately \$23 million. As of this writing the project is on-time and on-budget.

A key common factor among all of these projects is the use to varying degrees of what has become known as the "Agile" software development methodology.³⁷ As discussed below, this is

³⁷ See Shore, J., & Warden S., The Art of Agile Development, O'Reilly Media, Inc. 2008, ISBN 978-0-596-52767-9

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

in contrast to what appears to be the methodology used for the PTMS project, known as the “Waterfall” method.

Agile Versus Waterfall Methodologies

The theory of Agile methodology began development in the 1970’s and was formalized in 2001 with the publishing of the *Manifesto for Agile Software Development*.³⁸ Agile is a collaborative methodology, which means that end-users and developers work closely together throughout the entire project. It is also incremental and iterative in that one piece at a time is developed and implemented, and future pieces build upon previous ones. The Public Works Department calls its iterations “feature sets”, which are new releases (or enhancements) every two weeks, while the Assessor department calls their building blocks “frameworks”. Although all facets of Agile development are not used in each department mentioned above, many of the facets are used by each of them.

The rationale for the Agile approach stems from the conundrum that arises at the beginning of large projects, when the developer asks the user “What do you want?”, and the user responds “What can I have?” The developer may have the knowledge of what the technology can do generally, while the user knows the business process and requirements. A collaborative and iterative approach is a creative process wherein each learns from the other incrementally as they build a solution. The user begins to ask more intelligent “Can it do this?” questions, while the developer is able to provide more “What about this?” suggestions.

Agile systems development is facilitated by modern system development tools and programming languages that allow rapid prototyping with mock screens and sample dummy databases and processes. These tools allow users to see and actually work on operating mock-ups of their systems, before they are actually developed. Such an approach limited to previous generations of computer technology was simply too costly, time consuming, and cumbersome.

The Agile approach contrasts with the traditional, or “Waterfall” approach, wherein each phase of a project is done in its entirety before “going over the waterfall” to the next phase.³⁹ Thus, a requirements definition is completed, then design is done, then programming, etc. It attempts to be predictive, rather than adaptive, and know all requirements before design is started, all design issues before programming is started, etc. In reality, problems and issues encountered in subsequent phases often cause changes to previous phases, and that is one major source of cost overruns on projects. For example, in programming, it may be determined that a certain set of data is required to make some function work (like a customer number, or some totaled amount). This could cause some redesign of a database or input screens. Also, users may not discover a major flaw, or happen upon a particularly elegant solution, until they are actually testing the

³⁸ Ibid., pp. 10-11

³⁹ See Cuspin, Lisa & Gregory, Janet, *Agile Testing*, Pearson Education, Boston, MA, 2009, ISBN 978-0-321-53446-0, pp.12-13.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

system hands-on. The Waterfall approach makes it much more difficult and expensive to incorporate these changes, and the problem magnifies in relation to the size of the system. Conversely, the Agile approach is more difficult for management to budget for and control.

Simply stated, for PTMS it appears that in a very large, approximately 600 page requirements document was developed by an outside company, with users given one opportunity to comment on each portion of the document. It was then sent to another outside consulting company to develop and implement. The Grand Jury’s review of the document found that it is primarily a narrative of “as is” and “to be” processes, with some flowcharts and stick-figure process diagrams. The Grand Jury found no sample “to-be” screens or reports, or other opportunities for users to interact with developers before it was sent “over the waterfall.” Years later, after expending about \$5 million on system development, CEO/IT and potential County users discovered major technical and functional deficiencies in the system and have determined it is unsalvageable.

CEO/IT Current Methodology

Although CEO/IT has endorsed and provides certain Agile development tools, the Project Management Methodology for systems development outlined on the CEO/IT website sets forth what is very much the traditional Waterfall methodology.⁴⁰ It describes six project phases, and it proposes design build schedules that require completion of prior phases before beginning the next phase. The six phases outlined are as follows:⁴¹

1. Idea/Concept
2. Business Case or Customer Project Estimate
3. Initiating Phase
4. Planning
5. Executing/Controlling
6. Closing

While the CEO/IT methodology includes many valuable concepts, tables, and diagrams, it does not include any reference to more recent Agile methodologies. Thus, the CEO/IT methodology does not take into account the success that Agile has achieved in the County, and, in general, in Information Technology over the past ten to twenty years. The Grand Jury recognizes that certain kinds of projects lend themselves to more traditional development methodologies, and that the spectrum between Agile and traditional methodologies is a continuum rather than an either/or question. County departments and agencies can choose (and have chosen) to develop

⁴⁰ <http://ocgov.com/civicax/filebank/blobdload.aspx?BlobID=21140>, (available through the County Intranet), accessed Jan. 6, 2014

⁴¹ County of Orange Project Management Methodology Handbook <http://intra2k3.ocgov.com/pmo/index.asp> (available through the County Intranet), accessed Dec. 11, 2014.

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

systems using their own methodologies; however the recommendations on the CEO/IT website and by the Project Management Office tend to carry a certain degree of authority and credibility.

CEO/IT should study, embrace, and incorporate Agile methodologies into the system development methodologies offered by the Project Management Office and presented on its website. CEO/IT should have the necessary expertise, and should promote use of Agile methodologies on projects where, and to the degree it is appropriate.

The New Managed Services Model and Centralization

The provisions of the new outsource contracts with SAIC and Xerox are virtually identical. They fall under what has been termed a “Managed Services” model, in which the County tracks and measures the vendors based on delivery of specified service levels (e.g. system and network availability, time to resolve reported problems, terminal response time, etc.). The previous contracts followed a “staff augmentation” model where the County contracted with a provider for time of staff resources and additional material and other expenses. In the new contracts, SAIC and Xerox can be financially penalized up to 20% of their contract fees for failing to meet specified service levels or critical milestones.

Services in the new contracts are based on designated “Resource Unit” volumes. A Resource Unit may be a server, a PC, or a service desk call (for SAIC), or a designated volume of voice or data ports/phones (for Xerox). The contracts control the costs of increases or decreases of service volumes by specifying ranges of “Resource Unit” volumes within which costs do not fluctuate. In the contracts these ranges are called “deadband zones”. In addition to certain fixed management and administration fees, costs to the County can only increase if Resource Unit volumes increase by more than five percent, and can decrease if volumes decrease by more than .95 of one percent.

Service level requirements and deadband zones appear to be excellent mechanisms for managing costs. The Grand Jury concluded that costs for these outsourced services will be very predictable over the life of the contracts, as long as the County can predict, manage, and control volumes over that period. This is not to say that volumes won’t fluctuate, especially as more agencies/departments’ IT services come under the scope of the new contracts; however, they will be more predictable and manageable under the new contracts.

Transition to the new Managed Services model was completed for SAIC in February, 2014, and for Xerox in March of 2014.

Centralization

In November 2012 the Board of Supervisors held a series of workshops related to the Countywide Strategic Plan. At the workshops and the subsequent Board of Supervisors’

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

meeting, CEO/IT was directed to explore centralization of IT services and the inclusion of County agencies/departments into the scope of new outsourced services.⁴²

During Grand Jury interviews the move by CEO/IT toward consolidation of IT services under the new Managed Services contracts was a subject consistently raised by County senior management, CEO/IT staff, and department and agency staff. CEO/IT has advised various agencies/departments that they will be required, under the Direction of the Board of Supervisors and the CEO, to move certain services under CEO/IT management. Services include those covered under the new SAIC and Xerox contracts such as desktop support, IT service desk, and network management, and other services such as centralized procurement. While County senior management and CEO/IT believe such an increase in centralization will save the County money overall, and improve IT efficiency, agency/department management consistently expressed concern over loss of control and decreased quality of these services.

The Grand Jury agrees that consolidation and centralization of some IT services will provide economies of scale and eliminate redundancies, resulting in overall cost savings. It will also standardize the delivery of these services, allowing for more consistent governance and alignment with County strategies and IT guidelines.

The Grand Jury also acknowledges the risk this initiative presents of reducing the quality and level of service currently provided within agencies/departments with their own dedicated IT resources. This could occur when services such as application development and support, service desk, and others are provided by new staff not experienced or familiar with the needs and operations of particular departments and agencies. IT service levels may also be affected in agencies/departments that are given lower priority in the overall service model, compared to being the top priority when agencies were servicing themselves. The quality and level of such services will be particularly at risk during the time of transition to the new services environment, and during the training and re-alignment of new staff.

The Grand Jury recognizes that centralization of some IT services and resources may make more sense than others, and this may vary by function and by business unit. In agencies where extensive experience and specialized knowledge is critical, it probably does not make sense to centralize application development and other similar activities. Before the model for delivery of services to agencies and department is changed, CEO/IT should undertake a thorough analysis of the business case for the change (costs and benefits), and one of the IT governance groups should review this case. The analysis should include a plan for prevention or mitigation of the possible reduction of service levels and quality, developed with and agreed to by the affected agency.

⁴² “Strategic Priority – IT Centralization Assessment Draft”, February 15, 2013, provided by CEO/IT

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Information Technology in Orange County, the 2013-2014 Orange County Grand Jury has arrived at eight principal findings, as follows:

F.1. Based on the Grand Jury’s survey of the Chief Information Officers of California counties with populations of one to three million, current costs of Information Technology in Orange County, per resident, appear to be comparable or lower than IT costs in California counties of similar population size.

F.2. IT project cost overruns do not plague the County. However, policies and procedures are not in place in the IT governance structure to adequately measure and evaluate achievement of benefits and goals of IT projects over their entire project life cycle.

F.3. Recovery of IT resources and services will be critical to the functioning of vital County services in the event of a catastrophic disaster event. Recent Disaster Recovery (DR) exercises for the CEO/IT datacenter have not been completed successfully. Thus, the costs, time, and possibly the ability to recover some or all datacenter operations after a catastrophic disaster event has not been determined or demonstrated.

F.4. The Sheriff’s Department has both its primary production and backup mainframe computers and critical server platforms at its own datacenter. Those computers run most of the Sheriff’s critical applications, including Field, Booking, Jail, Criminal History and Records, and interfaces to outside databases such as the CJIS, DOJ, DMV, etc. A significant physical disaster event or cyber-attack disabling that datacenter would almost completely disrupt the Sheriff’s major law enforcement and public safety and protection functions. There is currently no plan in place to recover the Sheriff’s datacenter functions at another location.

F.5. IT best practices indicate that user satisfaction should be a key measurement of IT services. The current contracts for managed services both specify that the County shall “conduct satisfaction surveys semi-annually...or more frequently.” However, there are no consistent countywide policies, guidelines, or procedures for user satisfaction surveys of all IT services, including those provided by agencies/departments, and surveys are not taken or published on a regular basis.

F.6. The CEO/IT’s project management methodology that is accessible through the County Intranet site describes a traditional “Waterfall” approach to system development. Although still being used in the industry, Waterfall is a somewhat dated approach. More current Agile system

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

development methodologies have proven very successful in several County agencies and are recommended in the IT industry as best practices. Use of the Waterfall approach may have been a factor in the failure of the PTMS development project; however, there are many factors that can contribute to the success or failure of system development projects, and the Grand Jury renders no opinion as to the fault or liability relative to any litigation.

F.7. Under the new managed services contracts, costs for these outsourced services will be very predictable over the life of the contracts, as long as the County can predict, manage, and control volumes (data, transactions, service calls, etc.) over that period.

F.8. Under the new outsourced contracts, consolidation and centralization of some IT services will result in overall cost savings. It will also standardize the delivery of many services, allowing for more consistent governance and alignment with County strategies and IT guidelines. However, agencies/departments are concerned that additional centralization will result in higher costs and reduced levels of service for them. Centralization of some services may make more business sense than others, and this may vary by function and by business unit.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Information Technology in Orange County, the 2013-2014 Orange County Grand Jury makes the following nine recommendations:

R.1. CEO/IT should enhance the current format and guidelines for post implementation reviews of IT projects to include reviews of the achievement of the originally approved project goals and business case. Reviews of the achievement of project goals and the business case should be reviewed by the IT Investment Review Board, and should continue until the achievement (or failure) can be verified. **(F.2.)**

R.2. As part of the implementation of the new Managed Services contracts with SAIC and Xerox, the Board of Supervisors and CEO/IT should place high priority on successfully

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

completing a disaster recovery exercise with the new DR services provider, and marshaling agency/department support to do so. . Successful completion would include completion and verification of all transactions supporting processes the County datacenter supports that are designated “A” priority in Business Continuity plans. (F.3.)

R.3. Because critical law enforcement, public protection and safety functions of the Sheriff’s Department are currently at risk, The Board of Supervisors and the Sheriff should place the highest possible priority on studying the alternatives for a short-term DR solution for the Sheriff’s critical systems, selecting and funding an alternative, and implementing and testing it as soon as possible. (F.4.)

R.4. CEO/IT should strengthen its leadership role in seeing that all County agencies/departments with critical functions dependent on IT processes implement and test DR procedures to meet stated recovery goals. (F.3., F.4.)

R.5. CEO/IT should establish policies and procedures, and recommend the format and timing for user satisfaction surveys of IT services users, including CEO/IT services, and agency/department IT services. CEO/IT should review and publish the results of surveys of themselves and of agencies/departments and make the results available to all agencies/departments. (F.5.)

R.6 CEO/IT should study, embrace, and consider incorporating Agile methodologies into the system development methodologies offered by the Project Management Office and presented on its website. CEO/IT should have the necessary expertise, and should promote use of Agile methodologies on projects where, and to the degree it is appropriate. (F.6.)

R.7. In order to control and predict IT costs under the new Managed Services contracts, CEO/IT should use contract and other mechanisms to very closely monitor IT volumes specified in the contracts. Current and predicted costs or rate changes, and recommendations to avoid future costs increases based on volume trends should be reported to affected departments and agencies and to the Board of Supervisors. (F.7.)

R.8. Before centralizing IT services for an agency or department, CEO/IT should conduct a thorough analysis of the business case for the change, and one of the IT governance groups should review this case. The analysis should include a plan for prevention or mitigation of the possible reduction of service levels and quality, developed with and agreed to by the affected agency. (F.8.)

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Response Required:

Sheriff/Coroner: F.4.

Responses Requested:

CEO/IT: F.1, F.2., F.3., F.5., F.6., F.7., F.8.

Responses Required:

Sheriff/Coroner: R.3.

Board of Supervisors: R.2., R.3.

Responses Requested:

CEO/IT: R.1, R.2., R.4., R.5., R.6., R.7., R.8.

GLOSSARY OF TERMS

Agile Methodology	A methodology for project (particularly IT project) planning and implementation
ATS II (Assessment Tax System II)	Computer system used by the County Assessor's office for property tax assessment functions
Business Continuity	The ability of a business or organization to continue with important functions after a catastrophic disruptive event
CEO/IT	The Office of Information Technology within the County Executive Office
CIO (Chief Information Officer)	Typically the person in charge of Information Technology in an organization
Datacenter	A physical facility in which computers and telecommunications equipment is housed and operated
Deadband Zone	Defined in Managed Services agreements as a specified range of volume of Resource Units within which costs do not fluctuate
DR (Disaster Recovery)	Recovery of computer and telecommunications equipment after a catastrophic event that renders them partially or completely inoperable
EOC (Emergency Operations Center)	A pre-planned and configured location where recovery operations would occur after a major disaster
IT (Information Technology)	The use of computer and telecommunications equipment to store, manipulate, analyze, retrieve, and transmit data and information
IT Help Desk	A call center that receives and manages calls for service and problem resolution on IT related issues
Managed Services	A model for directing, monitoring and controlling services and costs of services delivered by an outside, organization

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Microwave communication	A method of telecommunications utilizing the microwave range of the spectrum, over-the-air signals, and dish receivers
PTMS (Property Tax Management Systems)	A computer system development project undertaken jointly in the County by the Auditor/Controller, the Treasurer, and the County Clerk to upgrade and enhance property tax related functions.
Resource Unit	A designated category of service to be delivered by the County's outsource contractors under Managed Service agreements
RTO (Recovery Time Objective)	The amount of time that an organization determines is tolerable for a business function to be inoperable after a catastrophic disruptive event.
SAIC (Science Applications International Corporation)	Company with which the County has contracted for outsourced management and operation of the County datacenter, IT Help Desk and Desktop Support
Service Level	A specified measure of delivery of services, particularly IT services; these measurements are called out in Managed Services agreements
Waterfall project methodology	A methodology for project (particularly IT project) planning and implementation

APPENDICES

**Orange County Information Technology Management:
Good Job Overall; Disaster Recovery Must Be Addressed**

Appendix A - Sample of CIO Survey Questions

1. What is the approximate annual operating budget for all IT services in your county, including employee staff, contractors, hardware, software, data and voice networks, facilities, and other services?
2. Approximately how many on-line users are there of your systems?
3. To whom does IT report in your County? (Please provide an organization chart for IT, if available.)
4. What other oversight or review bodies look at IT activities in the County? (Please provide an IT Governance organization chart, if available.)
5. To what degree is your IT organization centralized versus decentralized in terms of acquisition and management of hardware and network infrastructure and software applications? Are there separate IT organizations in various agencies and departments?
6. To what degree are county agencies and departments allowed to contract for IT services from outside providers? Would your IT organization compete with outside providers for services to county departments?
7. What, if any, services does your organization provide to outside organizations, including other cities, counties, or jurisdictions, and private organizations? (This may include mutual agreements for backup and recovery.)
8. What, if any, major functions do you outsource (e.g., data center management, network management, help desk, etc.), and who are your outsource providers?
9. Which, if any, of your IT employee groups are unionized, and which unions represent them?
10. What, if any, recent outside audits or reports have been done on your IT organization, and are they available to the public?

Appendix B – CIO Survey Results

CIO SURVEY RESULTS										
County	Reported Budget (\$000's)	On-line Users	Reports to	Oversight bodies	Centralized	Agencies contract independently	Provide Outside services	Outsource Functions	Unionized	Outside Audits?
Orange	\$150,000	17,000	County Executive Officer	IT Exec. Council Technology Council Enterprise Archit Grp IT Investment Rev Bd	No, currently consolidating	Y	Y, Gov't and one private company	Y	Y	None outside, County Performance Audit 2009-10
Alameda	\$48,000*	9,500	Dir. Of IT / Registrar of Voters	Proj. Wkg. Group, Exec. Proj. Oversight Comm.	No, have central datacenter	Y	Y, Cities and other counties, Superior Court	N/A	Y	N/A
Contra Costa	\$25,000*	8,000	County Administrator	None	No	Y	Y, cities and other county law enf, 1 private	Apple desktop support	Y	Current audit of County finance system
Riverside	\$205,000	18,000 + 5,000 part time	County Executive Officer	Technology Stds Oversight Comm	Currently consolidating, elected's refusing approval	Y, only with IT recom and TSOC	Y, Public Safety	None	Y	Y
Sacramento	\$92,000	10,600	Deputy County Executive	Exec. Tech. Comm, Tech Advisory Group, (ERP) St. Comm., GIS St. Comm.	Y except electeds. All use central svcs	Y, electeds. Must consult IT	70+ local, state, and fed + spec. + 1 private	None	Y	Annual county financial audit
San Bernardino	\$71,000*	22,000	Human Resources	Data Governance Committee, Functional Committee	Partial, large department have their own IT	Y, with IT consultation	Y	None	Y	Y - audit of IT in 2013
San Diego	\$130,000*	16,500	County Administrative Officer	IT Mgmt Comm., IT Governance Group, Bus. Process Gov. Group	Y, except for dept applic mgmt, and Sheriff and DA	Y, must adhere to County IT stds	none	All - HP	none	none
Santa Clara	\$76,000	15,000	Deputy County Executive	Five Committees plus Centers of Excellence	N, currently consolidating commodity svcs	N, discouraged with only one exception	Local, state, fed law enforcement	None	Y	Agency audits
* Does not include additional IT services - see Table 3										

Appendix C – Agency Disaster Recovery Summary
COUNTY AGENCY DISASTER RECOVERY SUMMARY

AGENCY	PRIMARY APPLICATIONS PLATFORMS	CURRENT DR PLAN & RECENT TESTING RESULTS	FUTURE DR PLAN	NOTES
Social Services Agency	Agency servers at County DC; Domain, Exchange servers at Agency DC	Case file replicated at Solano; have not tested transactions. Successfully tested e-mail, and configured other applications at Solano	Considering County Managed Services solution	DR of CA State systems and backup power generator considered \$ prohibitive
Health Care Agency	All platforms at County DC	Most recent tests at Solano did not complete successfully. No transaction applications at Solano	Will use software vendor Cerner for BHS, and software vendor Tech. Care for Jail Records, County for all else	BHS and Jail Records systems under development. Will test DR in 2014 after implementation
Sheriff-Coroner	Mainframe and Windows servers in Department DC	No off-site solution; replicate data and systems on second mainframe and servers on-site	No confirmed plans. Several short-term options being considered	Long-term solution awaiting definition of future application systems platform
Probation	All platforms at County DC	Most recent tests at Solano - connected and ran transactions, could not verify transaction output	Will use County Managed Services solution	
Auditor/Controller	All platforms at County DC	For CAPS, would use L.A. County, which uses same CAPS AIX system - no testing done. For Property Tax would use SunGard	Will use County Managed Services solution	Property Tax System previous under DR contract with outside DR provider. Issue interfaced with ATS II
OC Public Works	Agency has two DC's, with backup servers at Glassell	Use both Solano (for e-mail), and 2nd datacenter. Have tested.	Will use County Managed Services solution	
Assessor	ATSII production servers are at County DC	DR response would be to switch production to test servers at Assor location, or at an alternate location	No change	Test servers mirror prod config. Data connection in place. If not in July, RTO is months to produce roll

**JUVENILE OFFENDERS AND RECIDIVISM:
ORANGE COUNTY SOLUTIONS**



GRAND JURY 2013-2014

TABLE OF CONTENTS

TABLE OF CONTENTS	2
SUMMARY	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	4
Orange County – Embracing Better Programs and Practices to Reduce Recidivism	6
Community Day School	7
Statewide – The Case for Reducing Juvenile Incarceration	7
Collaborative Courts of Orange County	9
Detention vs. Treatment Facilities	11
California Juvenile Court Cases	12
Juvenile Arrests	14
Juvenile Referrals to Orange County Probation Department (OCPD)	16
Type of Crime	17
Trends by Ethnic Groups	17
METHOD OF STUDY	18
ANALYSIS	19
Community Day School and Re-Entry Support Services	19
Orange County Public Defender	22
FINDINGS	27
RECOMMENDATIONS	28
RECOMMENDATIONS AND REQUIRED RESPONSES	28
APPENDICES	31
Appendix A: Probation in Orange County’s Criminal Justice System	31
Appendix B: Acronyms & Agency Abbreviations	32

SUMMARY

The juvenile detention system is a kinder, gentler system than in the recent past. The Orange County Probation Department (OCPD) has shifted its focus and attitude from punishment and incarceration to rehabilitation and re-entry into the community. Juvenile crime is down from five years ago. Collaborative efforts of numerous County agencies assisted in this transition to ensure success. The 2013 - 2014 Grand Jury had the opportunity to closely observe the juvenile justice system to assess progress in reducing recidivism rates (reducing the rate of juveniles re-engaging in criminal offending, despite having been punished).

“It feels good to see my Probation Officer smile,” said a Community Day School student.

“How often do you hear a comment like that?” asked the Community Day School staff. Everyone silently acknowledged to themselves that the School must be doing most things right.

The OCPD participates in the Juvenile Detention Alternatives Initiative (JDAI), along with its juvenile justice stakeholders. JDAI is a proven method of assigning the least restrictive community-based rehabilitative alternatives for low-risk offenders who do not pose a concern to public safety. Orange County's JDAI initiative is made possible through grant funding from the Annie E. Casey Foundation.

Orange County is widely considered a leading county in developing and sustaining effective juvenile justice initiatives due to its use of evidence-based practices. The County continues to meet budgetary challenges while focusing on keeping the juvenile justice system strength-based, innovative, vital and responsive to the

needs of the communities and citizens in the County. This report identifies and reviews additional evidence-based practices and programs with which to augment the existing continuum, as well as pinpoints some gaps or deficiencies.

One observation that the Grand Jury made during this review is that the OCPD is severely handicapped with the reduction of personnel in the research department. A second observation is that juvenile recidivism is a complex concept and not easily tracked due to a different definition associated with each program.

One solution to reducing recidivism, worthy of recognition, is the Community Day School pilot program, which is a collaboration primarily of the Santa Ana Unified School District (SAUSD), OCPD and many other community organizations and services. The school has incorporated a newly formed pilot program that is aimed at channeling at-risk youths into school classes, behavioral and mental health counseling, and other community and County services to deter juveniles from re-offending.

REASON FOR THE STUDY

This report is a review of juvenile offenders, their recidivism rates, and the programs aimed at reducing recidivism in Orange County.

Recidivism is a fundamental aspect of the juvenile justice system and refers to a relapse into criminal behavior within a set period of time of release from detention. One of the functions of the OCPD is to deter offenders from becoming repeat criminals. A comparison of recidivism rates for juvenile offenders in Orange County, the State of California, and nationally will validate the effectiveness of local programs of intervention, rehabilitation and re-entry into the community.

Intervention, through positive change, is best accomplished by identifying at-risk youth. Juvenile offenders are far more malleable in the critical years leading up to adulthood. How can early intervention be achieved? The Grand Jury learned that there have been programs for many years aimed at reducing recidivism. These programs are foundational to the successful outcomes achieved through early intervention. However, it goes deeper than that. Socio-economic, community and parental dynamics play pivotal roles in reducing juvenile recidivism.

When the 2009-2010 Grand Jury looked at assessing the success of the Juvenile Detention Alternatives Initiative, it was found that the initiative was still in its early stages and too new to rate. However, with the passage of four years, the 2013-2014 Grand Jury felt it was appropriate to again review progress of this initiative.¹

BACKGROUND AND FACTS

During this investigation, the Orange County Grand Jury has noted that the OCPD has a good deal of compassionate thinking and delivers on its Mission Statement:

“We are dedicated to a safer Orange County through positive change.”

The Probation Department’s Mission Statement continues:

“As a public safety agency, the OCPD serves the community using efficient and research-supported corrections practices to:

1. Reduce Crime.
2. Assist the Courts in Managing Offenders.
3. Promote Lawful and Productive Lifestyles.
4. Assist Victims.”¹

¹ 2009-2010 Orange County Grand Jury Report, *Is the Juvenile Detention Alternatives Initiative Working?*

Definitions are elemental to understanding the corrections process.

Recidivism – General definition²: The act of re-engaging in criminal offending despite having been punished. The jail or prison recidivism rate is the proportion of persons released from incarceration that are rearrested, reconvicted or returned to custody within three years following their release from custody or placement on probation. Offenders are returned to jail or prison for one of two reasons: (1) For committing a new crime that results in a new conviction, or (2) For a technical violation of supervision, such as not reporting to their parole or probation officer or failing a drug test.

Recidivism – California definition³: “Number of individuals no longer under the jurisdiction of the juvenile court who had at least one sustained petition/adjudication during the period of supervision (not including original offense).”

Recidivism – Orange County definition⁴: Number of individuals no longer under the jurisdiction of the juvenile court that had at least one sustained petition/adjudication during the period of supervision (not including original offense).

Parole – A period of conditional supervised release in the community following a prison term. It includes parolees released through discretionary or mandatory supervised release from jail or prison, those released through other types of post-custody conditional supervision, and those sentenced to a term of supervised release.

Probation – A court-ordered period of correctional supervision in the community, generally as an alternative to incarceration. In some cases, probation can be a combined sentence of incarceration followed by a period of community supervision. See Appendix A for a flow chart on the Criminal Justice System.

Juvenile Probation – Differs slightly from adult probation procedures. Depending on how serious the crime is, the case may be handled informally (no court process). This means that the juvenile and their parents agree to a period of informal supervision under certain rules. Upon successful completion of this period of supervision, the application for petition will be closed with no further action needed. If the crime is more serious or state law requires the matter to be handled formally, the case will be reviewed by the District Attorney’s Office who will file a petition which will result in a Juvenile Court action. A Probation Officer will be assigned to the juvenile and the office will contact the parents, advising them of the dates and

² U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2011, November 2012, NCJ239686; and Pew Center of the States, State of Recidivism: *The Revolving Door of America’s Prisons*, Washington DC; The Pew Charitable Trusts, April 2011.

³ Chief Probation Officers of California; www.cpoc.com

⁴ Orange County Probation Department interview.

times of court hearings. Rules and guidelines are set up at the court hearings for the juvenile to successfully complete probation.

Probation Officers (POs) – Officers that conduct investigations for both the adult and juvenile courts and provide counseling, guidance and referral services to probationers. POs are sworn peace officers and can make arrests and conduct search and seizure operations.

Evidence-Based Practices – Practices that involve complex and conscientious decision-making which is based not only on the available evidence but also on individual characteristics, situations, and preferences. It recognizes that care is individualized and ever changing and involves uncertainties and probabilities.

Status Offenses – Acts such as curfew violations, incorrigibility, running away, and truancy.

Orange County – Embracing Better Programs and Practices to Reduce Recidivism

The Juvenile Detention Alternatives Initiative (JDAI) is a collaborative effort of key partners throughout the juvenile justice system. In Orange County, the Juvenile Court stakeholders include juvenile justice system representatives from the Courts, the District Attorney, Public Defender, Probation Department, Juvenile Justice Commission, Social Services Agency and the Orange County Sheriff's Department.

A Memorandum of Agreement between the Annie E. Casey Foundation and the County of Orange for the provision of technical assistance to implement the Juvenile Detention Alternatives Initiative has been entered into on an ongoing yearly basis. The grant provides funds from the Foundation to support its vision that all youth involved in the juvenile justice system have opportunities to develop into healthy, productive adults.

JDAI focuses on the juvenile detention component of the juvenile justice system because youth are often unnecessarily or inappropriately detained at great expense, with long-lasting negative consequences for both public safety and youth development. JDAI promotes changes to policies, practices, and programs to:

- a) reduce reliance on secure detention,
- b) improve public safety,
- c) reduce racial disparities and bias,
- d) save taxpayers' dollars, and
- e) stimulate overall juvenile justice reforms.

JDAI's eight core strategies in Orange County include:

1. An interagency collaborative to plan and monitor detention reforms.
2. Objective, risk-based admissions screening.
3. New or enhanced non-secure detention alternatives.
4. Expedited case processing to reduce lengths of stay and adjudicatory delays.
5. Improved policies and practices for dealing with warrants, violations of probation, and similar types of cases.
6. Specific strategies aimed at reducing racial disparities in the use of detention.
7. Consistent monitoring of conditions of confinement and improvements in areas found deficient.
8. Development of a capacity to track the results of these changes.

Community Day School

Typically, community day schools, or continuation schools, provide instruction to students who have been expelled from a traditional school or are on probation. These schools have a low teacher-student ratio and are run by the County or local school districts. However, the OCPD has taken this day school concept a step further in an effort to reduce recidivism among juvenile offenders. A pilot program at Community Day School consists of the OCPD teaming up with the Santa Ana Unified School District (SAUSD) and numerous other community organizations and services. Consideration is being given to replicating this pilot program in other areas of Orange County, assuming the data proves it is a successful approach to reducing recidivism. The program is aimed at channeling at-risk youths into school classes, mental health counseling and other services to keep them from re-offending. Further discussion of the Community Day School will be found in the Analysis section of this report.

Statewide – The Case for Reducing Juvenile Incarceration⁵

The Annie E. Casey Foundation (noted earlier) describes itself as a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States. The Foundation makes grants to help states, cities and neighborhoods fashion more innovative cost-effective responses to the needs of today's vulnerable children and families.⁶

What is wrong with juvenile detention? The Annie E. Casey Foundation has done extensive studies since the year 2000 and makes a compelling case. The Foundation sums up that juvenile detention facilities are no place for kids and that America's youth prisons and correctional training schools can be neatly summarized in six words:

⁵ Annie E. Casey Foundation, *No Place for Kids*, 2011; <http://aecf.com>

⁶ *Ibid.*

1. Dangerous
2. Ineffective
3. Unnecessary
4. Obsolete
5. Wasteful
6. Inadequate

Dangerous. Juvenile detention facilities subject the youth offender to intolerable levels of violence, abuse, and other forms of maltreatment. In 2008, an Associated Press story found that 13,000 claims of abuse had been reported from 2004 to 2007 in juvenile facilities nationwide. Of these, 1,343 instances of abuse had been officially confirmed by authorities. Countless more claims had never been investigated properly or never filed by youth due to lack of functioning grievance systems and/or fear of retribution. The Foundation even goes on record as stating, “California’s youth corrections system has remained in perpetual crisis for more than a decade.” In March 2006, a team of nationally recognized experts assembled to assist in implementing court-ordered reforms observed, “This is a system that is broken almost everywhere you look.” The experts listed 18 severe and systemic deficiencies including high levels of violence and fear, unsafe conditions for youth and staff, frequent lockdowns, and capitulation to gang culture. The Foundation concluded, “...it is not just reform that is needed. Everything needs to be fixed.”⁷

Ineffective. The outcomes of correctional confinement are poor. Recidivism rates are almost uniformly high, and incarceration in juvenile facilities depresses youths’ future success in education and employment. While recidivism studies vary in many important dimensions, the overall body of recidivism evidence indicates plainly that confinement in youth corrections facilities doesn’t work well as a strategy to steer delinquent youth away from crime. Juvenile incarceration also exacts a heavy toll on youths’ future employment.

Unnecessary. A substantial percentage of youth confined in youth corrections facilities pose minimal risk to public safety. A tragic irony of the abuses and regrettable outcomes is that many of the youth confined in juvenile detention facilities have no records of serious offending that would necessitate their confinement to protect the public.

⁷ Murray, Christopher, Chris Baird, Ned Loughran, Fred Mills, & John Platt, *Safety and Welfare Plan: Implementing Reform in California*, Division of Juvenile Justice, California Department of Corrections and Rehabilitation, March 31, 2006; <http://www.prisonlaw.com/pdfs/DJJSafetyPlan.pdf>.

Obsolete. Experts could not point to a single delinquency prevention or intervention program model with solid scientific evidence of effectiveness. Experts have found, however, that programs offering counseling and treatment typically reduce recidivism, while those focused on coercion and control tend to produce negative or null effects.

Wasteful. Most states are spending vast sums of taxpayer money and devoting the bulk of their juvenile justice budgets to correctional institutions and other facility placements when non-residential programming options deliver equal or better results for a fraction of the cost.

Inadequate. Despite the exorbitant daily costs, most juvenile correctional facilities are ill-prepared to address the needs of many confined youth. Often, they fail to provide even the minimum services appropriate for the care and rehabilitation of youth in confinement.

Collaborative Courts of Orange County⁸

Collaborative court programs are specialized courts that combine judicial supervision with monitored rehabilitation services. These programs focus on:

- a) integrated treatment and social services,
- b) oversight and accountability,
- c) a team approach to decision-making and problem-solving, and
- d) frequent interaction between the participants and the judicial officer.

Juvenile Drug Court

The Juvenile Drug Court was established in 1998 to focus on critical substance abuse issues of minors. The program's goal is to support the youthful offender's commitment to sobriety by providing the supervision and treatment needed to promote abstinence from alcohol and drug abuse and to deter criminal behavior. The Juvenile Drug Court team includes members from the Court, District Attorney, Health Care Agency, OCPD, Public Defender and any retained counsel. Minors participating in this program are required to:

- a) attend weekly self-help groups,
- b) participate in family, group, and individual counseling,
- c) remain clean and sober,
- d) attend educational and skill-building classes, and
- e) be present at frequent progress review hearings with a judicial officer and follow the conditions and terms of probation.

⁸ Collaborative Courts, 2012 Annual Report, Superior Court of California, County of Orange

Truancy Court

The Truancy Court was established in 2001 to deal with juveniles whose school attendance is not corrected by school level intervention. The school district then refers students to OCPD. The Truancy Court has the goals of stabilizing school attendance and reducing the number of juveniles who go on to commit crimes. Note that first grade students with nine or more total absences are twice more likely to drop out of high school than their peers who attend school regularly. Approximately 82% of prisoners in America are high school dropouts.⁹

“A pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.”¹⁰

The Court involves parents, students, and government agencies including the Department of Education, District Attorney’s Office, Health Care Agency, Juvenile Court, OCPD, Public Defender, and the Social Services Agency. The Court will order parents to attend the Parent Empowerment Program and may refer the family for counseling services provided by the Health Care Agency and the Social Services Agency. The students must provide proof of attendance to the Court each week until the chronic truancy problem is resolved.

Dependency Teen Programs – Girls Court

The psychological effects of abuse or trauma can put girls at a high risk of becoming school drop outs, becoming homeless, using drugs, and becoming involved with the criminal justice system. Many of these girls are living in foster care group homes. Because frequent changes of homes and schools can negatively impact self-esteem and the girl’s behavior, one of the Girls Court’s goals is to reduce the number of placement changes. Another goal is the reduction of run-aways where a girl leaves her foster home without permission, which sometimes results in living on the street or under the influence of an older boyfriend. In 2012, only one girl in the program had a new law violation. This is considered a good result, considering all the disruptions these girls are exposed to on a regular basis.

The Girls Court team includes the Court Appointed Special Advocates (CASA), Department of Education, District Attorney’s Office, Health Care Agency, Juvenile Court, Juvenile Defenders, Orange County Counsel, Orangewood Children’s Foundation, OCPD, Public Defender, Social Services Agency, and appointed counsel.

⁹ *In School + On Track*, Attorney General’s 2013 Report on California’s Elementary School Truancy & Absenteeism, 2013; <http://oag.ca.gov/truancy>

¹⁰ California Education Code 48260 (a).

Dependency Teen Programs – Boys Court

Most of the boys in this dependency program have had multiple foster care placements, mental health and socialization problems, and substance abuse, and they are at high risk of becoming involved in the criminal justice system as adults. Most of the boys were abandoned or neglected by their parents and many of them have suffered from violent emotional, physical, and/or sexual abuse. The boys diagnosed with mental illness and substance abuse issues receive therapy and treatment for these problems.

The Boys Court team includes the Court Appointed Special Advocates (CASA), Department of Education, District Attorney’s Office, Health Care Agency, Juvenile Court, Juvenile Defenders, Orange County Counsel, Orangewood Children’s Foundation, OCPD, Public Defender, Social Services Agency, and appointed counsel.

Detention vs. Treatment Facilities



This is a sentiment the Grand Jury heard on several occasions and this is how the staff at the juvenile treatment centers see their job. It was also articulated that staff sometimes feel there is not enough time to have a positive impact on the youths in the 30-day or less sentences currently being handed out to juveniles.¹¹ On the other hand, a dramatic drop in detention population is evidence that shorter detention is more effective than longer detention. Subsequent interviews indicated that most of the programs introduced in the juvenile treatment centers are followed through in the Community Day School and other programs.

Juvenile residential facilities (Joplin Youth Center, Juvenile Hall, Youth Guidance Center and Youth Leadership Academy) have a number of programs and activities to reduce recidivism. Most programs and activities are not data-driven, except Thinking For Change (T4C), Aggression Replacement Training (ART), and substance abuse programs. The length of stay in these facilities in most cases is 30 to 60 days.

A typical flow chart of Juvenile Probation in Orange County’s Criminal Justice System may be found in Appendix A.

¹¹ Orange County Grand Jury Inspection of the Youth Leadership Academy, 2013.

California Juvenile Court Cases

Each year, juvenile courts across the country voluntarily provide data to the National Juvenile Court Data Archive, a project maintained by the National Center for Juvenile Justice (NCJJ) with funds provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Table 1

California Juvenile Court Case Counts, 2010								
Reporting Counties (Counties over 500,000 population)	2010 Population Estimate	Delinquency			RATIO			
	Total	Petition (Detained)	Non- Petition (Non- detained)	Total Delinquency	Total Delinquents as percent of Population	Detained Delinquents as Percent of Population	Non- Detained Delinquents as Percent of Population	Ratio of Detained to Non- Detained Delinquents
		Alameda	1,513,000	2,506	2,202	4,708	0.31%	0.17%
Contra Costa	1,052,600	1,403	1,875	3,278	0.31%	0.13%	0.18%	0.75
Fresno	933,200	2,803	4,087	6,890	0.74%	0.30%	0.44%	0.69
Kern	842,800	2,481	2,793	5,274	0.63%	0.29%	0.33%	0.89
Los Angeles	9,826,800	8,271	556	8,827	0.09%	0.08%	0.01%	14.88
Orange	3,017,600	6,847	4,315	11,162	0.37%	0.23%	0.14%	1.59
Riverside	2,203,000	3,083	4,856	7,939	0.36%	0.14%	0.22%	0.63
Sacramento	1,422,100	2,347	1,817	4,164	0.29%	0.17%	0.13%	1.29
San Bernardino	2,042,000	5,786	2,294	8,080	0.40%	0.28%	0.11%	2.52
San Diego	3,105,100	3,360	2,422	5,782	0.19%	0.11%	0.08%	1.39
San Francisco	805,300	581	767	1,348	0.17%	0.07%	0.10%	0.76
San Joaquin	687,700	2,216	3,558	5,774	0.84%	0.32%	0.52%	6.62
San Mateo	719,600	1,961	738	2,699	0.38%	0.27%	0.10%	2.66
Santa Clara	1,786,300	2,596	2,402	4,998	0.28%	0.15%	0.13%	1.08
Stanislaus	515,400	1,564	1,605	3,169	0.61%	0.30%	0.31%	0.97
Ventura	825,400	1,242	1,450	2,692	0.33%	0.15%	0.18%	0.86

Table 1 lists the number of delinquencies in *all* of the counties throughout California that have a population over 500,000 people. Note that different counties have different ratios of petition (detained) versus non-petition (non-detained) cases, depending upon the case handling in each particular county. For example, in Los Angeles County, a juvenile delinquent has a much greater chance of being detained, rather than being placed on probation. In Fresno County, a juvenile delinquent has a greater chance of being placed on probation, rather than being detained. Orange and San Diego counties are similar in population, however Orange County has twice the number of delinquencies.

While many interpretations can be drawn from the chart above, it is clear that different counties have different ratios between petitioned and non-petitioned case handling (and total delinquency numbers) due to local county juvenile justice policies.

In general, the Juvenile Court Risk Assessment Intake (RAI) determines whether a case will be *petitioned* (formally handled and detained in a detention or treatment facility) and scheduled for an adjudicatory or waiver hearing or being *non-petitioned* (informally handled and non-detained and placed on probation). The *petition* is a document alleging that a juvenile is a delinquent and asks the court to assume jurisdiction of the juvenile or asks that an alleged delinquent be waived to criminal court for prosecution as an adult. Non-petitioned (informally handled) cases are handled by judges, referees, probation officers, other officers of the court or an agency designated to handle juveniles.¹²

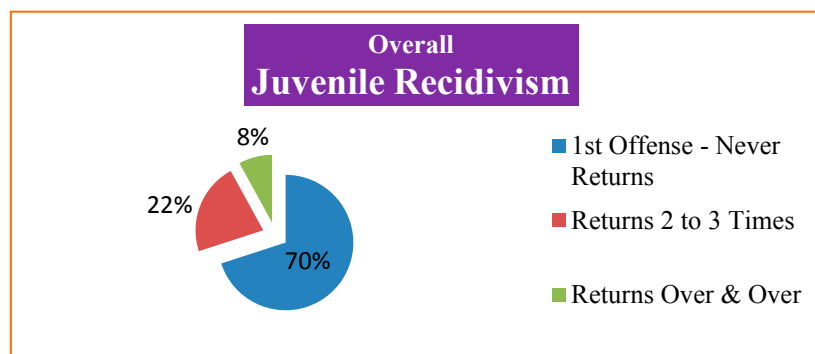
Juvenile Recidivism

As mentioned earlier, the definition of Recidivism has always been fluid. The definition has changed from year to year, and varies slightly from source to source. For example, one definition may be used in 2011 by the State of California as the basis for statistics in a chart; while another definition may be used in 2013 by the County of Orange as the basis for statistics in a chart.

70% of *first-time* offenders do not commit a second crime. 22% of first-time offenders will commit 2 to 3 crimes. The remaining 8% of first-time offenders will continue to commit crimes over and over.

One purpose of this study is to raise awareness for the remaining 30% of first-time offenders comprised of the 22% that will commit several more crimes, and the 8% that will continue to commit crimes. Juvenile Probation has embarked on innovative programs for these juveniles. Using evidence-based research, Probation's goal is to *nip it in the bud* before a juvenile can become a habitual offender. Juvenile Probation's *current thinking is to find the 8 Percenters before they become 8 Percenters*.¹³

Figure 1



¹² U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention; www.ojjdp.gov.

¹³ 8 Percent Problem Study Findings, Orange County Probation Department; <http://ocgov.com/gov/probation/about/8percent/>

Figure 1 above illustrates research done in the 1990's which defined juvenile recidivism as follows:¹⁴

1. **Non-Recidivists (1st Offense – Never Returns)** are those minors with one referral to the OCPD for a criminal offense during a three-year period (about 70%).
2. **Low-Rate Recidivists (Returns 2 to 3 Times)** are those minors with 2 or 3 criminal justice referrals during a three-year period (about 22%).
3. **Chronic Recidivists (Returns Over & Over)** are those minors with 4 or more referrals (about 8%).

It was also noted that the recidivism rate is more complex than the previous definition, and the severity of the crime can color the results of the research. For example, juveniles vandalizing via graffiti represents the highest crime rate, and a first-time offender may be charged with this misdemeanor over and over again. Juveniles that commit a murder actually represent the lowest crime rate. If a first-time offender commits murder, then they may never commit another crime, since they will be detained by the justice system.

Risk factors tend to play an important role in juvenile recidivism. The OCPD takes the following factors into consideration for juveniles:

- a) early onset of criminal activity,
- b) family domestic violence,
- c) gang affiliation, and
- d) substance abuse.

Evidence-based practices have added three additional risk factors:

1. anti-social thinking,
2. criminal thinking attitude and beliefs, and
3. lack of pro-social leisure activities.

Juvenile Arrests¹⁵

Table 2 below illustrates Juvenile Arrest Trends from 2002 to 2011. There was a 21% decrease in juvenile arrests from 13,646 to 10,481 in Orange County. Misdemeanor arrests decreased 25%; arrests for status offenses decreased 16%; and felony arrests decreased 13% during this ten-year period.

¹⁴ Ibid.

¹⁵ *The 19th Annual Report on the Conditions of Children in Orange County, 2013*, <http://ochealthinfo.com/phs/about/family/occp/report>.

Table 2

Orange County Juvenile Arrest Trends For Youth 10 to 17 Years of Age 2002 to 2011										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Felony Arrests										
Violent Crimes	727	720	643	602	692	710	824	832	690	562
Property Offenses	1,645	1,733	1,547	1,656	1,630	1,751	1,719	1,709	1,493	1,156
Other Offenses*	947	1,101	1,103	1,266	1,490	1,633	1,549	1,596	1,491	1,158
Misdemeanor Arrests	8,304	8,002	8,157	8,073	8,539	9,080	8,819	8,597	8,229	6,219
Status Offenses	2,023	2,024	1,583	1,417	1,685	1,841	2,016	1,620	1,592	1,706
Total Juvenile Arrests	13,646	13,580	13,033	13,014	14,036	15,015	14,927	14,354	13,495	10,801

*Other Offenses include drug, sex, weapons and other offenses.

Trends

Notable trends concluded from Table 2 are:

- a) Since its 2007 peak, the County juvenile ratio had gone down by 17% in 2011.
- b) In the last three years, there was a 16% decrease in referrals to Probation from 12,456 in 2008 to 10,454 in 2011; after a 16% increase from 2002 to 2008.
- c) Referrals for person, property and drug offenses all decreased over this ten-year period (35%, 18% and 15% respectively).
- d) Of all referrals to Probation, misdemeanor referrals decreased 30% from 8,217 in 2002 to 5,769 in 2011, while felony referrals increased 71% from 3,319 in 2002 to 4,354 in 2011.

Efforts to continue to reduce recidivism rates for juveniles are being made to maintain this decreasing trend through the Juvenile Justice and Crime Prevention Act (JJCPA). The Board of State and Community Corrections continues to support JJCPA programs in the County to help prevent minors from committing new crimes. Through these programs, drug counseling and comprehensive psychological and substance abuse assessment and treatment services are provided:

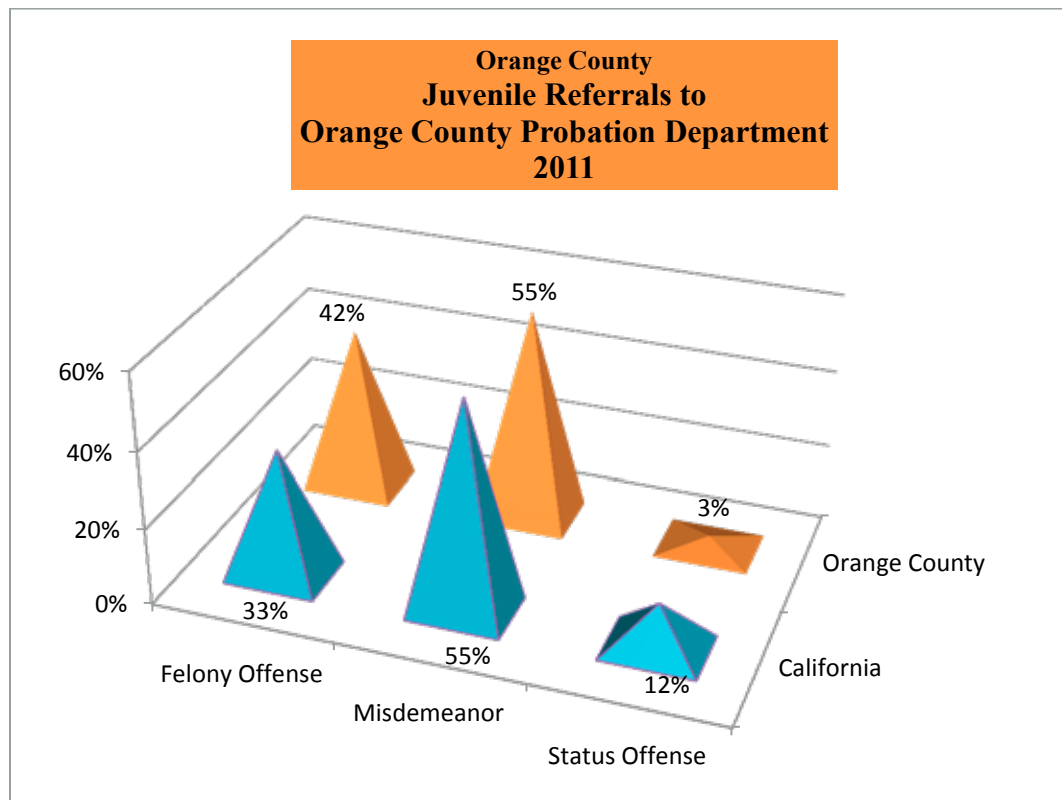
- a) Addiction and Substance Abuse Education and Recognition Treatment (ASERT),
- b) Sobriety Through Education and Prevention (STEP),
- c) Decentralized Intake (DCI), and
- d) School Mobile Assessment and Response Team (SMART).

Juvenile Referrals to Orange County Probation Department (OCPD)¹⁶

Referrals to the OCPD include mostly 10 to 18 year old minors who received a final disposition. Almost all of these referrals involve a criminal offense because arrests for status offenses are generally handled by the arresting agency. Disposition actions on these referrals can include diversion, informal supervision under the Welfare Institution Code 654, deferred entry of judgment or consideration by the juvenile court for dismissal or to become a ward of the court. In 2011, there were 148,250 referrals to Probation reported to the Department of Justice from all 58 counties throughout California. Of that total, 33% involved felony offenses, 55% were for misdemeanor offenses and 12% were for status offenses.

In Orange County, in 2011, there were 10,454 referrals to Probation. Of that total, 42% involved felony offenses, 55% were for misdemeanor offenses and 3% were for status offenses. See the following Figure 2.

Figure 2



Juvenile arrests make up only a small portion of the total County arrests, reaching an all-time low ratio of juvenile arrests of 13% in 2011 over a ten-year period. There was an overall decrease of 3% in all referrals to Probation from 10,770 in 2002 to 10,454 in 2011.

¹⁶ Ibid.

Type of Crime

A breakdown of the majority of all juvenile referrals to the OC Probation Department by type of crime is illustrated in Table 3 below. The table shows that probation violations, vandalism and truancy are the most common juvenile referrals.

Table 3

Orange County Juvenile Referrals to Orange County Probation Department By Type of Crime 2011		
Crimes against persons	11%	1,186
Drug related offenses (not including alcohol & DUI)	11%	1,152
Crimes against property	23%	2,369
Other offenses (mainly probation violations, vandalism and truancy)	55%	5,747
Total Juvenile Referrals	100%	10,454

Trends by Ethnic Groups¹⁷

From 2002 to 2011, the percent of referrals for:

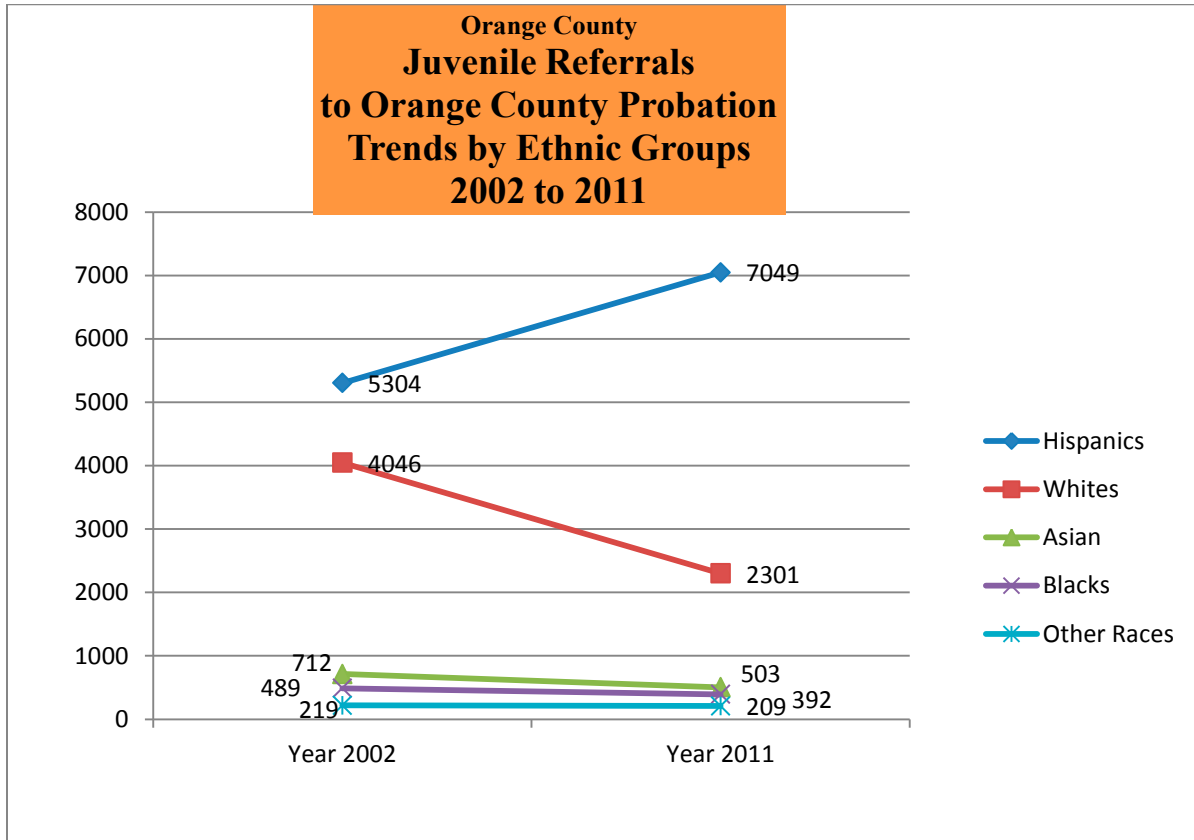
- a) Hispanics increased from 49% (5,304) to 67% (7,049),
- b) Whites decreased from 38% (4,046) to 22% (2,301),
- c) Asians decreased from 7% (712) to 5% (503) and
- d) Blacks decreased from 5% (489) to 4% (392).

The U.S. Census 2000 found that 65% of Orange County’s population identified as White (non-Hispanic) and 31% as Hispanic. The U.S. Census 2010 found that Orange County’s population changed to 44% White and 34% Hispanic respectively. The Asian and Black ethnic groups had minimal changes.

These trends are further depicted in Figure 3 below.

¹⁷ Ibid.

Figure 3



METHOD OF STUDY

It should be noted that all Juvenile records are held in the strictest confidence by our justice system. No individual names or records were used in this report. Confidential interviews were held with Orange County Probation Department management officials. Probation Officers were observed interacting with juvenile probationers.

1. Orange County Probation Department, Adult Supervision
2. Orange County Probation Department, Juvenile Supervision
3. Youth Reporting Center (for Juveniles)
4. Community Day School and Reentry Support Services

Confidential interviews were held with additional Orange County agencies.

1. Orange County Public Defender’s Office
2. Orange County Social Services
3. Lamoreaux Justice Center, Orange

Site tours were taken at the following Orange County juvenile facilities.

1. Joplin Youth Center
2. Orange County Juvenile Hall
3. Youth Guidance Center
4. Youth Leadership Academy

The Grand Jury also analyzed and reviewed the following sources.

1. Documents and publications received from the Orange County Probation Department (OCPD)
2. California Criminal Law Procedures and Practice, 2007
3. The 19th Annual Report on the Conditions of Children in Orange County 2013
4. Annie E. Casey Foundation website
5. Prior Grand Jury reports and responses
6. California Welfare and Institutions Code
7. Media reports and news articles on the topic
8. Documents from websites and blogs

ANALYSIS

The 2013-2014 budget appropriation for the OCPD is \$169,000,000. The OCPD has 1,456 employees. In Fiscal Year 2011-2012, 62% of 1,679 juveniles were terminated from formal probation without any new law violations, exceeding the goal of 60%.

Several meetings with the OCPD revealed that there are innovative approaches to reducing juvenile recidivism. Current research on recidivism is not as readily available for juveniles as it is for adults. The OCPD does rely on *evidence-based practices* in making their supervision decisions.

1. Officers assess juvenile offenders' risk to re-offend using a validated Intake Risk Assessment tool.
2. The highest risk offenders are contacted and drug tested more often than low-risk offenders.
3. Officers work with juveniles and their families to create individualized case plans resulting in referrals to appropriate community based services.
4. Swift and certain incentives and sanctions are used to motivate juvenile offender change.

Community Day School and Re-Entry Support Services

This collaborative implementation of services, which is actually held at an existing alternative school facility provided by the Santa Ana Unified School District, includes:

- a) academic programming,
- b) substance abuse counseling or treatment,
- c) behavior management,
- d) employment preparation,
- e) cognitive restructuring,
- f) family counseling and parenting skills, and
- g) community service referrals.

By providing all these services, the Probation Department feels all the parties will help ensure the successful reentry of participants into the community, improve school attendance, reduce recidivism, and enhance public safety.

A pilot program at Community Day School consists of the OCPD teaming up with the Santa Ana Unified School District and numerous other community organizations and services. The program is aimed at channeling at-risk youths into school classes, mental health counseling and other services to keep them from re-offending.

While numerous programs are successfully provided to the youths by the Probation Department, the Grand Jury felt this pilot program, “Community Day School and Re-Entry Support Services”, was outstanding. The Probation Department, along with the Santa Ana Unified School District, shares a common interest in the effective supervision and rehabilitation of juvenile offenders detained in Orange County’s juvenile institutions. They also have a common interest in preparing the youth to return to the community as law abiding citizens. Lastly, they are concerned with those students that have been determined to be at risk for truancy and other behavior problems.

In light of overall budget reductions felt in all areas of Orange County, it is important to note that this pilot program is being done at no significant additional cost. In fact, an example was given to the Grand Jury by a school district staff member who commented that having been involved in a number of grant funded projects over the years, this was the first time such a project had started with zero seed money and grown organically to this level of success.¹⁸

The school can accommodate up to 120 students and serves both youths on probation and at-risk non-probation minors. Currently, there are 106 juveniles attending the school. The student population changes daily and weekly as students transition back into their original schools, or other appropriate schools, once their sanctions have been satisfied.

Two Deputy Probation Officers (DPOs) and one Santa Ana Police Officer are based on the school grounds. The daily presence of the school based DPOs and police officers tend to remove most of the stigma the students may harbor. In fact, during a recent visit by the Grand Jury, it was noted that as classes ended and students streamed across the small campus, the school staff,

¹⁸ Interview with Santa Ana Unified School District staff member, 2014.

DPOs and school police officers were all outside, greeting students on a friendly first-name basis. The staff further indicated that they knew the students families and stayed in contact with most after they left the Community Day School.

The Grand Jury had the opportunity to interview three young male students. Each youth stated positive comments about how they understood the fairness of the strict school rules and also understood the consequences if they break the rules. All three respected the staff and teachers and held them in high esteem. When asked if each would like to see any improvements in the school, one comment was the school was lacking in competitive sports leagues because there were not enough students to create teams.¹⁹

After initial agreements were reached with OCPD and the Santa Ana Unified School District and their ongoing programs, in December, 2013, additional services are continuing to be vetted and added. Memorandums of Understanding with non-profit organizations and faith-based organizations are being executed on an ongoing basis. A youth forum was formed and identified needs such as Latino Health Access, tutoring, art and music. The Santa Ana Public Library (currently operating out of Jerome Park) offers sound mixing, video design, guitar lessons, and team support. Saddleback College offers tutoring and mentoring with college attendees.

The Grand Jury visited several of the partnerships with the Probation Department. One non-profit venture provides basic services of teaching and training the youth in bicycle repair and maintenance. “Wrapping the youths in community services and providing normalcy is the most important contribution.”²⁰

The OCPD has indicated they have two outstanding areas that still need to be addressed. The pilot program will be greatly enhanced when they can provide:

1. *Evening Meals:* Since the counseling sessions frequently extend into the evening hours, meals for the youths and their families would be beneficial. These meals could be casual in nature since they would not need to be structured to qualify under the school health codes.
2. *Evening Transportation:* Door to door transportation in the evening hours is necessary since many students live a great distance from the school, or in high risk neighborhoods.²¹

When the Santa Ana Unified School District staff and Community Day School staff were asked the same question as to what still needs to be addressed in this pilot program, the same two items indicated above (meals and transportation) were named. Additionally, the SAUSD indicated they are diligently working on getting the school accredited, which will solve some school issues. The school uses the same curriculum and text books as the rest of the District. This

¹⁹ Interviews with staff and students at Community Day School, Santa Ana, CA, 2014.

²⁰ Interview with Orange County Public Defender’s office, 2014.

²¹ Interview with OCPD, 2014.

allows for a smooth transition back into the youth's original school. Unfortunately, the credits earned at the school do not meet all the California course requirements to apply to a 4-year college/university. It was noted by the Grand Jury that both the Community Day School staff and the SAUSD are pursuing accreditation. Both agencies are also working on adding anger management and drug therapy programs to the curriculum. Lastly, SAUSD felt a full-time mental health/licensed clinical social worker would greatly augment the staff.

While the Community Day School pilot program is still in the early stages, both the OCPD and SAUSD have indicated their intention of replicating this model to other areas of Orange County.

Orange County Public Defender

The Grand Jury interviewed a member of the Orange County Public Defender's Office to obtain that member's views on detention versus rehabilitation of juveniles. The charge of the public defender is to provide legal representation in juvenile cases. The Juvenile Detention Alternatives Initiative (JDAI) is considered a success and fully supported by the Public Defender's Office. Incarcerating youth causes more damage than rehabilitating them. Providing education, counseling and wrapping the youth in community services are the reasons JDAI has been successful to date.

"The Community Day School pilot program is the wave of the future. It provides the youth with a normal school and community setting and exposes them to a number of cognitive behavior programs. Understanding that the teen-age brain and personality is still under construction is vital to collaborating on various ways to improve their rehabilitation."²²

The JDAI is finally getting some traction in Orange County. The Probation Department and segments of the justice system are fully onboard and committed to this alternative to detention.

"However, JDAI is counter-intuitive to some agencies that deal with adult crime and recidivism issues. There is room for better communication on the alternative programs available for the youth. Too many kids with mental health issues are housed in our juvenile facilities. We need to get to the core of what they need and fix the things that can be fixed."²³

²² Interview with Orange County Public Defender's office, 2013.

²³ Ibid.

Collaborative Courts of Orange County

Juvenile Drug Court

The success of this program is evident in a low recidivism rate of 10% of juveniles within one year and 13% within two years of graduation (release from custody). The average cost of housing a minor at one of the four Orange County juvenile correctional and treatment facilities in 2012 is \$368/day. The 17 participants who graduated in 2012 had 2,193 days reduced from their detention, which resulted in a cost saving to the County of \$807,000.

Truancy Court

About 63% of the students successfully complete Truancy Court programs. Of the students who do, 95% had an improved attendance rate and 67% had 90 or more consecutive days of perfect attendance. Of the 1,665 students who have successfully completed the truancy program since its inception, only 6% were arrested for violating the law in the six months following their exit compared with 21% of the students who did not successfully complete the program.

Dependency Teen Programs – Girls Court

Many of the Girls Court participants develop a better attitude toward education and 70% remained in one school during the year of 2012, while 73% decreased their incidence of suspension compared to the prior year of 2011. None of the participants were expelled from school and none were referred to the Truancy Court program. In addition, 70% of the girls improved their grade point average and most girls passed the California High School Exit Exam during 2012.

Dependency Teen Programs – Boys Court

The Boys Court's goals are the same as the Girls Court objectives: a reduction in the number of placement changes in foster homes, a reduction in runaway incidents, and improved attitudes toward education compared to prior years. These goals were achieved. There was a 56% reduction in the number of boys suspended from school compared to prior years coupled with an increase in grade point average.

Juvenile Recidivism Rate by United States, California, and Orange County

Table 4

Overall Juvenile Recidivism Rates 2012		
United States	California	Orange County
12-55%*	50-70%**	37%
<i>*Wide range because all 50 states in United States are represented. **Wide range because all 58 counties in California are represented.</i>		

Table 4 above, represents the recidivism rates for the United States, California, and Orange County.

The most specific definition of recidivism (re-incarceration for delinquent offenses in the juvenile system only) to the broadest definition (re-arrest for delinquent or criminal offenses in the juvenile and adult systems) is among the multiple definitions.

The Chief Probation Officers of California (CPOC) have agreed with the California definition of Recidivism: “Number of individuals no longer under the jurisdiction of the juvenile court who had a least one sustained petition/adjudication during the period of supervision (not including original offense).”

The Orange County definition of recidivism now concurs with the CPOC definition.

Juvenile Recidivism rate by Detention Facility

The following Table 5 outlines the recidivism rates based on the four juvenile detention and treatment facilities. These percentages refer to the occurrence of one or more new law violation arrests within 180 days of release for those minors released during the 2012 calendar year. These percentages may be low, as some detainees were transferred to a State facility when they reach a certain age. Since the Joplin Youth Center houses boys from 12 to 14 years of age, they will not be transferred during their detention.

Table 5

Orange County Juvenile Recidivism by Detention Facility 2012			
Joplin Youth Center	Juvenile Hall	Youth Guidance Center	Youth Leadership Academy
63%	31%	30%	23%
<i>These juveniles ARE detained in a locked or in a secured facility.</i>			

Juvenile Recidivism Rate by Collaborative Courts & Programs

Table 6 below outlines the recidivism rates based on the four collaborative courts.

Table 6

Orange County Collaborative Courts			
2012 Juvenile Drug Court	2012 Truancy Court	2012 Dependency Teen Programs (Girls Court)	2012 Dependency Teen Programs (Boys Court)
57%	8%	n/a	n/a
<i>These juveniles are NOT detained in these programs.</i>			

Juvenile Drug Court: This percentage (57%) refers to the occurrence of one or more new law violation arrests during the fiscal year of 2012-2013.

Truancy Court: This percentage (8%) refers to the occurrence of one or more new law violation arrests during the fiscal year 2012-2013.

Dependency Teen Programs (Girls Court) and Dependency Teen Programs (Boys Court): Statistics are not being tracked due to a lack of funding and staff.

Each of these data points required a different recidivism definition either due to the inherent parameters of the program or due to available resources and information. Many of these programs serve different populations. For example, Truancy Court deals with non-delinquent status offenders. These juvenile offenders are much lower risk for re-offense than a Drug Court participant, who are not only on formal probation already, but are in intensive programs due to their higher risk (multiple suspensions, severe drug use, multiple petition, etc.)

Conclusion

Currently, success rates on reducing recidivism are not fully documented by the Probation Department. Relevant pieces of missing information are (1) what happens after a youth finishes probation; and, (2) how many youths “graduate” to jails after reaching age eighteen. Juvenile recidivism is measured only against those juveniles who break probation and/or commit offenses while on probation. Records of their youthful offenses do not follow them to jail. *Thus the ability to measure recidivism is very limited.*

The Probation Department has noted that recidivism rates can also be confounded by the fact that some youth are released from an institution to state prison, county jail or the California Department of Corrections and Rehabilitation – Division of Juvenile Justice. Those releases will not show recidivism within 180 days because they are still incarcerated elsewhere and therefore, do not have the opportunity to re-offend. There may also be older youth who are terminated from probation prior to the end of the 180-day evaluation period, and thus have less opportunity to re-offend within 180 days, where a younger probationer may be on probation for the entire 180-day period.

Making recidivism comparisons across programs is very difficult since there are so many variables that may not be accounted for without strict experimental research, data collection and analysis. Since evidence-based planning is critical to allocating limited funding, the Grand Jury feels it is important to re-establish a research department to collect and analyze this data.

During recent cutbacks at the Probation Department, the existing Research Department, which consisted of approximately 12 employees (5 were Juvenile researchers), was reduced to only 8 full-time employees (3 are Juvenile researchers), due to budget constraints. The Probation Department is handicapped by this reduction in staff since they are unable to determine the true cost impact of their programs and recidivism rates due to the lack of research personnel to collect and analyze data.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on its study, the Grand Jury has arrived at eleven principal findings as follows:

F.1. Many juveniles are detained in treatment centers for 30 to 60 days, yet many probation staffers believe that additional days of treatment and classes will result in a lower recidivism rate.

F.2. By treating juveniles for more days, there are greater “upfront” costs to the County.

F.3. The use of evidence-based practices (what treatment modalities work) results in lower recidivism rates since the focus has shifted from detention and punishment to rehabilitation and re-entry into the community.

F.4. Budget constraints have reduced the County’s research department. The Probation Department is handicapped by this reduction in staff since they are unable to determine the true cost impact of their programs and recidivism rates due to the lack of research personnel to collect and analyze data.

F.5. The Juvenile Detention Alternatives Initiative (JDAI) is an innovative approach utilized by Orange County for a number of years

F.6. The decline in the number of juvenile detainees has resulted in unused capacity in several juvenile facilities, resulting in the closure of one facility and consolidation in the remaining four facilities. Modest unused capacity is a good thing.

F.7. As of 2010, juvenile court cases in Orange County are in line proportionately with other like-sized counties of populations over 500,000.

F.8. The recently established collaborative teams of the Community Day School, Santa Ana Unified School District, Orange County Probation Department, and various community services, are working as a cohesive team within the budget limitations of this pilot program.

F.9. The Probation Department and Santa Ana Unified School District staffs are dedicated to behavioral modification treatments. Additional staff and programs are needed to provide psychological therapies for many juveniles.

F.10. To date, the pilot program of Community Day School is not academically accredited.

F.11. OCPD indicated their intention to replicate the Community Day School to other areas of Orange County, upon successful completion of the pilot program.

RECOMMENDATIONS

In accordance with California Penal Code §933 and §933.05, the 2013-2014 Orange County Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of juvenile recidivism in Orange County, the 2013-2014 Orange County Grand Jury makes the following recommendations:

R.1. The Orange County Probation Department and the Board of Supervisors should re-constitute a research department to collect and analyze the cost effectiveness of their programs, and further monitor their juvenile recidivism rates. **(F.3., F.4., F.6.)**

R.2. The Santa Ana Unified School District, the Superintendent of Schools, and the Orange County Probation Department should continue to seek academic accreditation for the Community Day School. **(F.10.)**

R.3. The Orange County Probation Department and the Board of Supervisors should budget for evening meals/snacks, transportation home after evening programs, and additional trained behavior modification specialists. **(F.9.)**

R.4. After successful evaluation of the Community Day School pilot program, the Orange County Probation Department and the Superintendent of Schools should pursue replicating this model to other areas in Orange County. **(F.11.)**

RECOMMENDATIONS AND REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses to Findings are requested from:

Orange County Probation Department: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, and F11.

Responses to Findings are required from:

Orange County Board of Supervisors: F4

Superintendent of Schools: F8, F9, F10, and F11.

Santa Ana Unified School District: F8, F9, F10, and F11.

Responses to Recommendations are requested from

Orange County Probation Department: R1, R2, R3, and R4..

Responses to Recommendations are required from:

Orange County Board of Supervisors: R1 and R3.

Superintendent of Schools: R2 and R4.

Santa Ana Unified School District: R2

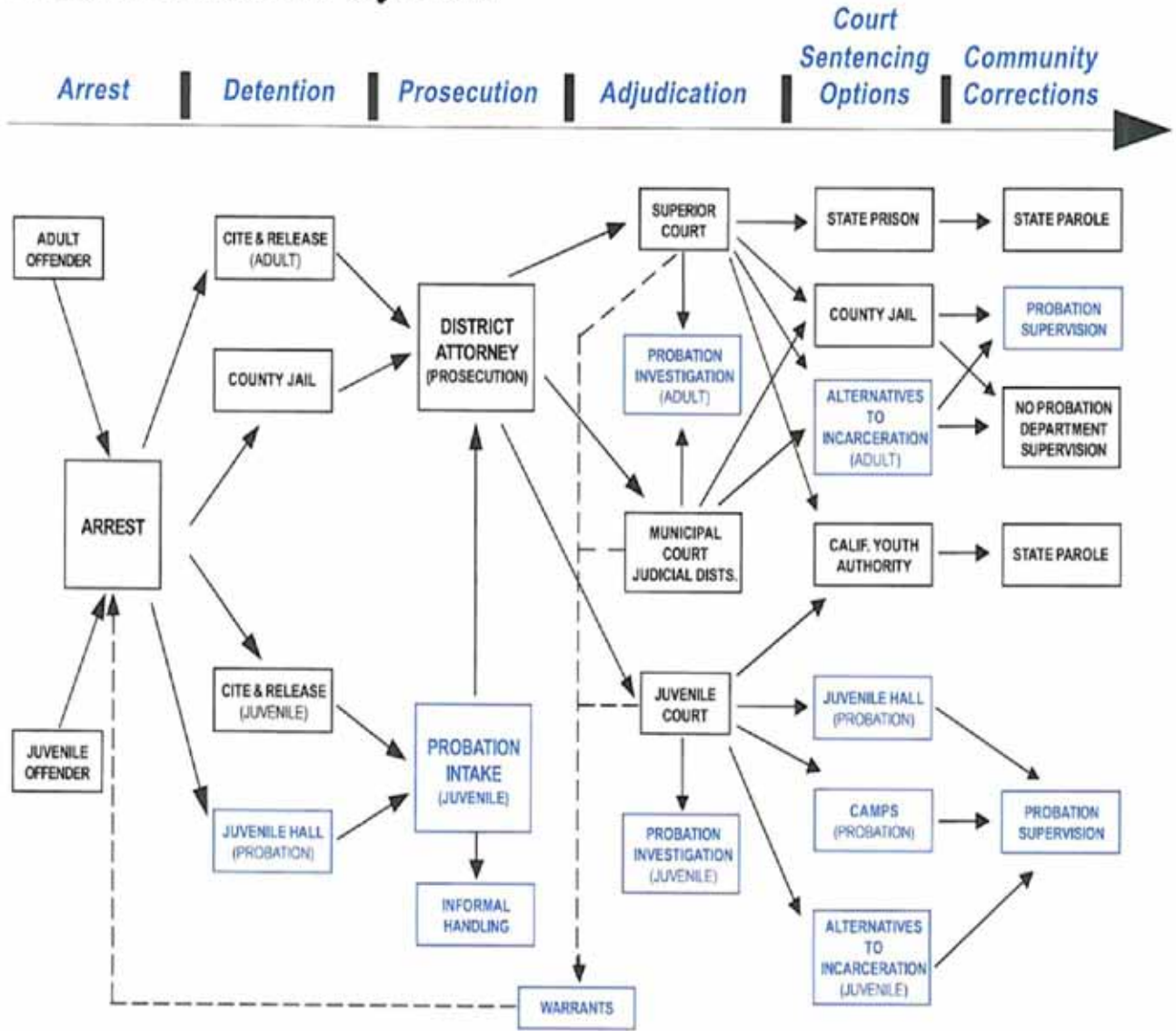
COMMENDATIONS

The 2013-2014 Orange County Grand Jury is impressed with the dedication of the staff at the Orange County Probation Department, and especially the leadership in the Juvenile Division, as well as with the Santa Ana Unified School District staff at the Community Day School.

APPENDICES

Appendix A: Probation in Orange County's Criminal Justice System

Probation in Orange County's Criminal Justice System



Appendix B: Acronyms & Agency Abbreviations

AECF	Annie E. Casey Foundation
ART	Aggression Replacement Training
ASERT	Addiction and Substance Abuse Education and Recognition Treatment
CASA	Court Appointed Special Advocates
CDS	Community Day School
DA	District Attorney
DCI	Decentralized Intake
DPO	Deputy Probation Officer
FY	Fiscal Year
HCA	Health Care Agency
JCS	Juvenile Court Statistics
JDAI	Juvenile Detention Alternatives Initiative
JJC	Juvenile Justice Commission
NCJJ	National Center for Juvenile Justice
OCC	Orange County Counsel
OCPD	Orange County Probation Department
OCSD	Orange County Sheriff's Department
OJJDP	Office of Juvenile Justice and Delinquency Prevention
PO	Probation Officer
SAUSD	Santa Ana Unified School District
SMART	School Mobile Assessment and Response Team
SSA	Social Services Agency
STEP	Sobriety Through Education and Prevention
T4C	Thinking For Change
YGC	Youth Guidance Center
YLA	Youth Leadership Academy

**SUSTAINABLE AND RELIABLE ORANGE
COUNTY WATER SUPPLY:
ANOTHER ENDANGERED SPECIES?**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
State of the County Infrastructure and Supply	5
Drivers Affecting Future Supplies	8
Future Water Demand	10
Catastrophic Events and Their Effects	10
Mitigation Measures	12
Climate Change Events	16
Water Quality and Safety	17
Financing and Permitting Large Scale Infrastructure Projects	18
System Reliability Improvements	19
Improving Source Reliability	19
METHOD OF STUDY	22
ANALYSIS	24
Local Water Source Reliability	25
Local System Reliability	25
Imported Water System Reliability	26
Imported Water Source Reliability	26
The Case for Seawater Desalination	27
FINDINGS	28
REQUIRED RESPONSES	31
APPENDICES	33
Appendix A – References	34
Appendix B – Acronyms	36
Appendix C – Glossary	38

SUMMARY

Wholesale water districts, Orange County Water District (OCWD), Metropolitan Water District of Southern California (MET), Municipal Water District of Orange County (MWDOC), and Orange County (OC) retailers (cities and districts) comprise the water supply chain. They collectively estimate future demand and develop projects to improve water quality, source and system reliability. Imported water from the State Water Project (SWP) is now safer and less, but still vulnerable to earthquakes and long term drought due to a number of recent projects undertaken by the wholesalers. Projects include significant increases in State water storage, upgrading water treatment, improving time to detect and repair damaged infrastructure, upgrading infrastructure seismic design, and negotiating water transfer agreements with other wholesale agencies.

The local OC supply is also less vulnerable to major drought and earthquake events because of a number of innovative retailer and wholesaler water suppliers' policies and infrastructure projects. Policies have primarily focused on conservation and tiered water rates. Infrastructure projects have been directed at treating waste water for use in large scale landscape irrigation and ground water replenishment.

City Public Works and Water Districts are to be commended for their diligence and foresight in pursuing these source and system reliability projects. Similar projects are either being studied or developed, but will have a marginal impact on the water supply; *the low hanging fruit has already been picked.*

However, loss of State Water Project (SWP) due to a 6.7 magnitude or greater earthquake and diminished Colorado River (COR) flows due to drought coupled with future climate effects could severely impact OC imported water deliveries for multiple years. New local sources of water and/or significant curtailments will be required to mitigate these events.

Water source reliability and sustainability issues have been widely reported and discussed in the media with a specific focus on depleted reservoir storage (currently at about 50% of normal) and interrupted water supplies from the SWP to protect salmon runs and smelt populations. One proposed solution is the recently released Bay Delta Conservation Plan (BDCP). This plan requires \$25 billion dollars of Federal, State and local water district funding over a 15 year construction project life. The objective is to restore the Sacramento River delta ecology and improve the reliability of exported water deliveries. Under several drought scenarios little or no water is available for export to the SWP. News articles have also discussed various planned and executed projects to improve or develop more locally sourced water supplies, specifically, increased storage, seawater desalination and water transfer agreements. These approaches have their supporters and detractors, and have varying effects on the environment and local water supply reliability.

Locally sourced desalinated seawater, a nearly infinite supply, has significant merit and should be a primary candidate to ensure water supplies against climate change, drought or a catastrophic event. Four Southern California seawater desalination projects are currently in various stages of development:

1. 50 Mgd (million gallons per day) Huntington Beach plant which is in the final stages of permitting and financing.
2. 15 Mgd Doheny Beach plant (South Coastal Ocean Desalination Project) which has completed a small scale pilot plant to evaluate a novel, low environmental impact seawater intake system.
3. 50 to 150 Mgd Camp Pendleton plant located in Northern San Diego County which has completed feasibility and conceptual design studies.
4. 50 Mgd plant located in Northern San Diego County which is currently under construction.

These desalination projects have sufficient total capacity to replace about 20% of OC's current water demand, or about 40 % of imported water purchases. This supply would substantially mitigate the loss of either the COR aqueduct or SWP water. Unfortunately, new, large infrastructure projects have significant implementation costs, difficult permitting issues, and are usually contentious and highly politicized.

OC water suppliers need the public's active involvement in supporting sustainable solutions to ensure a reasonable quality of life and to support economic growth. The public should also understand that to ensure future water supplies additional investments will need to be made to acquire new water sources and improve existing system reliability and performance. These projects will inevitably increase urban water rates, result in allocation issues among the stakeholders, and will have some small impact on the local ecology. *OC water suppliers with significant public support should immediately select, expedite and execute seawater desalination projects with sufficient total capacity to replace up to 40% of OC's imported water.*

REASON FOR THE STUDY

There is another “inconvenient truth.” We live in a semi-arid ecosystem where water supplies are frequently unpredictable and sometimes, scarce. With the exception of a few native sources of water such as the Santa Ana River (SAR) water shed and associated aquifer, about 50% of the Orange County (OC) potable water is developed from out-of-County sources. Both native ground water and external sources (primarily from the State Water Project and the Colorado River aqueduct) are vulnerable to a number of events beyond the local water wholesalers' control. Extended drought, interruptions (earthquakes and flooding) of supply due to infrastructure failures, and the potential longer range effects of climate change (ground water contamination due to sea level rise and lower snowpack) can probably be managed over short periods. However, the combined effects of sustained drought and catastrophic events can

substantially impact OC water supplies. Agencies in the water supply chain are continually studying and developing tactical and strategic plans for managing these crises under various hypothetical event scenarios. The question is whether these plans are sufficient to ensure a reasonable quality of OC life after an extended drought and significant event.

The primary objective of this report is to evaluate proposed game changing, cost-effective and reliable infrastructure projects and to shine a light on their efficacy. The 2012-2013 Orange County Grand Jury investigated and developed a status report¹ on OC water sustainability and is an excellent source of historical and contemporary information. However, the report's recommendations were more generalized and did not convey a great sense of urgency. The Grand Jury conducted this investigation to assess the effectiveness of current planning in addressing the future reliability and sustainability of the OC water supply. It is this Grand Jury's intent to develop findings and recommendations which will further create a public awareness, interest and involvement by shining a light on the highly complex legal, permitting, policy, and financing issues confronting water suppliers.

BACKGROUND AND FACTS

This section describes the chain of supply and baselines, the ability of the existing local retailers, County and State infrastructure, and policies to respond to various catastrophic events. The major wholesale supplier for imported water is the MET which distributes water from two sources, the COR Aqueduct and the SWP, Figure 1. The major wholesaler of locally sourced ground water is the OCWD. MWDOC and OCWD are the major wholesale agencies distributing water to the local retail water districts and cities.

State of the County Infrastructure and Supply

North Orange County (NOC) districts are blessed with a large Santa Ana basin aquifer managed by the Orange County Water District (OCWD). The aquifer supplies 65 to 80% of NOC's total water use. South Orange County (SOC) districts, on average, import about 80% and NOC only imports about 20 % of their water. This imported water is primarily supplied through the wholesalers, Metropolitan Water District of Southern California (MET) and the Municipal Water District of Orange County (MWDOC). With fifty percent of the OC water supply being imported there is legitimate concern for supply chain infrastructure damage due to catastrophes such as earthquakes or flooding and for sustained droughts which drain storage reservoirs. The wholesale water suppliers have undertaken a number of large projects at considerable cost over the last 10 years to develop local water sources, increase storage, improve water use efficiency,

¹ 2012/2013 Orange County Grand Jury Report, "Orange County Water Sustainability: Who Cares?" pg 269-303:
http://www.ocgrandjury.org/pdfs/2012_2013_reports/OCGJOC-Water061913.pdf

and discourage waste; Table 1. The Diamond Valley Project located in Riverside County cost over two billion dollars and required four years to construct.

Fig. 1. Chain of Water Supply, Source to Retail Agencies

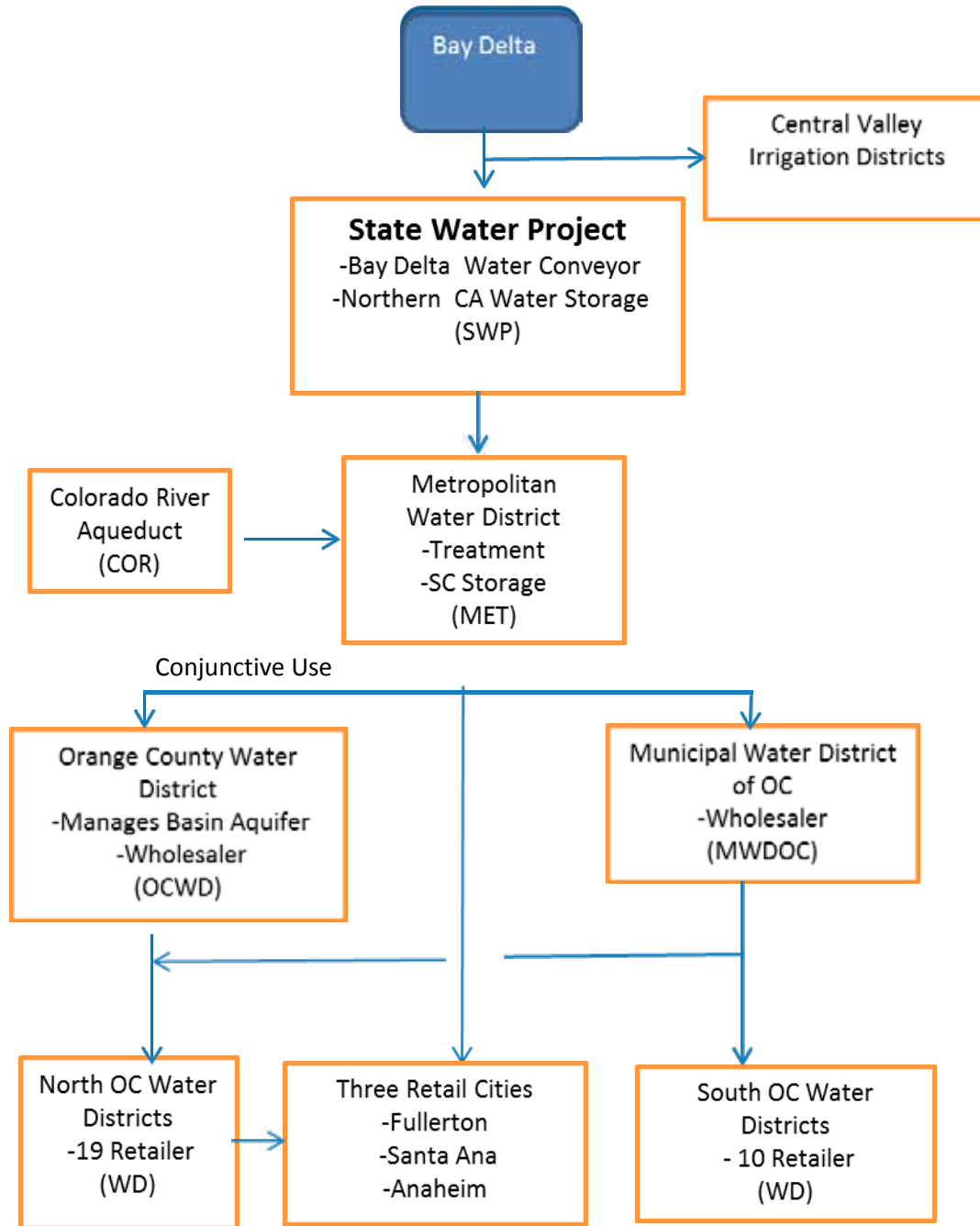


Table 1, Operational Large OC Water Projects

Item	District or Developer	Project Description			
		Project/Technology	Location	Capacity	Cost \$ M ¹
Storage Projects, AF⁴					
1	OCWD	Prado Dam SAR Storm Run-off Capture	Riverside	50,000	
2	Irvine Ranch Water	Strand Water Storage, Transfer, and Banking	Kern	50,000	
3	Irvine Ranch Water	Recycled Treated Winter Water Storage	OC	4,500	
4	MET	Diamond Valley Lake, Emergency Imported Water	Riverside	810,000	2,100
5	OCWD	Green Acres Recycle Storage	OC	7,500	
6	Santa Margarita WD	Upper Chiquita Emergency Storage Reservoir ³	OC	750	50
Source Projects, Mgd⁵					
1	OCW	Ground Water Replenishment System ²	OC	70	500
2	Irvine Ranch Water	Michelson Recycled Irrigation Water-purple pipe	OC	33.5	44
3	Mesa/Irvine Ranch	Deep Aquifer Pumping and Treatment Systems	OC	14	
4	Santa Margarita WD	Upper Chiquita Water Reclamation Plant	OC	5	
5	Irvine Ranch Water	Irvine Desalter Treated Contaminated Ground Water	OC	7	
6	La Habra	La Bonita Park Pump and Blend Water Facility	OC		
Reliability Projects, Mgd					
1	MET	Aggressive Infrastructure Inspection/ Maintenance	LA/OC		
2	MET	Diemer Water Treatment Plant Quake Hardening	OC		130
3	Irvine Ranch Water	South County Emergency Intertie ³	OC	19	
4	Mesa Water District	Monitor, Inspect, Repair or Replace Project	OC		

Notes: 1, M=million
 2, Waste Water Reclamation, Purification and Aquifer Storage
 3, multiagency allocation
 4, AF=acre-ft, an acre under one foot of water
 5, Mgd=millions of gallons/day

Large infrastructure projects have been undertaken by the OCWD; a few are listed below.

1. Ground Water Replenishment System (GWRS) recycles waste water to potable quality and injects and stores it in the OC aquifer.
2. Prado Dam project captures urban and Santa Ana River (SAR) water run-off and employs biological ponds to remove nitrates.
3. SAR recharge facility uses inflatable dams to divert storm water run-off to percolation ponds for ground water replenishment.

A 30 million gallon per day (Mgd) expansion of the Orange County Water District’s (OCWD) GWRS is currently in progress which will increase its production to about 100 Mgd, about 6% of OC’s annual water demand. There are contingency plans for an additional 30 Mgd by connecting to the Huntington Beach waste water treatment plant.

Local water districts have undertaken similar projects on a smaller scale. Reclaimed and treated waste water in central and SOC is more typically used for landscape irrigation and distributed through a non-potable, separate “purple pipe” system. Some additional, smaller scale waste water recycling is still feasible, but there are challenges. Matching production to seasonal needs (higher irrigation demand in summer months) requires winter storage. This is more difficult in SOC since reservoir storage needs to be developed which adds additional costs. Therefore, small scale recycle and urban run-off capture projects tend to be less cost effective.

Drivers Affecting Future Supplies

Population growth, drought and climate change will negatively affect the water demand and supply balance, which collectively could have a significant negative effect on the OC economy and resident quality of life. Recorded history and archeology suggest that many ancient civilizations (Mesopotamian, Assyrian, and Mayan to name a few) have risen and fallen on the issue of water availability and sustainability driven by climate change.² Historically, significant climate change³ and sea level changes of over 6 ft. (2m) have been documented within a short span of several hundred years. The major demographic and environmental drivers affecting future OC supplies are:

- a) climate change resulting in higher sea levels with salt water infiltration into coastal aquifers and the Bay Delta and less mountain winter snow storage,
- b) population growth in both North (infill), and South OC (new development),
- c) water conservation, sometimes referred to as water use efficiency, and
- d) the need to protect ecosystems and endangered species.

Detrimental climate effects are already being felt in California as evidenced by the abnormally low level and higher water temperatures of the State lakes and reservoirs, and shrinking (30 to 70%) Sierra Glaciers. There has also been a higher acreage of forest fire burns over the last 20 years and several inches of local sea level rise. Except for one exceptionally wet (20 inches) 2011 season, a six-year drought over the last seven years has significantly depleted most State and local storage levels. The Colorado River (COR) water shed has experienced a 10 year drought, 90% of the time the river has run dry by the time it has reached Baja California. More recently, MET imported water supplied from the Bay Delta has been significantly curtailed to protect Delta smelt and salmon runs.

The OC population continues to grow, albeit at a slower rate. Although this should place additional pressure on the water supply, water use efficiency measures driven by the 20/20 State Mandate⁴ (20% per capita urban water reduction by 2020) have reduced per-capita demand. In the early years conservation was focused on in-door use (efficient toilets, washers and shower

² Isabel King, “Drought Cited In Downfall of Ancient Lands”, Orange County Register

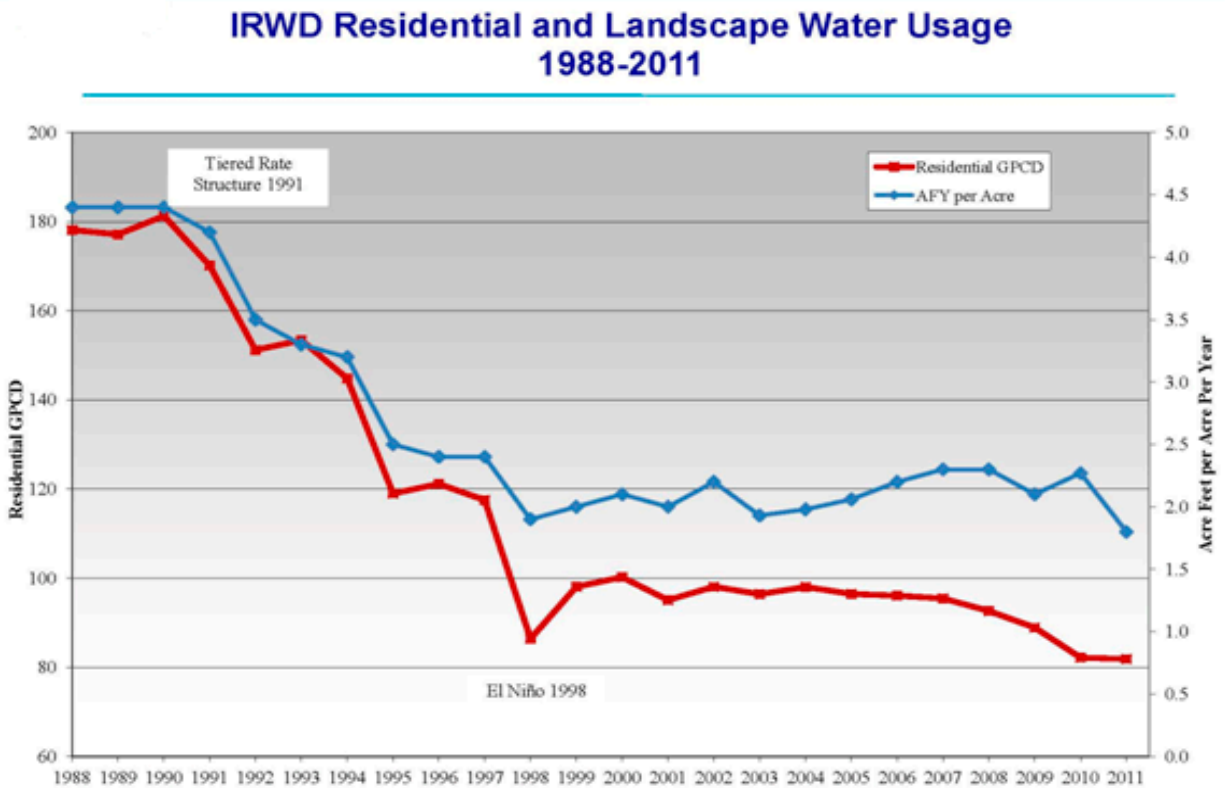
³ Ken Caldera, “The Great Climate Experiment, Scientific American”, v 307, #3, September 2013

⁴ California Department of Water Resources, “20x2020 Water Conservation Plan”, February 2010: http://www.swrcb.ca.gov/water_issues/hot_topics/20x2020/docs/20x2020plan.pdf

heads). A revised plan has been developed⁵ which focuses on out-side uses. Smart irrigation water flow controllers, drought resistant plants, and artificial turf replacement are being promoted. Rebates for their installation cost are available.

Tiered escalating rate pricing has also been adopted by a number of agencies to discourage high residential consumption. These rates seem to work best for intermediate tiers more typically applied to middle income users; wealthy users are negligibly impacted and low income families typically use less water. The Irvine Ranch Water District, Figure 2, has reduced per capita use by about 50% over 10 years, although the recent recession has contributed in some small part to this reduction.

Fig. 2. Irvine Ranch Water District (IRWD) Per Capita Reduction in Water Use Due to Water Conservation and Tiered Rates



This rate is adjusted up or down based on current weather station measurements and, longer term, for drought conditions. Of the six retail suppliers interviewed, four used tiered rates and thought them to be effective in reducing consumption. Two agencies (located in NOC) thought tiered rates treated users unfairly and did not use them.

⁵ MWDOC Water Use Efficiency Master Plan Report-2013 draft final

Future Water Demand

Estimates of Orange County future water demand are built from the bottom up with input from the retail agencies. Estimates are made based on the current per capita water use, estimated increases in population, and the estimated impact of additional conservation policies. NOC agencies typically estimate a nearly flat demand; their residential land is essentially built out and conservation will continue to reduce per-capita consumption. SOC agencies typically estimate modest demand increases due to on-going residential development.

OC water is provided by three wholesale agencies (supply chain flow chart on page 6):

1. Municipal Water District of Orange County (MWDOC) supplies 28 retail districts and cities.
2. Metropolitan Water District of Southern California (MET) supplies imported water to one wholesaler (MWDOC) and three retail cities.
3. Orange County Water District (OCWD) supplies 19 NOC retailers from the managed Santa Ana aquifer.

The MET/MWDOC typically supplies about 42% (five year average) of the OC demand or about 240,000 acre feet per year (AFY) which is estimated to increase 3 to 6 % per year over the next 20 years.⁶ The OCWD typically supplies about 320,000 AFY, 65% to 70 % from ground water depending on Basin Production Percentage (BPP) allocations. The total OC demand is estimated to grow to about 700,000 AFY (about 15%) by 2035.

Catastrophic Events and Their Effects

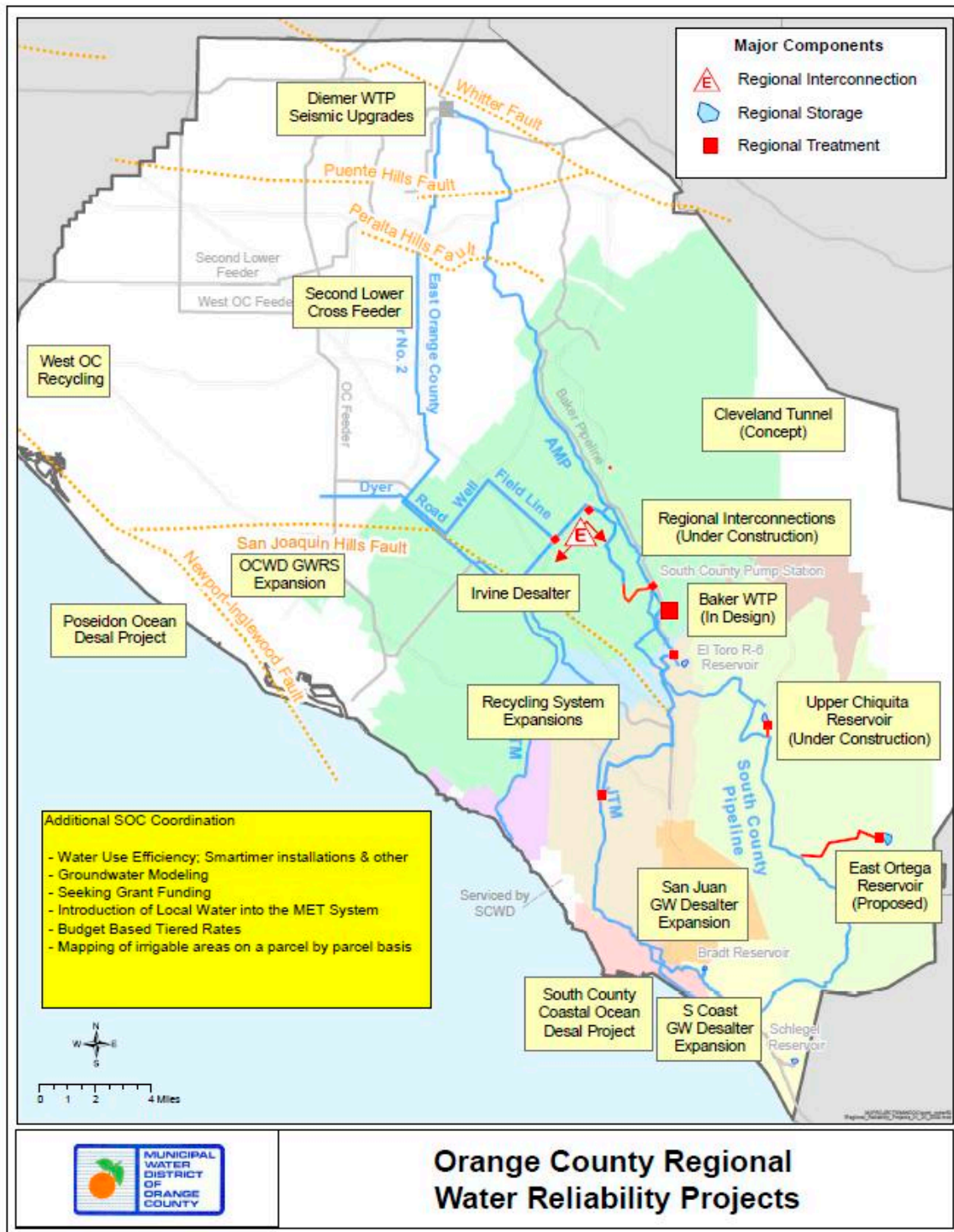
Emergency event coordination is performed by the Water Emergency Response Organization of Orange County (WEROC) from its Fountain Valley headquarters. In the event of a major emergency, inter-agency needs and resources are identified and allocated through mutual aid agreements. WEROC also coordinates agency activities with other first responders like the Orange County Fire Authority (OCFA) and the County Health Care Agency.

Both the MET and OCWD supplies are vulnerable to interruption due to earthquake caused infrastructure damage and extended drought. The MET system has vulnerable infrastructure sites which, if significantly damaged, could result in lengthy imported water supply interruptions of up to three years. The most vulnerable infrastructures are:

1. The Sacramento Bay Delta water intakes-a magnitude 6.7 quake could result in levee failures and an in-rush of seawater resulting in contaminated water at the Banks Aqueduct Pump Station located in the Delta.
2. Four Hundred miles of SWP conveyance and pump stations.
3. The Oroville dam which has the second largest reservoir capacity in the SWP system.

⁶ Water Supply Report, Water Advisory committee of Orange County, December 13, 2013

Fig. 3. Location of Major Existing and Proposed Infrastructure Relative to Earthquake Faults



4. The Diemer Water Treatment Facility and its MET feeders located in Yorba Linda, the primary facility for treating OC imported water from both the Colorado River (COR)

Aqueduct and State Water Project (Bay Delta Water). Damage to the COR aqueduct could interfere with water transfer and conveyance to the Diemer treatment plant from the Imperial Valley agricultural water districts via transfers with SDCWA or from MET's Diamond Valley Reservoir.

Diamond Valley Lake is the largest emergency source of stored surface water (0.81 MAF) in Southern California and the closest to OC. The transport pipeline does not cross the San Andreas Fault; pipeline damage is not expected to be severe and outages should be relatively short. However, a concurrent extended drought on the COR watershed could reduce California's urban allocation under the multi-state, multi-district Quantification Settlement Agreement. Under this agreement California irrigation districts have a higher priority than urban Southern California to Colorado River (COR) water.

Locally, three significant fault lines traverse the main MET Diemer feeders (Figure 3 preceding page). Two faults straddle the Diemer plant. A severe earthquake along one of these faults would have a significant impact on SOC supply and also result in a more rapid depletion of the NOC groundwater.

OC water districts and cities may experience difficulties in executing water transfers between themselves due to local earthquake infrastructure damage. Distribution piping within a district service area may also be affected. Except for OCWD's Ground Water Replenishment Facility, most of the OC infrastructure (wells, pumping stations and distribution piping) is geographically distributed and backed up with redundant equipment and emergency power. Wide-spread curtailments would not be expected.

Mitigation Measures

Measures are underway to further mitigate the effects of drought and earthquakes, although some issues remain unresolved and are discussed later in this report. Projects include new storage and source development and improvements in system reliability (Table 2). These projects are in various stages of evaluation or implementation and have varying impacts and capital costs. The two largest projects and potential game changers are the Huntington Beach Seawater Desalination Plant (50 Mgd, in the final phase of permitting) and the Bay Delta Conservation Plan (4,200 Mgd exported to California urban users) which has been submitted for public comment. OC has typically received about 130 Mgd of State Water Project (SWP) imported water.

Probably the worst case scenarios involve earthquake damage to the MET operated COR aqueduct and the SWP imported water infrastructure. MET is prepared to address COR aqueduct failures. MET has expanded their facilities to manufacture and repair large diameter piping. Piping is manufactured in spool sections with dimensions which allow for over-the-road transport. MET does not anticipate that damaged pipe outages will last more than several months. Locally, the worst potential earthquake impact would be the loss of the Diemer Water

Table 2, Status of Large, New OC Water Sustainability Projects

Item	District or Developer	Project Description				Status
		Project/Technology	Location	Capacity	Cost \$ M ¹	
New Storage Projects, AF²						
1	Santa Margarita Water	Cadiz Valley Project, Imported Desert Aqifer	SBC			Negotiation
2	Santa Margarita Water	Coto de Caza, Urban Run-off Basin Reclamation	OC	200-850	20.9	Construction
3	Irvine Ranch Water	Stockdale Ranch Banking, Water Exchange	Kern	25,000		Development
4	Santa Margarita Water	Ortega Reservoir Recycled or Potable Water	OC			Study
5	Irvine Ranch Water	Expanded Syphon Recycled Water Reservoir	OC	4,500	72	Study?
New Source Projects, Mgd³						
1	OCWD	Water Replenishment Expansion, 25% Capacity	OC	25		Construction
2	MWDOC	Doheny Desalination Plant	OC	15	153	Pilot Plant
3	Poseidon Resources	Huntington Beach Desalination Plant	OC	50	1,000	Permitting
4	El Toro Water	Recycle water system expansion	OC			Planning
5	Santa Margarita Water	Upper Chiquita Reclaim	OC	4.7		Proposed
6	Irvine Ranch Water	Phase 2, Michelson Waste Water Collection	OC	14.9		Development
Reliability Projects, Mgd						
1	MET/MWDOC	Second Lower Feeder Interconnection ⁴	LA/OC	30	51	Terminated
2	OCWD	North/South County Interconnection	OC			Study
3	Fullerton	100 Miles of Water Main Replacement	OC		263	Authorized
4	Joint District	Baker Treatment Plant, CO river to potable	OC	28	90	Construction
5	Santa Ana	200 Miles or Distribution Pipe Replacement	OC		263	Construction
6	MET/MWDOC	Bay Delta Conservation Plan ^{5,6}	SaC	4,200	25,000	Planning

Notes:
 1, M=million
 2, Emergency supply, 4' diameter pipeline, 100 cfs, actual amount depends on availability,
 3, Dual tunnel, 33' diameter pipeline in Bay Delta, actual flow depends on allocation during drought
 4, AF=acre-ft, an acre under one foot of water, sufficient for 2.5 households
 5, Mgd=millions of gallons/day
 6, Maximum SWP allocation to OC is about 180 Mgd (4%)

Treatment Plant located in Yorba Linda, which would substantially reduce imported water flows from all sources. MET is stabilizing sloping landfills and reinforcing structures around the Diemer water treatment plant to achieve a higher seismic standard. This \$120 million earthquake hardening project is currently about 50% completed. When completed, earthquake caused outages are not expected to exceed several months. The currently under construction Baker Water Treatment Plant, located adjacent to the Allen McColloch Pipeline, will provide a by-pass around the Diemer Treatment Plant. When operational, it will provide a significant alternative SOC's potable water supply (about 25% of average demand). The proposed MET owned second lower tier feeder intertie to the East OC feeder has been under study (now deemed infeasible) and would have replaced an additional 25% of Diemer sourced water to SOC.

The major concern is loss of Bay Delta SWP water which is typically about 60% of the imported water supply. The fragility of the Bay Delta has been recognized for over 70 years. Protecting this ecosystem and fairly distributing water to users has been contentious for years. This has resulted in a tug of war between Northern, Central Valley and Southern California over water allocations. The Sacramento river water shed is sourced from Sierra Nevada mountain range winter run-off and summer snow pack melt, most of which flows through the delta. This water shed is mostly owned by Federal and State agencies and, in theory, the water should be fairly allocated between the urban population, agriculture and the fish. The currently promoted

concept, the “Bay Delta Conservation Plan” (BDCP) is intended to achieve the following objectives.

1. Restore part of the Delta ecosystem and protect endangered species and salmon runs.
2. Improve the reliability of the State Water Project.

The major features of the plan are:

1. Relocate the Delta water intakes (3 new ones dispersed along the river) to a higher than sea level elevation near the junction of the Sacramento and San Joaquin rivers.
2. Connect the new intakes to the existing Banks Aqueduct Pumping Station with 30 miles of dual, underground tunnels with a maximum capacity of 9,000 cfs (5,800 Mgd).
3. Selectively remove levees to flood several delta islands currently below sea level.
4. Restore 145,000 acres of delta wetlands to its native condition.

The BDCP is costly (both construction and operating); the water infrastructure portion is currently estimated at about \$25 billion, and will require a significant time, about 15 years, to complete. Bay Delta water exported to the SWP is targeted at about 4.7 million acre feet/year (MAFY), about 250 Mgd of which would be allocated to OC assuming there is adequate river flow for endangered species protection. It is alleged that the State Water Project supply reliability is enhanced since intake water quality will not be affected by levee failures or sea level rise. Further, the project probably has higher value to Northern California and the San Joaquin Valley and Delta farmers than to Southern California urban users. Northern California is at the start of the pipeline and Southern California is at the terminal end. Both Northern and Southern California obtain 30 % of their water from the Bay Delta SWP. The tail-end of the aqueduct could very well run dry. *Under extreme drought conditions all of the water is allocated to the fish.* A second, perhaps more economically viable option to the BDCP is the peripheral canal concept.⁷ This project does not rely on a risky and expensive, dual, underground pipeline. A California bond issue was introduced in 1982 to implement this project, but was defeated due to significant opposition from Northern California voters.

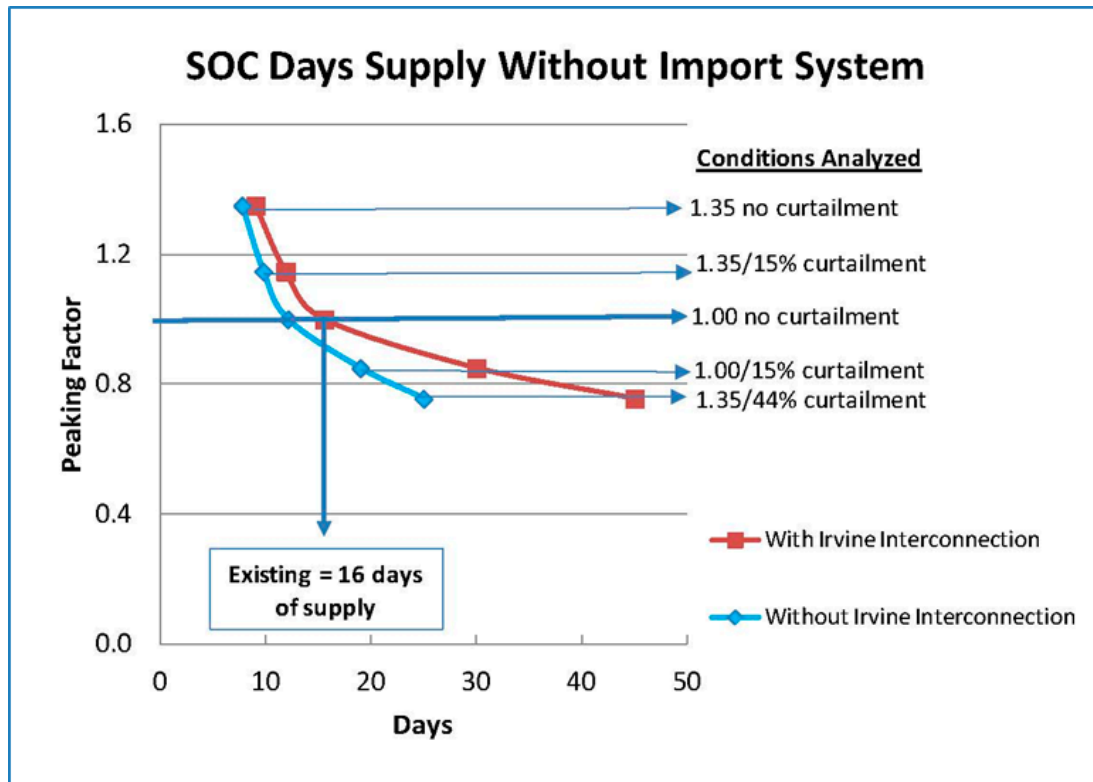
In general, distribution systems within the County are less vulnerable to earthquakes and unscheduled outages due to the execution of a number of reliability projects, (see Table 1, page 7). Reliability projects have been undertaken collectively or individually by OC districts, agencies and cities, and include:

- a. cross ties between district distribution systems which will allow interagency water exchanges for short outages, some agencies have cross ties with all of their neighboring agencies,
- b. ground water well redundancy, if production at several wells is lost there are sufficient operating wells to provide adequate service,

⁷ Ellen Hanak, et al, Navigating the Delta: Comparing Futures, Choosing Options, Public Policy Institute of California, Research Brief, July 2008

- c. back-up command and control system emergency electrical power supplies,
- d. back-ups to pumping stations, either emergency power generators to run the pumps and/or spare pumps,
- e. emergency reservoir and tank storage sufficient to accommodate 12 to 31 days, (Figure 4), of average annual demand with various levels of curtailment, the MWDOC goal for SOC is 30 to 60 days of local storage with curtailed demand and is a work in progress,⁸
- f. tanker trucks to shuttle potable water to an agency with substantial interruptions of their water supply,
- g. “Condition based maintenance” using software programs that predict safe maintenance intervals, allowing inspection and replacement before equipment failure,
- h. monitoring and where required, the repair or replacement of aged conveyance and distribution piping,
- i. waste water recycling for ground water replenishment and irrigation, and
- j. infrastructure reliability projects and replacement of antiquated pipelines.

Fig. 4. South Orange County Supply with No Imported Water for Various Curtailment Scenarios



Curtailments apply only to SOC’s annual average water demand (1.00). A higher, 35% seasonal increase (1.35) in demand or a lower curtailment decreases the days service can be met.

⁸ Municipal Water District of Orange County, “South Orange County Water Reliability Study,” 2013 update

The Grand Jury was pleasantly surprised at the diligence with which our local agencies and cities are pursuing reliability and sustainability projects within their jurisdictions and with each other. Most have active projects in various stages of planning and/or execution, although they may be constrained by environmental activism, funding, regulatory issues, local geology and demographics. Some of the larger projects addressing additional emergency storage, new local sources and reliability are highlighted in Table 2, page 13. Smaller surface water capture and reuse projects are being pursued and, where cost effective, can be used for local irrigation and aquifer recharging. However, these are not game changers as the captured flows are relatively small and highly dependent on winter run-off.

Climate Change Events

Climate change can significantly impact future MET and local water sources due to:

- a) reduced imports of COR water and even less during the high demand summer months,
- b) more rapidly depleted local and State ground and reservoir water storage to compensate for reductions in imported water,
- c) the possible contamination of the Bay Delta pump intake-water due to sea level rise if the BDCP or peripheral canal equivalent has not been implemented, and
- d) significantly lower winter Sierra and Rocky Mountain snow packs with less summer run-off.

Under the “Quantification Settlement Agreement” California irrigation agencies have higher priorities to COR water, but can transfer limited quantities to urban districts. In the past, irrigation water district surplus water allocations were used to replenish MET owned water storage systems. MET has increased its storage capacity, mostly in reservoirs, from approximately 3 to 5.5 MAF (almost doubled) over the last 10 years, Figure 5. The latest project, Diamond Valley, has a storage capacity of 0.81 MAF and is currently at 75% of its capacity. Climate change could have a significant impact on the MET’s ability to maintain adequate reserves. Rising sea levels could increase water salinity near the Bay Delta intakes. Intake water could become brackish resulting in non-potable water which would require additional expensive treatment such as reverse osmosis (RO) either before transport or at the receiving treatment plant.

Fig. 5 Metropolitan Water District and State Water Project Reservoir Storage



Water Quality and Safety

Water quality is assured through an extensive monitoring system operated by the wholesalers (MET and OCWD) and retail districts. The MET performs more than 320,000 analytical tests per year using Environmental Protection Agency (EPA) and State certified methods. Monitoring of regulated contaminants is performed at transfer points and water treatment plants (both entering and treated discharge). Tests are also performed to validate the efficacy of the disinfection treatment, typically with ozone (preferred) and chloramines. In combination, these disinfectants will produce significantly less by-products and odors. MET and water district annual water quality reports are available on their web sites. Contaminate tests typically include the following:

- a) microbial such as bacteria and viruses,
- b) naturally occurring radioactive material,
- c) inorganic compounds which pose operating issues such as mineral deposits or which are toxic, and
- d) toxic or carcinogenic organic compounds.

The OCWD monitors more than 700 wells using 1,400 sampling points. The OCWD conducts more than 18,000 analyses for 330 contaminants including unregulated water quality parameters. Analyses are performed in a State-of-the-art, EPA certified laboratory.

Ground water is monitored at least once a year for non-treated wells and more frequently for those processing brackish or colored water to potable standards. Pipe line valves are located throughout the potable water distribution network to isolate areas suspected of contamination. Retail district wells are typically disinfected with ozone or chloramines.

Financing and Permitting Large Scale Infrastructure Projects

Increasing OC water supplies will require new, large infrastructure projects with associated large capital financing and long project timelines. Large water projects are costly, typically \$100 million to \$2 billion, Table 1, page 7. California projects from planning to operation such as seawater desalination plants have taken 10 to 15 years to implement.

There are four methods of financing projects:

- a. Pay-as-you-go using (a) capital reserves and/or (b) consumer rate increases,
- b. Local agency general obligation or revenue bonds,
- c. Private/public financing, the latter through investor LLC's or IPO offerings, and
- d. Grants from local, State and Federal agencies.

A number of water districts maintain large capital reserves (50 to 180% of their annual operating budget) which can be used to finance multi-million dollar projects or as collateral to negotiate favorable bond rates. City public works projects more typically rely on general obligation bonds paid through property taxes or pay- as-you-go rate increases.

A significant impediment to developing large infrastructure projects is the number of local, State, and Federal agencies having sometimes conflicting jurisdictions over the permitting process. For example, a few of the up to 23 permits/approvals are required to construct seawater desalination plants. Representative samples are listed below:

1. California Coastal Commission
2. California Environmental Quality Act (CEQA)
3. Local Land Use Permits (EIR Certification, City Conditional Use and Coastal Development Permits)
4. Department of Public Health Services Permit
5. State Lands Commission Permit

Other government agencies have successfully addressed shortening the permitting procedure. The Federal Nuclear Regulatory Commission's (NRC) stream-lined procedure for power plants is a one-stop construction and operating permit process which takes about five years.⁹ A similar approach could substantially reduce the extremely lengthy 10 to 15 years needed to execute large water infrastructure projects.

⁹Nuclear Regulatory Commission, Fact Sheet on Nuclear Power Plant Licensing Process, September 22, 2009

System Reliability Improvements

System reliability is a measure of how well the water treatment and distribution infrastructure functions under normal and stressed conditions, and how fast it can recover from normal outages and catastrophic events.

OC water reliability has been significantly improved with redundant systems, back-up power, good maintenance diagnostics, inventoried materials and equipment for planned and emergency repair outages, mutual aid agreements, and interties of retailer and wholesaler distributions systems. Incremental system improvements will yield diminishing returns.

Improving Source Reliability

Future local sources of water supply are more valuable than imported sources. The latter are vulnerable to pipeline, aqueduct, and pumping station outages due to routine maintenance and repair or substantial infrastructure damage. Longer term depletion of locally and regionally stored water due to climate change is also a major concern. The primary source of local water well into the future will be the NOC aquifer. The means of replenishing this aquifer after large draw-downs is a top priority in OCWD's water management planning.

OC has access to coastal seawater which could be desalinated. Except for the Great Lakes there are no other large sources of water that are relatively immune to climate change. The desalination technology of choice is reverse osmosis (RO) which is capable of directly producing potable water. The RO process requires the following equipment and infrastructure:

- a. seawater intake infrastructure extending up to 6,000 ft. from the shore line; currently proposed and under-construction projects alternatively use an existing coastal electrical power plant cooling water discharge pipeline for the RO plant feed and brine discharge,
- b. filtering and chemical conditioning equipment to adjust feed water acidity, remove sediment, and resist fouling of the RO membranes,
- c. High pressure pumping station to raise pressures to about 950 pounds per square inch (psi), the energy intensive step,
- d. a large array of RO canisters arranged in parallel flow to remove the salts and chemicals by filtering the seawater through plastic polymer membranes,
- e. chemical conditioning unit to disinfect the now potable water for distribution,
- f. concentrated brine which is twice the salinity of the intake seawater is discharged to the sea through multiple distribution ports, and
- g. additional large diameter piping to interconnect the plant's produced, treated water to the users' distribution system.

The most significant negative impact is the cost of the desalinated water, currently estimated at between \$1,700 to 1,900/AF. This is about a 45 % increase over current imported water cost of about \$1,000/AF which it would replace. It should be noted that MET is currently providing a

\$250/AF incentive (subsidy) to develop local water supplies which would partially off-set the higher cost of desalinated seawater.

Large desalination plant systems (buildings and equipment) are relatively straight forward to design, construct and estimate price. However, the cost of the ancillary infrastructure such as seawater intakes, brine discharge out-takes and a connection to the local user's distribution piping is highly variable, depending on geology, demographics, method of financing, and environmental issues. For example, spreads in total capital cost for a nominal 50 Mgd plant are typically between \$800 to \$1,200 million.¹⁰ A 50 Mgd plant would require about 35 MW's of power, which is about 25% of the total operating costs. To put it in perspective, this power consumption is similar to that of a large university campus or a regional hospital.

Supporters make the following case for desalination:

1. The source of water is local and nearly infinite; with sea level rise there will only be more of it.
2. Once permitted, the projects can be constructed much faster, with less risk than the BDCP; the Huntington Beach, 50 Mgd plant is almost shovel ready waiting for final permitting and financing and could be in production in about 4 years.
3. RO is a mature technology which is widely used in Australia, the Middle East, and elsewhere in the United States.
4. Contrary to its detractors, a desalination plant has little impact on the CA coastal marine ecology, CA has 1,000 miles of coast, a properly designed plant intake and outflow might negligibly affect marine life; however, beyond a 200 to 1,000 ft. radius of the discharge, the effects are well within regulated values¹¹.
5. New low pressure RO membranes and more energy efficient designs are in development which will substantially reduce power consumption, one of the largest operating costs.

The desalination detractors argue that:

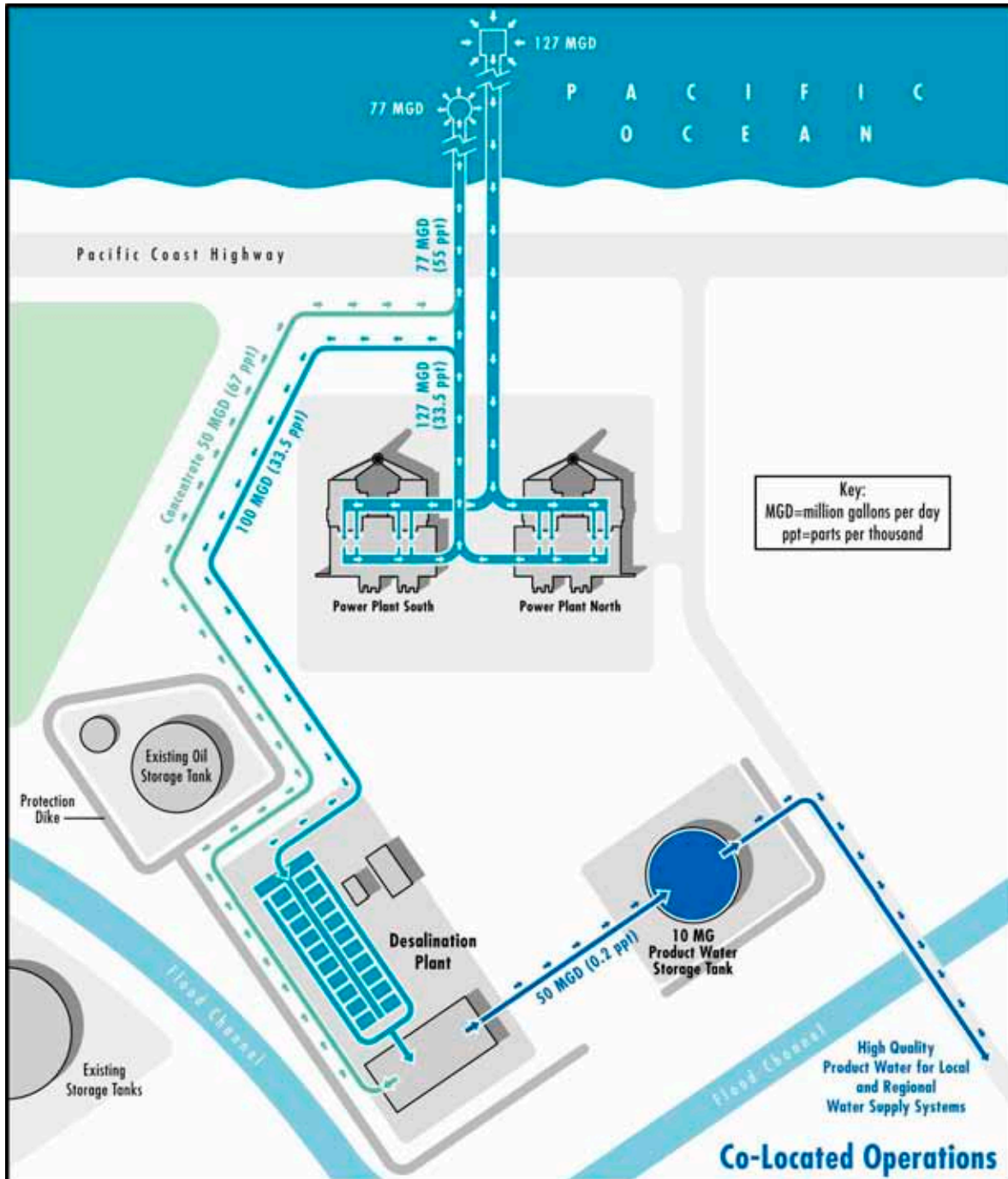
1. It is expensive water and that there are less costly source options– however, if the imported water supply is significantly reduced or lost this a moot point.
2. It damages the marine ecology--this is a very local effect and can be substantially mitigated with good design practice and without resorting to expensive, multiple, subsurface slant drilled intakes.
3. There are more cost effective options such as additional waste water recycling--see discussion below.
4. A base loaded, constant flow, RO supply is mismatched to fluctuations in water demand - -see discussion below.

¹⁰ Water Reuse Association White Paper, Seawater Desalination Costs, January 2012

¹¹ Steve Christie and Veronique Bonnelye, Perth, Australia: Two-year Feed Back on Operation and Environmental Impact, presented at IDA World congress, November 7-12, 2009

The San Diego County Water Authority¹² (SDCWA) estimates that its currently under construction Carlsbad 50 Mgd desalination plant will increase average residential water bills by about \$5 to 7/mo. The proposed Huntington Beach plant¹³ is similarly configured, Figure 6, with a less complicated user interconnection and should have a similar cost impact on rates.

Fig. 6. Proposed Huntington Beach Desalination Plant Co-located with the AES Power Plant



¹² San Diego County Water Authority, Seawater Desalination-the Carlsbad Desalination Project, March 2013

¹³ Poseidon Resources Proposed Water Reliability Agreement, Jan 2013

This monthly rate increase is about the same as the cost of a Starbucks Venti, a small price to pay for a more secure water source. Desalinated water may compare more favorably in future years with imported costs since the latter is estimated to escalate at a faster rate. The time to achieve a break even cost has been estimated at between 20 to 30 years assuming a 50 year project life. Increasing water costs and environmental issues will be a reality no matter what new supply options are selected.

The San Diego County Water Authority in consultation with the Camp Pendleton Marine Corp has completed a conceptual engineering study to evaluate the feasibility of constructing a second world class desalination plant. Two coastal sites suitable for up to a 150 Mgd plant have been investigated, both located along highway I-5 on the southern end of the base near the Santa Margarita River Estuary. Capital costs are estimated at slightly under \$2 billion and water deliveries could be initiated during 2018. Twenty three permits were identified and included Federal, State, County, and local city regulatory agencies. It is conceivable that this facility could also be connected to a SOC feeder, providing an additional source of supply and further insulating OC from loss or curtailment of imported water.

METHOD OF STUDY

The Grand Jury gathered information for this report from interviews, site tours, agency meetings and research (articles, reports). Specifically the following water supply chain interviews were undertaken.

1. Metropolitan Water District of Southern California (MET); imported wholesaler.
2. Municipal Water District of Orange County (MWDOC); wholesale distributor.
3. San Diego County Water Authority; a wholesaler similar to MWDOC.
4. Four retail Orange County Water Districts with different approaches to infrastructure reliability and financing.
5. One privately held water district.
6. Three Cities with different approaches to self-sufficiency, water sourcing, infrastructure, reliability and financing.

Interviewed water agencies were a representative cross section of the OC supply chain and reflect the following diversity in demographics and practices.

1. North versus South County sources of water supply (reliance on imported water).
2. Policies with respect to financial reserves.
3. Policies and resources dedicated to infrastructure maintenance and reliability improvements.
4. Diversity of projects to provide water supplies in emergencies or during planned outages.
5. Policies, plans and resources dedicated to developing locally controlled sources of supply.

Meetings, with wholesale and retail water districts and cities within the water supply chain, explored the following questions.

1. What drivers have been considered in the Reliability and Sustainability Planning function?
2. How effective are the ongoing water rate restructuring and conservation programs in reducing water demand?
3. What is the future water demand (potable and landscape irrigation), how is it estimated and with what accuracy?
4. What are the plans for ameliorating significant interruptions (earthquakes, global warming, terrorist attack, loss of power) of the water supplies during short and long term outages?
5. What capital intensive, long development time infrastructure will be required for implementing /ameliorating of Items 3 and 4?
6. Are there adequate financial reserves to maintain the existing and planned infrastructure?
7. How is reliability addressed in the design and implementation of current and future projects?
8. What alternate sources of water supply (Cadiz aquifer, desalinization) can be developed, with what technology and in what time frame and at what cost?
9. How do politics affect OC water policy and planning, and how are they addressed with regard to competing stakeholders (recreational and ecological, flood control, other water agencies)?
10. What is the current storage status of local reservoirs and ground water reserves (number of days of supply for normal and emergency use)?
11. Can capture rates and storage capacity of surface run-off be improved during the wet season?

In addition, interviews were conducted with academic consultants specializing in water infrastructure engineering and financing and with a company which develops and constructs large water infrastructure projects. Members of the Grand Jury also attended two presentations on the BDCP jointly sponsored by MWDOC and WACO.

The following field trips were undertaken to validate the extent to which the issues raised in the above questions have been addressed.

1. Bay Delta and Oroville Dam Tour, source of MET's imported State Water Project water.
2. Parker Dam and the Colorado Aqueduct, source of imported MET Colorado River water.
3. OCWD's Prado Dam Wetlands Project, the capture of Santa Ana river run-off and its nitrate removal with biological treatment.
4. Orange County Water District (OCWD) Ground Water Replenishment Project which treats and recycles waste water, currently producing about 70 Mgd of treated water.

5. Mesa Water District’s Water Reliability Facility which extracts colored water from a deep aquifer and treats it to potable standards at the well head.
6. MWDOC’s Doheny Ocean Desalination Project, a pilot plant which is evaluating the feasibility of subsurface seawater extraction to minimize marine impacts.

During the Grand Jury’s trip on November 2013, to the Bay Delta SWP, Lake Oroville, the second largest reservoir in the SWP system was visited. At that time this reservoir was at about 50% of its average seasonal capacity because of the extended drought, Figure 7. The light colored “bath-tub” ring is the level reduction below its annual average level.

Fig. 7. The Effect of Drought on Water Level at Lake Oroville



ANALYSIS

Both source and system reliability must be addressed to ensure a sustainable OC water supply now and in the future. Source reliability relates to the current and future probability that water will be available. System reliability relates to the ability to convey, treat, and distribute water under normal and catastrophic events. Superimposed on both of these reliability requirements is the potential impact of the wild card, *climate change*, on planning for sustainability.

Local Water Source Reliability

Local sources of water have been aggressively pursued by OC water wholesalers and retailers, mostly focused on ground water recharging with recycled water or surface run-off water, and brackish or contaminated water reclamation. OC wholesale and retail agencies have focused on storage within the County to provide some level of drought protection and for emergencies. NOC has a large capacity aquifer for potable water storage, but little capacity or compatible infrastructure for storing reclaimed water for irrigation. SOC has limited geology for ground water storage, but some opportunity for expanding or developing canyon reservoirs.

Most cost effective projects involving large waste water sources and their means of storage have been completed. Agencies are primarily concentrating on capturing urban and storm run-off, a more marginal and costly effort. These projects usually produce less than 4 Mgd and are typically highly seasonal and sensitive to climate change. The recycled and reclaimed water projects tend to be more expensive, but produce higher flow capacities. Seasonal storage will be required for large projects which will substantially increase operating and infrastructure costs.

It would seem prudent that Orange County accelerate a path toward more self-sufficiency with the objective of replacing the potential loss of 40% of its imported water within 3 to 10 years. This replacement would provide OC with sufficient capacity to meet potable water demand upon loss of all imported water. Some seasonal curtailment of outside use might be required.

Mitigating the loss of SOC imported water after a catastrophic event could be accomplished by some combination of:

- a) more waste water treatment and recycling, although issues of infrastructure, demographics, economics and regulatory compliance may limit the size and number of viable new project,
- b) construction of several world class seawater desalination plants, about 50 Mgd each, but possibly down-scaled if it makes permitting easier,
- c) additional out of County aquifer replenishment, storage, and transfer agreements, for example, the Cadiz (now Fanner) Valley Project located in Riverside County, and
- d) development of a County water distribution system model in order to evaluate the adequacy and strategies for water deliveries to retailers under various outage scenarios.

Climate effects will require additional infrastructure projects similar to those proposed for earthquake mitigation, but their implementation might be deferred pending validation of adverse climate affects. An additional 50 Mgd seawater desalination plant and more severe water use restrictions may be necessary at some future date.

Local System Reliability

Distribution system interties between agencies and cities, existing and planned, should facilitate conveying NOC ground water and desalinated seawater south. The County could limp along

with a user curtailed water supply for an indeterminate time. There are a number of inter-agency mutual aid agreements, although it is not clear how well they will function in a highly stressed, catastrophic event. The Grand Jury did not find a detailed County wide master plan on how to identify and inter-connect city, district and MET systems when large interruptive events occur. If not available, there needs to be an evaluation of the total OC water distribution system and its inter-connections to confirm that adequate flows between North and South County retailers and their wholesale suppliers can be managed under different infrastructure damage scenarios and/or with proposed new or modified infrastructure. *It is the Grand Jury's opinion that the merger of OCWD and MWDOC wholesale districts could significantly facilitate the implementation of all of the above recommendations.*

Imported Water System Reliability

The availability of imported water from the State Water Project could be severely impacted by a failure of the Bay Delta levees after a magnitude 6.7 earthquake on the Hayward fault. Unfortunately, there is no durable, short-term fix for this issue and OC future sustainability could be greatly compromised. The 15-year fix is the completion of the Bay Delta Conservation Plan (BDCP) proposed conveyance system for exporting water to the SWP. Although this project is important to the State Water Project and fisheries, its primary benefit to OC would be as a future, sustainable water source of unknown improved reliability and availability (climate change and ecological needs could severely limit flows to Southern California). The Grand Jury has the following additional concerns relative to this project as it is currently configured:¹⁴

- a) the survivability of the dual tunnel system after a major quake, and the time to repair underground/underwater large diameter piping,
- b) the vulnerability to outages and quake damage of the Banks Aqueduct Pumping Station which supplies Delta water to the SWP Aqueduct, and
- c) the actual water allocations to stakeholder under severe shortages.

Thirty miles of tunnel under squishy delta soil subject to liquefaction is a risk the Grand Jury hopes will be adequately vetted for quake survival.

It is critical that a sustainable, properly and cost effectively executed BDPC be implemented and supported by MET and MWDOC, but OC should not rely solely on this option!

Imported Water Source Reliability

The MET cannot control the climate and drought. Therefore, it has aggressively pursued conservation and water storage as the primary means of managing long term water supplies. The MET and MWDOC have also been strong champions of the BDCP which improves the reliability of SWP deliveries. However, MET reservoirs and lakes are remote (except for

¹⁴ DHCCP-Program, Support Document for BDCP EIR/S Administrative Draft, Conceptual Engineering Report-Isolated Conveyance Facility, All Tunnel Option, January 2013

Diamond Valley reservoir) from OC and the transport infrastructure to Southern California is vulnerable to quake damage. In the long term, the ability to replenish storage will be subject to the effects of drought and climate change, even with a more reliable Bay Delta water source.

The Case for Seawater Desalination

Even though a supportive argument can be made for constructing a world class OC seawater desalination plant, its permitting has been stymied by environmental activists. However, an argument can also be made for adverse environmental impacts caused by the construction of any large scale infrastructure project. It's doubtful that the Colorado River Aqueduct or State Water Projects could be built with today's environmental constraints and permitting issues. Clearly, environmental concerns should be addressed to the extent they can be cost-effectively accommodated. However, OC residents should be granted a reasonable quality of life under adverse water supply conditions. Yes, we could probably survive with half the water we currently use if we want to live without green spaces. No, we can't afford to wait for a long, drawn out BDCP process to achieve a compromised imported water solution.

Any new source or Delta fix will increase user water rates. However, this should be thought of as the equivalent of home fire insurance. We pay for it annually, but do not expect to use it. In the case of a desalination plant, OC receives an annuity, a potable water supply to use or bank. Surplus desalination water produced during low demand at night can be banked as necessary using the large SA aquifer or local retailer reservoirs.

Environmental activists assert a high mortality rate in the millions/day for marine life like fish eggs and larvae which are sucked into the seawater intake. Whether these numbers are founded on good science and applicable to a specific site and technology is moot. It is hard to believe that all of the marine life in the Pacific has migrated to a single intake location. A well-documented, multi-year evaluation of the impact of the Perth, Australia desalination plant (of similar size to those proposed along the SC coast) found no significant marine impacts 200 feet from the intake and discharge locations¹⁵. Also, plants that use existing power plant discharges as proposed at Huntington Beach and Carlsbad have a small impact on local salinity due to the dilution factor of the higher power plant cooling water flows. When the power plant is not operating the intake flows are substantially reduced resulting in less marine life ingestion. *The environmentalists have had their say and have been reasonably accommodated.*

The wholesale agencies should form and significantly fund a working group with the San Diego County Water Authority to explore in greater depth the possibility of developing the proposed 50 to 150 Mgd Camp Pendleton seawater desalination project.

¹⁵www.waterboards.ca.gov/water_issues/programs/ocean/desalination

At the very least, this group should develop a preliminary design for the project and perform sufficient CEQA investigations to identify and initiate critical path permitting activities. If the current extended drought continues or when significant climate changes start to impact source reliability coastal Southern California will be in a better position to expedite the permitting and construction of another large seawater desalination plant. This venue has minimal coastal impacts and the least impact on public access.

Huntington Beach is one of several Southern California venues where a world class desalination plant can be built.

It's time to complete the permitting and contract negotiations, and start construction of the Huntington Beach desalination plant!

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires responses from the Board of Directors of the Orange County Water District and the Municipal Water District of Orange County affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of water reliability and sustainability in Orange County, the 2013-2014 Orange County Grand Jury has arrived at ten principal findings, as follows:

F.1. MWDOC's SOC water reliability study objective of a 30 to 60 day emergency supply from local storage will fall short, requiring between 33 and 48 Mgd of additional capacity. Mitigation of this short fall may require the development of a new water source.

F.2. The BDCP is an expensive, long-term, (\$25 billion in capital and operations over 50 years) plan yet to be approved or funded project to restore the Bay Delta and improve exported water source reliability. The future effects of climate change on water allocations and the vulnerability of the dual, under delta tunnels have not been well defined and should be developed further before MWDOC allocates significant resources to its implementation.

F.3. Most of the local and County water sources have been developed and optimized. Some additional capture of ground water and recycling of municipal waste water is in various stages of planning and execution, but these options are progressively more expensive to execute and, by themselves, are not game changers.

F.4. OC water quality is widely and frequently monitored by both wholesalers and retailers and, in general, is well within the State standards. Some wells have been contaminated with seawater or industrial chemicals and are either capped or the water is treated on site. All wells and transfer interfaces are frequently monitored for water quality.

F.5. The largest, yet to be developed source of local water is the Pacific ocean. Two OC desalination projects are being evaluated by regulatory agencies and OC water districts, Poseidon's 50 Mgd Huntington Beach project and the MWDOC's Doheny Coastal Ocean Desalination Project rated at 15 Mgd potable/15 Mgd barrier injection at Doheny Beach.

F.6. The MWDOC imported water supply source and transport infrastructure has been greatly improved, but it is vulnerable to several major events outside of their control. These include flooding or a large earthquake in the Bay Delta which could collapse levees. Quakes could also damage critical infrastructure such as conveyance piping, water treatment plants and pump stations. Contamination of Bay Delta intakes due to the seawater infiltration is a possibility; some say it's likely. Long periods of drought could also result in the depletion of major State reservoir storage which are currently at 50% or less of annual average capacity.

F.7. The local OC water supply is less vulnerable to major events because of a number of innovative retail water supplier and OCWD efforts. The primary focus has been on large waste or surface run-off water reclamation, increased winter and emergency storage, conservation and rate pricing strategies, preventative maintenance, back-up and redundant equipment, and a large number of interconnections between district distribution pipelines.

F.8. The imported water supply is less vulnerable to earthquakes and long term drought because of a number of recently completed projects such as:

1. Increasing southern California reservoir storage about doubled over the last 10 years and is currently at about 5.5 MAF (million acre-feet, an acre under one foot of water).
2. Upgrading the Diemer imported water treatment plant seismic design.
3. Developing the Diamond Valley reservoir and connecting pipeline to store Colorado River (COR) and State water for emergency use-note that transport piping does not cross the San Andreas Fault and should be less vulnerable to quake caused catastrophic failures.
4. Adding ozone treatment at three water treatment plants for disinfecting potable water.
5. Implementing an extensive conditioned maintenance program for mechanical and electrical equipment including the ability to fabricate, transport and install large diameter pipe spool pieces to repair damaged sections of piping.
6. Negotiating transfer agreements with Imperial and Central Valley agricultural districts for water exchanges and transfers during surplus wet years.

F.9. Permitting large water infrastructure construction projects consumes many years, and cuts across many agencies and jurisdictions. Permitting issues are frequently used by stakeholder special interests to manipulate outcomes that are not always consistent with the public's greater good.

F.10. The San Diego County Water Authority (SDCWA) has geological, demographic and water import issues which are similar to SOC. They are pursuing similar conservation and storage

projects, but have also committed to water purchases from a large, 50 Mgd desalination plant located in Carlsbad to achieve a more diverse, local water portfolio. Their interest in seawater desalination has primarily been driven by an imported water curtailment of 50% in 1991. It has taken over 10 years and significant public involvement to obtain regulatory approvals. SDCWA has also completed a conceptual engineering study of the feasibility of locating a second large desalination plant at the Camp Pendleton Marine Base.

The Grand Jury recognizes that it lacks jurisdiction over the San Diego Water County Water Authority, but makes the finding merely to demonstrate the complexity of desalination projects and length of time needed for regulatory approval is similar to Orange County. The Grand Jury believes that coordination and advocacy between water districts would be beneficial.

RECOMMENDATIONS

“In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from the Board of Directors of the Orange County Water District and the Municipal Water District of Orange County which are affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.”

Based on its investigation of water reliability and sustainability in Orange County, the 2013-2014 Orange County Grand Jury makes the following five recommendations:

R.1. MWDOC and OCWD should assemble and finance a strong inter-agency (OCWD, MWDOC, and select retailers) advocacy group to drive the final permitting and construction of several large scale seawater desalination plants with the objective of significantly accelerating the process and shortening project schedules. **(F.1. through F.6.), (F.10.)**

R.2. MWDOC and OCWD should work with legislators, contractors, other stakeholders, and the regulatory agencies to streamline and accelerate the large infrastructure permitting process. The goal should be the development of a one-stop agency capable of representing and adjudicating conflicting or overlapping agency permit requirements. **(F.9.), (F.10.)**

R.3. MWDOC and OCWD should develop an interconnection process flow network diagram connecting all relevant OC agencies (City, County, and MET) and use it to investigate the impact of “what if” scenarios (various emergency outages due to failed wells and pumping stations, damaged piping, etc.) which could impact local district water supplies. Close coordination of resources and plans is necessary to integrate the local OC water infrastructure. **(F.7.)**

R.4. MWDOC should continue to monitor and support the BDCP, but a favorable resolution of water supply allocations and tunnel vulnerability issues is required before significant resources should be expended. **(F.2.), (F.8.)**

R.5. MWDOC and OCWD should consider merging into a single wholesale agency to better evaluate, coordinate, and integrate more complex strategies involving the allocation and distribution of ground and imported water under emergency and climate change impacts. This merger would facilitate the implementation of Recommendations 1-4. **(F.1.), (F.4.), (F.6.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required.

Responses to Findings **F.1.**, **F.2.**, **F.4.**, **F.5.**, **F.6.**, **F.8.**, and **F.9.** are required from the Board of Directors of the Metropolitan Water District of Orange County.

Responses to Findings **F.2.**, **F.3.**, **F.5.**, **F.7.**, and **F.9.** are required from the Board of Directors of Orange County Water District.

Responses to Recommendations **R.1.** through **R.5.** are required from the Board of Directors of the Metropolitan Water District of Orange County.

Responses to Recommendations **R.1.** through **R.5.** are required from the Board of Directors of the Orange County Water District.

APPENDICES

Appendix A – References

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Appendix B – Acronyms

AF	Acre-feet, one acre (football field equivalent) under one foot of water
AFY	Acre-feet/year, measure of large scale conveyance flows, sufficient for 2.5 households/year
BDCP	2013 Bay Delta Conservation Plan, a water source reliability and restoration plan
BPP	Basin production percent, amount of OCWD ground water allocated to purchasers
CEQA	California Environmental Quality Act
cfs	cubic feet/second, measure of flow in pipe or conveyance systems
COR	Colorado River, source for SC district and County aqueduct water
EPA	Environmental Protection Agency
GWRS	Ground Water Replenishment System, OCWD's 70 Mgd waste water reclamation Plant
MAF	Millions of acre feet, typically refers to storage capacity
MET	Metropolitan Water District of Southern California, Wholesale distributor for SWP
Mgd	Millions of gallons/day
MW	Megawatts of electrical power generation or consumption
MWDOC	Municipal Water District of Orange County, imported MET water wholesaler to districts and cities
NOC	North Orange County
OC	Orange County
OCFA	Orange County Fire Authority
OCWD	Orange County Water District, owner/operator of the GWRS and SA aquifer
Psig	Water Pressure, lbs/square inch
RO	Reverse Osmosis, a technology for removing chemicals and salts from water
SAR	Santa Ana River

SC	Southern California
SDCWA	San Diego County Water Authority, similar function as MWDOC
SOC	Southern Orange County
SWP	State Water Project, imported Bay Delta water supplier to MET
WACO	Water Advisory Committee of Orange
WEROC	Water Emergency Response Organization of Orange County

Appendix C – Glossary

Aquifer — underground reservoir of stored water in a natural geologic feature comprised of stratified alluvial sand and gravel.

Brackish water — non-potable water with a high mineral and salt content.

Breakeven point — the time at which the estimated annualized cost (operating and amortized capital) of a project equals the cost of an alternative project.

Chloramines — a strong oxidizing compound incorporating chlorine for disinfecting water.

Conditioned maintenance program — a computer program that monitors a large data base of critical equipment and estimates inspection/repair intervals.

Conjunctive Use Agreement — a purchase agreement between wholesale and/or retail agencies for water transfers during surpluses which are used for recharging aquifers and reservoirs, sometimes with the transferee's right to a percent of the transferred water when needed.

Intertie — the connection of two separate water distribution systems to improve reliability.

Mean time to repair — the time required after the detection of an equipment malfunction to obtain parts and materials, and perform corrective maintenance or replacement.

Potable water — water suitable for human consumption and meeting local, State, and federal safety standards.

Purple pipe system — waste water treated to comply with State Standards for Irrigation and distributed through a separate pipeline, primarily used in SOC for large scale irrigation.

Santa Ana river basin or OC aquifer — a large, deep, natural underground water storage area composed of old Santa Ana river alluvial sand and gravel which underlies NOC.

Quantification Agreement — an entitlement agreement between Colorado River water users (Western States and irrigation districts) which prioritizes allocations based on availability and need.

Ozone — a strong oxygen based agent used to disinfect water.

Watershed — an extensive area of land where surface water drains to a common location, a major river, lake, or reservoir.

Well head — the discharge piping located at the top of the well.

**IMPROVING THE
COUNTY OF ORANGE GOVERNMENT'S
MULTI-BILLION DOLLAR
CONTRACTING OPERATIONS**



GRAND JURY 2013-2014

SUMMARY

The County of Orange has a population of 3,010,232¹ and its Board of Supervisors controls a budget of approximately \$5.39 billion. The County currently conducts more than \$3 billion in business-related actions through contracting and procurement undertakings. This is accomplished through the utilization of over 3,400 contracts with both private sector providers and vendors, or adopted funding from public sector sources. In County government, more than one-half of the budgets for agencies or departments are planned for the procurement of goods, and/or services provided by vendors and contractors, not-for-profit organizations, and governmental agencies.

The 2013-2014 County of Orange Grand Jury has recognized that the Contracting/Procurement System (CPS) of County government has shown improvement in its methods over the past two decades. The County Purchasing Agent, assigned to the County Executive Office, has modified the County Contract Policy Manual, and improved the monitoring of existing training for Deputy Procurement Agents. All the same, the County's decentralized CPS remains substantially unchanged for the last 15 years.

As with any complex institution or business, there is room for continuing improvement in certain operational facets. Within this Report, the 2013-2014 Grand Jury has determined that certain critical needs require additional attention. The areas of focus for modification as part of the Contracting and Procurement System are as follows: (1) agencies and departments within the existing decentralized CPS, (2) CPS personnel training protocols, and (3) the importance of the current County Contract Policy Manual and its impact on CPS.

REASON FOR STUDY

Contracting and Purchasing as Key Government Components

The County of Orange Board of Supervisors has the principal responsibility to approve contracts for the County. As a prime illustration of the County's business volume, from December 2012 to December 2013 the Board made determinations impacting County finances on approximately 1,200 contract matters representing 55% of its Agenda items.

The County does business with large and small firms, and individual entrepreneurs. The originating County government agencies and departments are directly responsible for more than

¹ United States Census Bureau as of 2010

3,463 current agreements and purchasing documents and with an approximate sum of \$3.074 billion under their CPS jurisdiction. These agencies/departments are supported by County sources such as tax and fee revenues, as well as second party funding from the State of California, or the Federal Government. Sums paid or allocated to vendors and service suppliers are incorporated into the overall amount. These contracts include funding for the procurement of goods and human services, major construction projects, and service delivery that is not performed by public employees whether by choice or necessity.

During 2013 it came to the Grand Jury's attention that there were certain instances of contract award or amendment decisions that initiated alarm by members of the Board of Supervisors, news media, competitors of selected contract awardees, and the general public. The most prominent of these events involved Community Resources, Dana Point Harbor, Health Services, and John Wayne Airport. It was these and other occurrences that prompted the interest of the Grand Jury.

The adverse comments included a) improper involvement by potential respondents in Request For Proposals (RFP) or Invitation For Bids (IFB) preparation, b) warning signs that proposal evaluations were mishandled or possibly implemented inappropriately, and finally, c) allegations of cronyism and undue influence. Many of the doubts appeared to have merit and the Grand Jury commenced an undertaking to investigate contributing factors that had long lasting or significant negative impacts to County business.

Any undesirable publicity, whether factual or not, must be averted. Given the sums of money involved, it is vital to cultivate and maintain the greatest level of public confidence and trust. This applies to the public having faith in its public servants, and by extension, the contract management teams that are entrusted with the oversight of implementation procedures.

Review Rationale

Contracting and procurement are integral components to revenue and service developments in the County of Orange. The County has sought to improve its CPS efforts and its executives have been active in refining government services. This is in no small part due to the enactment of Best Practices measures instituted by County management as well as implementation of recommendations issued by a previous Grand Jury.

As with most professions, *well-trained personnel* are the crucial factor in producing and implementing the most effective methodology possible. The intent of the training is to fully acquaint staff with regulations, protocols, and techniques that provide to the general public those services that enrich lives, upgrade property values, and promote higher standards.

BACKGROUND AND FACTS

County government is comprised of 25 separate agencies and/or departments that provide a wide range of services and/or facilities to the citizens of the County including animal control, beaches, child support, facility planning and construction, juvenile detention, law enforcement, parks, services for the aging and veterans, voter registration and elections, property tax bills, public health, sanitation, public libraries, and more.

The Procurement Process

Six of the 25 County government agencies/departments are authorized to prepare, solicit, and negotiate public works contracts. A public works contract is principally an agreement financed with government funds for improvements to the County's infrastructure. The County entities authorized to perform this type of work are as follows:

1. Dana Point Harbor
2. John Wayne Airport
3. OC Community Resources
4. OC Public Works
5. Sheriff-Coroner
6. Waste and Recycling

In addition, the Grand Jury learned that five of the 25 County Departments do not administer "Master Agreements." A Master Agreement is a contract developed by a given County agency/department and thereafter approved by the Board of Supervisors.

Within the County government system another agency/department can avail itself of the services or commodities via a service agency agreement supported by a Master Agreement and have the acquisition costs applied to its budget. *The net effect is greater efficacy.*

In this report, the Grand Jury verified the extent to which Master Agreements are utilized and the amount of funding involved. Following approval action by the Board of Supervisors, administrative oversight is undertaken by the initiating agency/department.

The 1997-1998 Grand Jury conducted an investigation and issued a report regarding the County government's procurement efforts entitled, *Study of the County of Orange Procurement System*. That report detailed recommendations which are listed in *Appendix A* on page 21. That Grand Jury's purpose was to determine if the County of Orange government (a) had a comprehensive, uniform, methodical approach to procurement basics, (b) if the approach was documented in written policies and procedures, (c) if trained staff and appropriate infrastructure are in place to implement those policies and procedures, and (d) if there is exceptional provision for oversight to test for compliance with the policies and procedures. The overall findings were negative, yet

much of the current County administration and its CPS outcomes were generally supportive of the findings and recommendations of that Grand Jury.

The result of the 1997-1998 Grand Jury report was that six of the ten recommendations issued were implemented. Two of four remaining recommendations are currently in progress, and the final two are not expected to be implemented due to alternative approaches being taken.

Using County of Orange parlance, the words “procurement” and “contracting” are used interchangeably. *Purchasing* typically deals with the acquisition of standard, commercial items, and “off the shelf” supplies, and services. In simplistic terms, purchasing can be thought of as the means for acquiring operating supplies and services that County employees will use in doing their jobs. *Contracting* generally involves more specialized subject matter expressed in a made-to-order statement of work for services or a detailed specification for supplies and equipment. Contracting, then, is a way to engage others to perform a County job or mission. Individual contracts, oftentimes referred to as “agreements,” normally involve relatively large expenditures of money when compared to purchase orders.

As a subset of both purchasing and contracting, *Contract Management* is a proactive management technique utilized to ensure that the vendor/contractor and the County comply with the terms of the purchase order or contract. The vendors and contractors deliver services of the appropriate quality, in the proper quantity, on time, and at the agreed upon price. The County agrees to make timely payments to vendors and contractors.

A listing of Master Agreements that were approved during Fiscal Year 2013-2014 is shown in Table 1 on page 6. The agreement annual sums, or aggregate sums for multi-year agreements are shown.

Table 1

COUNTY OF ORANGE GOVERNMENT CONTRACTING SYSTEMS
LIST OF MASTER AGREEMENTS AND DOLLAR VALUES

	AGENCY / DEPARTMENT	Number of Master Agreements	Contract Value
1	Health Care	225	\$1,057,370,267
2	County Executive Office - - Procurement Office and the Office of Information Technology	414	\$821,017,509
3	OC Community Resources	505	\$354,271,717
4	John Wayne Airport	222	\$329,894,600
5	OC Public Works	575	\$166,017,509
6	Waste and Recycling	146	\$154,502,050
7	Sheriff-Coroner	599	\$93,952,132
8	Social Services	258	\$44,992,284
9	Auditor-Controller	15	\$14,504,720
10	District Attorney	109	\$11,693,801
11	Probation	142	\$6,997,506
12	Clerk-Recorder	25	\$4,707,699
13	Registrar of Voters	37	\$3,685,900
14	Dana Point Harbor	13	\$3,244,666
15	Assessor	29	\$2,745,679
16	Child Support Services	63	\$2,607,878
17	Treasurer-Tax Collector	65	\$2,004,310
18	Public Defender	6	\$265,208
19	Human Resources	13	\$120,540
20	County Counsel	2	\$19,734
21	Internal Audit	0	\$0
22	Clerk of the Board of Supervisors	0	\$0
23	Office of Independent Review	0	\$0
24	Office of Performance Audit	0	\$0
25	Public Guardian	0	\$0
TOTAL		3,463	\$3,074,615,709

As of May, 2014

Impacts of Bankruptcy

In 1994 the County of Orange investment pool collapsed, thereby losing \$1.6 billion from its \$7.5 billion portfolio. As a result it led to the County filing for protection under Chapter 9 of the United States Bankruptcy Code. The County of Orange was the largest governmental entity to file for bankruptcy at that time. The City of Bridgeport, Connecticut had filed for bankruptcy in 1991, but a federal bankruptcy judge disallowed its petition.²

The money in the County investment pool came from a broad spectrum of sources, including cities, school districts, water and sewer authorities, and pension funds.³ Many of the creditors, especially the school districts, were demanding payment, and because interest rates had not remained low as the County had anticipated, there were insufficient funds to make the payments.

At the time, there was considerable apprehension that it would take years for the County of Orange to recover, and that many small businesses and some cities would fail because of the County's fiscal collapse. The bankruptcy negatively affected housing values and business decision-making for new development. In the public sector, highway and infrastructure projects were stalled. The final plan that led the County out of bankruptcy called for elimination of 3,400 County jobs and a 41% reduction of the General Fund budget.

Perhaps the longest lasting effect of the bankruptcy was decentralization of specialized functions within County government. The most prominent of those decentralized functions were contracting and procurement, human resources, and information technology.

Various County executives, including the County Executive Office concur that the County would be better served with reestablishment of centralized services in key units. For instance, currently underway is centralization of the departmental human resources operations. With regard to contracting and procurement, a very recent advancement is the increase in the number of Deputy Procurement Agents (DPA) performing contracting and purchasing tasks. Within the past 10 years there has been a 15% increase in DPA personnel working on various facets of contracting/procurement assignments.

Current DPA staffing levels per agency/department are listed in Table 2 on page 8.

² Judson, George, *Bridgeport Bankruptcy Plea Focuses on Solvency Dispute*, July 24, 1991.

³ Long, Heather, the Patriot-News, Central PA., *Bankruptcy: What is the real aftermath for a city?* May 19, 2010.

Table 2

NUMBER OF DEPUTY PURCHASING AGENTS WITHIN COUNTY GOVERNMENT		Deputy Purchasing Agents
1	Assessor	4
2	Auditor-Controller	7
3	County Executive Office - Information Technology	8
	Procurement	17
	Real Estate	1
	Administration	2
4	Child Support	4
5	Clerk of the Board	1
6	Clerk-Recorder	2
7	OC Community Resources	18
8	County Counsel	3
9	Dana Point Harbor	1
10	District Attorney	7
11	Health Care	29
12	Human Resources	9
13	Internal Audit	2
14	John Wayne Airport	5
15	Office of Independent Review	0
16	Office of Performance Audit	0
17	Probation	14
18	Public Defender	4
19	Public Administrator / Public Guardian	4
20	OC Public Works	33
21	Registrar of Voters	4
22	Sheriff-Coroner	13
23	Social Services	22
24	Treasurer-Tax Collector	3
25	Waste and Recycling	19
26	Law Library	1
GRAND TOTAL		237

As of May, 2014

METHOD OF STUDY

The Grand Jury conducted confidential interviews with 10 agency/department units of County government. This included top-level Executives, Managers, and Subject Matter Experts (SME) on staff.

Staff Interviews

County agency and department staff interviewed represent both the greatest number of Master Agreements administered as well as the highest amount of contract dollar value. The interviewed agencies/departments were as follows:

1. Auditor-Controller
2. County Executive Office
3. OC Community Resources
4. District Attorney
5. Health Care
6. John Wayne Airport
7. OC Public Works
8. Social Services
9. Sheriff-Coroner
10. Waste and Recycling

In addition to the list of aforementioned interviewees, a fact-finding discussion took place with the Internal Audit Department (IAD), which is not active in contracting efforts. Rather the Department carefully reviews the endeavors of other County agencies and departments. The purpose of IAD is to report audit findings to the Board of Supervisors in order to ensure that the Board receives trustworthy advisory services involving the Board's business and financial decision-making. The Grand Jury deemed it appropriate to fully acquaint itself with IAD's core activities, audit plans conducted on behalf of the Board of Supervisors, standards and practices on audits, and pertinent audit reports.

The Grand Jury study also included a written survey circulated to County departments that were not formally interviewed. Consisting of 24 questions, the survey mirrored the contents of the interview discussions conducted in the course of this Report. An abstract of the survey is provided in *Appendix B* on page 24. A 100% response rate to the survey was achieved.

Documents and Publications Reviewed

Numerous relevant documents and publications were reviewed and served to additionally inform and bring the Grand Jury up-to-date on topics addressed in this report.

These items included:

1. The 1997-1998 County of Orange Grand Jury's report entitled, *Study of the County of Orange Procurement System*.
2. Typical County Requests For Proposals (RFP), and Invitation For Bids (IFB) solicitation documents, supplemented by actual Evaluation Scoring forms.
3. Selected Board of Supervisors approved agreements and contracts.
4. County-wide accounting system entitled *County Accounting Personnel System (CAPS)* .
5. County of Orange Contract Policy Manual, adopted by the Board of Supervisors in August 1998.
6. County of Orange Contract Policy Manual, as revised and adopted by the Board of Supervisors in July 2012.
7. County of Orange Request For Proposals Evaluation Rules of Procedures, March 2010.
8. County of Orange Procurement Ethics Guide, (2011).
9. Memorandum of Understanding for the County of Orange Purchasing Alliance.
10. The Request For Proposals Procedure published by the County of Orange Social Services Agency, (2013).
11. *A Guide to Best Practices For Contract Administration* - General Services Agency (GSA) Office of Federal Procurement Policy, October, 1994.
12. Model Procurement Code, American Bar Association, 2000.
13. Minnesota State Auditor, Government Information Division Office: *Best Practices Review Contracting and Procurement in the Public Sector*, November, 2005.
14. Business Basics, *Centralization versus Decentralization*, February 2013.

Research

Finally, the Grand Jury's research included (a) the County of Orange Board of Supervisors meeting agendas, meeting minutes, and supporting Agenda Staff Reports (ASR) and related addenda, (b) County ordinances and regulations, (c) pertinent federal and state statutes and related funding requisites, and (d) newspaper articles and website materials.

ANALYSIS

The Case For Centralization

There are significant managerial differences between a centralized and a decentralized procurement system. In a centralized structure the decision-making and administrative authority

is focused on a pre-determined agency or department. Oversight is conducted by individuals within the top tier of management. This tier of management is the one that determines policy and makes all of the crucial decisions. A decentralized system delegates authority throughout the jurisdiction and to several levels of management within that jurisdiction.⁴

The decision to centralize or decentralize, willingly or otherwise, is one of the most challenging endeavors to be undertaken. While centralized planning and implementation creates a more efficient information distribution and record keeping processes, it can seem cumbersome to the first line personnel or site manager. *Maintaining the balance between centralized and decentralized activities necessitates a joint understanding of the contracting or purchasing practice from start to finish.*

Within a decentralized jurisdiction, such as the County of Orange, it is important that all agencies/departments operate under the same rules so that inconsistencies do not create future problems. This would enable the decision-making officials, in this case the County Board of Supervisors, to focus attention on the most crucial matters for its consideration.

Requirements upheld by one agency or department and not by another could lead to inconsistently applied procedural steps. To address the issue, County government should engage in a shared Contracting/Procurement System.

In a centralized jurisdiction the CPS staff of a department in need of the service or product would contact the County Purchasing Agent with both sides collaborating on the specifications for solicitation of proposals or bids to be drafted. Both departments play a role in the project and contract management. Working together, the departments ensure that the services contracted or goods purchased are meeting specified terms and conditions in terms of the schedule, budget, and end-user satisfaction.

The department CPS staff would then conduct the solicitation. Both departments will be involved in the bids/proposals evaluation process and the client department will make a final recommendation of the selected vendor to the purchasing official.

Overall, there are advantages and disadvantages to centralization and de-centralization that are to be considered.

⁴ Business Basics, *Centralization versus Decentralization*, February 2013

A pertinent sampling regarding centralized systems is as follows:

<p style="text-align: center;"><u>Advantages – Centralized</u></p> <p>a) greater top-management control, b) increased efficiency, c) simpler information sharing system, and d) stronger representation and buying power.</p> <p style="text-align: center;"><u>Disadvantages – Centralized</u></p> <p>a) less responsiveness to clientele, b) reduced amount of empowerment, c) greater risk of interdepartmental conflict, and d) lower morale away from the central headquarters.</p>
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A significant argument in favor of centralized procurement lies in the economies of scale. Volume purchases and service acquisition makes it possible to obtain significant reductions in the price of goods or to receive better services at lower costs. This is confirmed by the fact that most procurement jurisdictions report savings even as they compete in the general marketplace. Greater savings will be realized if there is a single large contract within a centralized procurement body. Such a contract gives the acquiring jurisdiction access to a wider market with fewer fluctuations in costs as a large number of orders can be processed simultaneously.

The increased purchasing power of the procurement officer allows the supply base to be streamlined and overhead costs to be reduced. It also allows the proactive purchaser to seek changes in the supplier's organization and production methods, further reducing costs.

Centralized efforts are justified by the need to establish technical standards for information technology systems and computer software applications within the government sector. Similarly, environmental standards for the inclusion in technical specifications and contracts with suppliers are established. It is more difficult to achieve these objectives if the government's purchasing system is highly fragmented, particularly in the absence of a public procurement office with limited formal as well as informal powers.

Potential non-cost benefits which support centralized purchasing groups include better service to the public sector resulting from a more expert and responsive staff. Greater attention can be paid to contract management and problem resolution (e.g., defective items, below specification services, poor after sale maintenance, etc.) which adds value for the client and which are easier to deliver in a more centralized system.

Personnel can typically be easier to manage in a centralized system. They can be organized more efficiently, with fewer people in need of training as there are fewer agencies requiring highly skilled and experienced procurement specialists. Performance management of staff can be handled through a common system.

The increased professionalism that well-trained DPAs can bring to centralized procurement will enhance the economic benefits for the County and should reduce the chances of error undermining these effects. A dedicated procurement team is more likely to be able to deliver increased benefits consistently even during sustained periods of budget stringency.

Finally, centralized purchasing systems provide greater transparency such as proper recording and reporting of transactions, effective management controls, and an audit trail open to public scrutiny. Purchases can more easily be checked for evidence of financial incompetence and corruption. In addition, the employees of a single agency can more easily be trained and encouraged to use efficient control and reporting procedures. Lines of responsibility are more easily established and sound financial practices more easily maintained.

Some advantages and disadvantages of decentralized systems are as follows:

Advantages – Decentralized

Better adaptation to client and patron desires, faster decision making, more empowerment of workers and greater opportunity to gain valuable experience and develop.

Disadvantages – Decentralized

Diminished efficiency, complex distribution system, less top-management oversight and control, weakened department image.

Decentralization can result in contradictory policies and procedures. Too much emphasis on localized ways of making decisions may end up blurring the bigger picture. Further down the corporate ladder, employees seem to lose sight of the organizational vision. A highly decentralized organization can be the battleground for unhealthy competition between local managers leading to lack of co-operation and coordination. As a result, interdependent functions may suffer. Resolving interdepartmental conflicts is difficult when authority has been delegated. In addition, there is costly duplication of work (activities, processes and outcomes) that may impact economies of scale.

While decentralization promotes the jurisdiction's spread of standards and best practices, different managers perceive them differently. In case of imminent circumstances that require adoption of organization-wide standards, the diffusion of authority and independent opinions and actions pose a major hindrance. Therefore, implementation of uniform organization-wide consistent policies can be problematic.

Decentralization often gives rise to an employee population composed mainly of generalists and very few specialists. External specialist consultants may sometimes need to be utilized, which adds to the cost of operations. Most disadvantages of decentralization can be overcome by controlling the degree of authority delegated to the lower levels of the organization.

The Grand Jury has concluded that centralization works well if it is managed well. In the case of the County of Orange, recent executive level decision-making has supported the probability that decentralized functions may be strategically restructured into a broadly centralized mode in order to maximize efficacy in contracting and procurement personnel and efforts.

County Contract Policy Manual – Revision

The County of Orange's government has modified its Contract Policy Manual significantly since its predecessor was adopted in August 1998. At this time it has become a much more complete reference document for experienced CPS personnel. The Manual is structured as a reference document and contains additional protocols when compared to its predecessor.

Despite recent improvements, the Contract Policy Manual lacks training and instructive scope. The 2012 County Contract Policy Manual is not a thorough training instrument for educating County contracting and procurement personnel. A comprehensive training handbook is inclusive of assorted training courses with broadened curricula, proficiencies development for all contracting/procurement personnel, sample standard documents, added seminars and workshops, and complete training calendar integration.

A complete training curriculum is characteristic of an appropriate enrichment undertaking for staff members whose job responsibilities involve contracting and procurement. What is now critically needed is the publication of a revised Manual that will provide an intensified training component. A comprehensive, functioning contract manual normally includes the following:

<p style="text-align: center;"><u><i>County Contract Policy Manual</i></u></p> <p>Comprehensive contracting and purchasing measures, Legal and legislative information, County, State, and Federal procedural requirements, Best practices approaches, Practical methodologies to bolster the CPS, Undertakings to improve staff capabilities, Enhancement of expertise, and personal growth potential.</p>

Deputy Procurement Agent Training

The personnel within various departments have differing payroll titles and levels of contracting experience and expertise. They also have attended initial, qualifying training and are required to attend a prescribed ten hours of Deputy Procurement Agent (DPA) annual training.

In the Grand Jury's view the proposed DPA training modifications to the Manual would be of significant value to CPS entry-level personnel as well as the individuals whose assignments have been upgraded over time. It would also have the advantage of supporting personnel transfer and promotional opportunities within agencies and departments. All of the foregoing would be advantageous to optimizing the proficiency of the County Contracting/Procurement System workforce while employing key elements of successful contracting and procurement.⁵

The County's established Deputy Procurement Agent (DPA) training and certification program is an approach that introduces the DPA to the job and supports contract and procurement management. Agencies and departments have a DPA training program qualifying personnel participation given that DPAs come from the ranks of various payroll titles such as a) Administrative Managers, b) Real Property Agents, c) Buyers, d) Procurement Contract Specialists, and in some cases, e) staff assistant personnel. The training does not communicate to staff the opportunity to avail themselves of on-going educational and career aspects of contracting endeavors, and procedural and legislative updates.

Although some agencies/departments may not scrutinize attendance closely, DPAs are still required to attend a basic, 10 hours per year. This approach, which relies heavily upon on-the-job training, lacks important aspects needed to require and provide to personnel, the critical needs of DPA positions within a specialized work environment. It also does not speak to the personal advancement potential for promotions. Deputy Procurement Agents are expected to keep pace with changes in contracting and procurement by completing this annual refresher course in DPA training. The training does not focus upon procurement ethics training, refresher DPA training, and Procurement Integrity goals.

Courses in service contracting and preparing statements of work would be very helpful for DPAs who handle complex contracts and service contracts. It would help them in the preparation of a successful contract/procurement administration plan. Such advancement potential will support a more proficient and productive brand of employees. The County, within its agencies and departments, does not have a comprehensively trained team of contracting officials providing instruction to subordinate staff.

⁵ Minnesota State Auditor, Government Information Division Office, *Best Practices Review Contracting and Procurement in the Public Sector*, November 2005

There are several training components lacking in DPA training. They are as follows:

DPA Training Issues

1. Complexity of a variety of agreements and scope of work
2. Fiscal, political or social importance of the agreement
3. Risk Assessment for quality assurance
4. Mutually beneficial contractor relationships
5. Thorough documentation in all CPS venues

The County Purchasing Office currently does not conduct tutorial classes designed to instruct managers and supervisors thus ensuring that DPA members are made aware of the beneficial aspects of dedicated oversight and intense preparation.

The training of DPAs in the County is a key element to providing a well-qualified and skilled personnel. Employee training and development is an organizational activity in human resource management aimed at impacting the employees with skills aimed at bettering the performance of both the individual and the organization.

Impacting staff with the skills necessary to get the job done will boost job morale and fewer mistakes will be made. Due to the mistakes that could occur, untrained personnel may be more costly in the long run than even the wages paid. Employee development gives the workforce a good chance to realize personal potential and eventually work at the highest possible level. When a manager realizes the potential in a staff member, and then sends that employee to class to improve expertise and skills, the well-trained staff will be more willing to work at the optimum level of ability.

Although several County agencies and departments do not consider employee training an important function of contracting and procurement, this is not the case because there are many benefits accrued to the County, the organization, and most importantly, the individual employee.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 County of Orange Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its examination of the Agencies and Departments within County of Orange government, the 2013-2014 Grand Jury has reached 6 principal findings, as follows:

- F.1.** County government does not have an identified re-centralization strategy of its contracting assignments in order to pro-actively reduce the fragmentation, inconsistency, and inequality that currently exist. Several County executives and senior managers have noted a need is indicated for a substantial reorganization of intra-agency contracting/procurement responsibilities and personnel assignments.
- F.2.** The County Contract Policy Manual, as adopted in 2012, performed an admirable job in response to the critique published by the 1997-1998 Orange County Grand Jury. A majority of the recommendations were implemented and have continued to be helpful in attainment of long-range goals.
- F.3.** The 2012 County Contract Policy Manual is a helpful guide that has value as a reference tool; however the Manual is not a comprehensive document inclusive of specialized training courses, complete planning calendars, an extensive catalogue of procedural standards, and occupational proficiencies.
- F.4.** The Contract Policy Manual lacks a summary for development of all contracting and procurement personnel, with broadened curricula, sample standard documents, and added seminars and workshops.
- F.5.** Contracting and/or Procurement staff members expressly engaged in contracting are not given focused and thorough training designed to present topics in project management, contract administration, and risk assessment. In addition, there is an absence of objectives designed to enhance personal expertise, productivity, and effectiveness.
- F.6.** There are County departments that assign staff members to perform contracting or procurement tasks that are unrelated to their regular roles. Such fragmented assignments present negative impacts to accuracy and productivity as a result.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 County of Orange Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation, the 2013-2014 Grand Jury presents the following 4 recommendations.

- R.1.** The Board of Supervisors and County Executive Officer should adopt a re-centralization strategy and a corresponding implementation schedule for the contracting functions of a majority of County Agencies and Departments. The goal of said strategy will be to ensure that the contracting/procurement procedures and decision-making will be a collaborative and constructive process in an effort to provide for consistency, thoroughness, and transparency with the County Purchasing Agent. **(F.1.)**
- R.2.** The County Executive Officer, utilizing the services of the County Purchasing Agent, should revise and expand the County Contract Policy Manual. The revision should include: a) Procurement Guidelines; b) RFP and IFB methodology; c) Rules of Procedures and Evaluation; d) Procurement Ethics Guide (comprehensive version); e) Risk Assessment; f) Contract Management; and g) Best Practices for Contracting and Procurement. **(F.2., F.3. and F.4.)**
- R.3.** The County Executive Officer should implement expanded training curricula and workshops for Deputy Purchasing Agents and other subject matter experts performing contracting and procurement assignments pursuant to the County Contract Policy Manual. This would include increased training frequencies of longer duration, and staff membership councils that are comprised of peer level conferences and collaboration at least quarterly. **(F.5.)**
- R.4.** The County Executive Officer as well as department heads should ensure that County staff members, who act as the department's Purchasing Agent, should focus primarily, if not exclusively, on procurement and contracting responsibilities as their principal work assignment. **(F.6.)**

REQUIRED RESPONSES AND INSTRUCTIONS

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses to Recommendation **R.1.** and **R.4.** are required from the County Board of Supervisors.

Response to Finding **F.1.** is required from the County Board of Supervisors.

Responses Requested:

Responses to Recommendations **R.2.**, **R.3.** and **R.4.** are requested from the County Executive Officer.

Responses to Findings **F.1.** and **F.2.** are requested from the County Executive Officer.

Responses to Findings **F.3.**, **F.4.**, **F.5.** and **F.6.** are requested from:

CEO – County Purchasing Agent

CEO – Information Technology Office

Health Care

OC Community Resources

OC Public Works

APPENDIX A

The original, published list of Recommendations by the 1997-1998 Grand Jury reads as follows:

STUDY OF THE COUNTY OF ORANGE PROCUREMENT SYSTEM GRAND JURY REPORT 1997-1998

RECOMMENDATIONS

1. The Board of Supervisors and the County Executive Officer immediately cease the current approach to the selection of architect/engineer and consultant contractors. Instead, require the source selection decision to be made consistent with the appropriate general criteria in the *County Regulation* and the project-specific criteria in the instant request for proposals. Further, require the rationale for the ultimate source selection decision to be publicly documented.
2. The Board of Supervisors and the County Executive Officer, concurrent with Recommendation 1, adopt policies substantially in conformance with the following provisions of the *Model Procurement Code*:
 - a. It shall be a breach of ethical standards for a person to be retained or to retain a person or solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agents for the purpose of securing business.
 - b. Every person, before being awarded a County contract, shall represent in writing that such person has not retained anyone in violation of the above. Failure to do so constitutes a breach of ethical standards.
3. The Board of Supervisors and the County Executive Officer give top priority to replacing the existing fragmented County procurement system with a cohesive and integrated system based on the *Model Procurement Code* with provisions for the following:
 - a. Compliance with the federal Common Rule and state grant procurement requirements (Appendix 1).
 - b. Issuance of implementing regulations by a designated group responsible to the chief administrative officer of the County.
 - c. Authority for County contracting agencies to issue strictly supplemental procedures, if deemed necessary and appropriate.
 - d. Comprehensive implementing regulations complete with coverage of the topics listed in Table 5, and the following:
 - i. A requirement that personnel serving in or selected to contracting positions possess established position experience, education, and training prerequisites.

- ii. Establishment of both a Contracting Council and a Purchasing Council comprised of representatives of the CEO/Procurement Office and the Deputy Purchasing Agents and key personnel of the contracting agencies, respectively, chartered to address matters of common concern.
 - iii. The requirement that all contracts be entered into EPS, and that EPS is to be used as a primary means to track and manage contracts.
 - iv. A systematic approach to contract administration: to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow-up of all purchases and the evaluation and documentation of overall contractor performance on the contract.
 - v. The requirement that orders for supplies or services be in writing except those authorized to be made by petty cash and County purchase card.
 - vi. A proactive means to ensure timely payment of vendor and contractor invoices in accordance with purchase order and contract terms and conditions.
 - vii. Documentation of contract files.
 - viii. Types of contracts and their application.
 - ix. Subcontracting considerations.
 - x. Full and open competition in the selection of architect/engineer and consultant contractors.
 - xi. Prohibition against the payment of contingent fees to lobbyists to influence the award of County contracts and the requirement for an affirmative certification thereto.
4. The Board of Supervisors and the County Executive Officer designate the County Purchasing Agent as the Chief Procurement Officer of County of Orange ("CEO/Procurement").
 - a. Place the Chief Procurement Officer in the County organization structure reporting directly to the CEO and officially assign that person to perform, along with assistant CEOs, before-the-fact reviews of AITs of all procurement transactions.
 - b. Include in the Chief Procurement Officer's duties the requirement to conduct annual compliance reviews of all aspects of procurement transactions of Deputy Purchasing Agents and County contracting agencies.
5. The County Executive Officer create a Procurement Policy working group reporting to the CEO (in that official's capacity of County Chief Administrative Officer) to develop and
 - a. administer the new and improved County procurement system, comprised of the County Procurement Code and implementing regulations. Designate the Chief Procurement Officer of the County to chair the group, with membership to include representatives from the ranks of the Purchasing Council, the Contracting Council, and knowledgeable members of the public.

6. The County Executive Officer establish standards and provide suitable training for County employees who perform the principal contracting functions.
7. The County Executive Officer encourage use of the *Commerce Business Daily* for the advertisement of specialized County procurement requirements.
8. The Internal Auditor participate with the Chief Procurement Officer in the annual compliance reviews of procurement activities.
9. The Auditor-Controller use EPS to track contracts. In collaboration with the Chief Procurement Officer, institute a proactive approach to ensure the timely payment of purchase orders and contracts in accordance with their terms and applicable statutory requirements.
10. The Office of the Public Defender cease the practice of using oral (not written) orders to acquire the services of expert witnesses.

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APPENDIX B

A synopsis of the *County of Orange Contracting – Survey of Agency Policies and Procedures* as distributed to County government agencies/departments whose staff was not formally interviewed during the 2013-2014 Grand Jury Report information gathering process.

- 1) Is the County's Contract Policy Manual consistently utilized within your Department?
"Yes" or "No." If "No" why not?
- 2) What is the number of budgeted items per category of personnel assigned to prepare contract documents, administer solicitations and conduct negotiations?
Identify by Payroll title.
- 3) How many of the personnel listed above are fully trained, and have attained the designation of "Deputy Procurement Office?"
- 4) In addition to the office of County Counsel, what type of legal advice is obtained in the preparation of bid/proposal solicitation documents and the process of contract negotiations?
- 5) What experience, in terms of category and years, is required for the assignment?
- 6) What type of training does staff receive? How many hours per year?
- 7) Who decides if an IFB or a RFP is to be utilized?
- 8) Prior to the commencement of the solicitation process how are "interested parties," and the "general public" notified of the availability of an IFB or RFP?
- 9) Evaluation Panels are normally comprised of what sort of members, e.g., County staff and/or private sector experts? At what ratio?
- 10) How many Evaluation Panelists are typically engaged per project?
- 11) By what method are Panel members instructed on evaluation procedures?
- 12) How is the weighting of percentages assigned to the various rating factors for any individual project?
- 13) What type of rating procedures is normally employed?
- 14) Are Evaluation Panelists instructed on the requirement for confidentiality during their deliberative proceedings and thereafter, pending Board of Supervisors final action? Is a written Confidentiality Statement utilized? "Yes" or "No."
- 15) What procedures are established that are designed to ensure that all submitted bid/proposal documents are kept confidential until presented to the Board of Supervisors?
- 16) What measures are in place to restrict the efforts of non-participants from seeking to improperly influence the decision-making process?
- 17) What are the penalties/sanctions for the contractor's non-performance or poor performance?
- 18) What safeguards are in place to ensure that services, products, or other deliverables provided conform to the specifications or statement-of-work identified in the contract?
- 19) Who on your staff monitors contract compliance by the service provider/vendor?
- 20) What is the frequency of contract compliance inspection and documentation?
- 21) If the contract requires revenue to be submitted to the County, what are the prescribed verification and auditing procedures?

Improving The County of Orange Government's Multi-Billion Dollar Contracting Operations

- 22) In the case of payment by the County to vendors, are the payments issued as a result of an invoice? "Yes" or "No."
- 23) What is the internal method of verification that payments are properly supported?
- 24) What is your agency's record of the number of contracts that have been terminated "for cause" within the last ten years?
- 25) Has your agency conducted debarment proceedings of a contracted entity? "Yes" or "No." If "Yes," how many?
- 26) List the number and type of Master Agreements administered by your agency/department. Include the cost to the County or the revenue received by the County.

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**ETHICS AND CAMPAIGN REPORTING:
WHY AND HOW TO IMPLEMENT STRONGER
OVERSIGHT, TRANSPARENCY AND ENFORCEMENT**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
Ethics Provisions Applicable to Orange County Government	5
The Orange County Campaign Reform Ordinance (TINCUP)	6
FPPC Enforcement and SB1226	7
Current Oversight and Enforcement in Orange County	8
Ethics Commissions in California Cities and Counties	10
<i>Characteristics</i>	<i>10</i>
<i>Functions and Operations</i>	<i>11</i>
METHOD OF STUDY	12
ANALYSIS	13
Deficiencies in Current Ethics and Campaign Reporting Enforcement	13
Advantages and Disadvantages of FPPC Oversight and Enforcement	17
Solutions for Orange County	18
<i>Functions and Operations</i>	<i>19</i>
<i>Independence</i>	<i>20</i>
<i>Potential Costs</i>	<i>20</i>
Objections to an Orange County Ethics Body	22
FINDINGS	23
RECOMMENDATIONS	24
REQUIRED RESPONSES	25
APPENDIX: Ethics Commission Survey Results	27

SUMMARY

The 2013-2014 Orange County Grand Jury undertook part of the mission of the Blue Ribbon Commission recommended by last year's Grand Jury by studying ethics and campaign and lobbyist reporting oversight and enforcement in the County. The 2013-2014 Grand Jury studied ethics commissions in California and other jurisdictions to see if a similar model would be suitable for Orange County. The Grand Jury also analyzed the proposed initiative to have the California Fair Political Practices Commission (FPPC) enforce Orange County's TINCUP Campaign Finance Reform Ordinance.

The 2013-2014 Grand Jury found that ethics, campaign and lobbyist reporting oversight and enforcement in Orange County is deficient in a number of areas, including coordination, audits, transparency, law and policy advice and recommendations, and independence.

Existing ethics commissions in California provide an established and effective model to monitor and enforce campaign finance and reporting and lobbyist reporting laws as well as other ethics laws and policies. The Grand Jury concluded that an ethics body in Orange County would not be bureaucratic, unnecessary, irresponsible, or wasteful, as asserted by the Board of Supervisors. The potential cost of an ethics body is outweighed by its potential benefits, including coordinated oversight, transparency, independence, and creating atmosphere of deterrence to law violations and corruption that could contribute to improving overall trust in local government.

The Grand Jury concluded that the proposed enforcement by the California Fair Political Practices Commission (FPPC) of the County's campaign finance law has several drawbacks:

1. It could possibly invalidate current campaign contribution limits specified in Orange County's TINCUP Campaign Finance Ordinance.
2. Its independence may be limited because it would be under control of and subject to continuing Board of Supervisors approval, including budget approval.
3. It would be limited to only civil (not criminal) enforcement.
4. It could defeat the purpose of establishing coordinated oversight and enforcement in the County of ethics compliance and campaign and lobbyist reporting.

Ethics bodies work effectively to deter, detect, and punish ethics violations. The 2013-2014 Grand Jury calls on County officials and candidates to declare themselves in favor of establishing an ethics program, which could move County government closer to being beyond ethical reproach.

REASON FOR THE STUDY

When the 2012-2013 Orange County Grand Jury called for the creation and implementation of an ethics reform program for the County,¹ it met with strong opposition from members of the Board of Supervisors. With dissenting opinions, the Board declined the recommendation to create a Blue Ribbon Commission to study and recommend an ethics reform program for the County.

The 2013-2014 Grand Jury chose to undertake part of the mission of the previously recommended Blue Ribbon Commission themselves, by analyzing current ethics oversight in the County, and by studying bodies (ethics commissions) that fulfill this purpose in California and other jurisdictions. The Grand Jury also wished to analyze the stated objections of the Board of Supervisors to an ethics body, and the justification and feasibility of fitting parts of the model into County's current structure.

The Board of Supervisors has accepted that there is a need for additional ethics enforcement in the County. They have sponsored legislation (Senate Bill 1226) to allow the FPPC to investigate violations and enforce campaign finance laws in the County. The Grand Jury also wished to study how this FPPC initiative might fit into an overall County ethics program, and the initiative's advantages and disadvantages.

The reasons for 2012-2013 Grand Jury ethics study and report were based partly on a historical recounting of alleged corruption in Orange County politics. This study by the 2013-2014 Grand Jury does not attempt to recount additional recent incidents of alleged corruption in the County, although they are certainly reported, and in many cases apparently supported, in the local news media. The 2013-2014 Grand Jury does not believe that in Orange County, politicians and public officials or people in general, tend to be more corrupt than in other jurisdictions in California.

Orange County, however, is very wealthy,² and land and economic development are still very active here. When such robust development and economic activity is combined with the size and scope of government activity in general today, unethical attempts at self-enrichment and increased power tend to follow, and have followed in Orange County. Such is human nature. Oversight of ethics compliance is necessary to not only uncover and punish violations, but to create an atmosphere in which everyone knows they must fully understand and comply with ethical standards. With such oversight, people who are inclined toward unethical behavior know that such behavior is monitored and are thus discouraged from engaging in it.

¹ 2012-2013 Grand Jury report "A Call for Ethical Standards", accessed 4/8/14 at http://www.ocgrandjury.org/pdfs/2012_2013_reports/Corruption-in-OC04152013.pdf

² In 2011, O.C. was 2nd among California Counties in total income, and in the top ten in per capita, household, and family income. Source: U.S. Census Bureau. American Community Survey, 2011, http://en.wikipedia.org/wiki/California_locations_by_income#Counties, viewed 5/21/14

The need for trust in government by those who are democratically governed cannot be over emphasized. Nevertheless, surveys and polls show that such trust continues to decline,³ perhaps with justification. For example, the California FPPC has reported that prosecutions of both serious campaign violations and lobbying violations were the highest ever in 2013.⁴ The overriding reason for this Grand Jury study was to outline a concrete method for Orange County government to take a leadership role in overcoming this mistrust and rise to a level of being truly beyond ethical reproach.

BACKGROUND AND FACTS

Ethics Provisions Applicable to Orange County Government

A plethora of Federal and State laws, local ordinances, codes of conduct, policies, guidelines, and procedures govern ethical behavior of Orange County officials, employees, contractors, candidates, political campaigns and lobbyists. These rules can be general in nature, or only apply to specific agencies, departments, or activities. Some local Orange County examples are

- a) the Orange County Gift Ban Ordinance,
- b) agency and department Codes of Conduct,
- c) the County's Lobbyist Registration and Reporting Ordinance, and
- d) the Orange County Campaign Reform Finance Ordinance (TINCUP).

Generally, ethics provisions fall under three categories:

1. Personal and financial gain,
2. Transparency, and
3. Fair process and merit based decision making. This category refers to processes and decision based on objective criteria for the benefit of the residents of the County, rather than on personal gain, personal relationships (cronyism), or personal bias.

A very important point is that the broad topic of "ethics" in public service refers to much more than just laws, and certainly to more than just laws relating to campaign finance. Ethics training for public officials strongly emphasizes that laws are only a minimum standard. Quoting a well-known ethics textbook:

"Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even so, it is important to keep in mind that these standards are

³ See American National Election Studies at http://www.electionstudies.org/nesguide/toptable/tab5a_5.htm, viewed 5/27/14

⁴ FPPC 2013 End of Year Report, <http://www.fppc.ca.gov/agendas/01-14/Enforcement%20End%20of%20Year%20Report.pdf>, viewed 5/16/14

*only minimum standards: it is simply not possible or practical to write laws that prevent all actions that might diminish the public's trust. For this reason, the laws should be viewed as a floor for conduct, not a ceiling. Just because a given course of conduct is legal does not mean that it is ethical (or the public will perceive it as such)."*⁵

The Orange County Campaign Reform Ordinance (TINCUP)

The Orange County Campaign Reform Finance Ordinance (known as TINCUP - Time is Now to Clean Up Politics) was originally adopted in 1978 and applies to twelve Orange County elected offices:

1. Sheriff-Coroner
2. District Attorney/Public Administrator
3. Auditor–Controller
4. Clerk–Recorder
5. Assessor
6. Treasurer/Tax Collector
7. Superintendent of Schools
- 8-12. County Supervisors (five)

The Ordinance has been amended a number of times since adoption and is currently comprised of these main elements:

1. Election campaign donations are limited to \$1,900 per person or per campaign committee during an election cycle.
2. Post-election campaign statements are required to be filed with the Registrar of Voters.
3. Provisions/guidelines are established for slate mailers and independent expenditures such as media advertisements, “robo” calls, posters and other campaign style literature.
4. Violations of the ordinance may be prosecuted as misdemeanors by the District Attorney’s office. Civil violations are punishable by fines of up to \$5,000.

⁵ “Understanding the Basics of Public Service Ethics Laws, Principles and California Law,” p.3, viewed 5/14/14 at http://www.ca-ilg.org/sites/main/files/file-attachments/understandingbasicsethicslaws_finalproof_0.pdf

The purpose of the ordinance is to lessen opportunities for disproportionate influence of affluent individuals on County elections.

While TINCUP provisions are generally widely accepted as desirable, compliance oversight of the ordinance has been left to volunteer watchdog groups, opposition candidates, or the media. Complaints about violations of the Ordinance are referred to the District Attorney (DA), who then may refer them to the State Attorney General or to the FPPC. The DA's office reported to the Grand Jury that they have occasionally found violations and imposed fines. However, since 1992 no misdemeanor or felony criminal prosecutions have taken place under TINCUP.⁶ Any civil enforcement of TINCUP by a private individual must be preceded by notice to the District Attorney, who may investigate for 90 days before deciding whether to pursue civil action. Only after the DA declines action may another party pursue a civil action.

FPPC Enforcement and SB1226

In 2013, San Bernardino County contracted with the FPPC for enforcement of that County's Campaign Finance Reform Ordinance. San Bernardino County was the first and only local jurisdiction (city or county) in California to contract with the FPPC for enforcement of a local ordinance. San Bernardino County budgeted just under \$500,000 over a two-year period for FPPC enforcement.⁷ Through February 2014, approximately 13 months into FPPC enforcement in San Bernardino, the FPPC had only billed the County for a little more than \$9,000⁸, although San Bernardino had not yet begun an election year cycle at that time.

In February 2014 the Orange County Board of Supervisors approved proposed legislation to empower the FPPC to assume enforcement responsibility of the Orange County Campaign Finance Reform Ordinance. This approval took place after Board members visited San Bernardino County officials to inquire about San Bernardino's hiring of the FPPC for campaign finance enforcement. Subsequently, at the Board's behest, the State Senator from Orange County's District 34 introduced SB1226 to allow such enforcement in Orange County by the FPPC.

As of this writing, SB1226 has been amended to allow FPPC enforcement of campaign finance ordinances in any California city or county that requests it. The bill has been reported out by the Senate Elections Subcommittee with unanimous approval, and will come up for a vote in the Legislature sometime in mid-year of 2014.

⁶ The DA's office was unable to produce any data regarding TINCUP enforcement when requested to do so by the Grand Jury. Representatives of the office did not refute that no criminal prosecutions under TINCUP had taken place since 1992.

⁷ San Bernardino County staff reported to the Orange County Grand Jury that for the 13 month period from 1/13 through 2/14, the FPPC billed SB County \$9,397.

⁸ Information obtained through an inquiry of San Bernardino officials by the Grand Jury

Current Oversight and Enforcement in Orange County

In addition to individual agency and department management, the following County-wide offices are charged as part of their responsibilities with monitoring, uncovering, investigating, or penalizing ethics violations in County government.

District Attorney

The Orange County District Attorney (DA) is charged with investigating all possible criminal activity, including State and local ethics violations, campaign law violations, as well as Accusations by a Grand Jury of corruption and malfeasance by public officials. The DA's office is the only office that can bring resulting criminal prosecutions, unless the case is referred by the DA to the State Attorney General. The DA is also charged under TINCUP with investigating and enforcing civil violations of the ordinance. Such investigations may result in settlements that include corrections of violations (such as amended filings or return of contributions), or fines up to \$5,000.

Internal Audit

The Internal Audit Department assists agencies and departments regarding County policies and procedures, including advising Human Resources on revisions to these. The Department manages the County-wide OC Fraud Hotline and may conduct or oversee investigations of ethics complaints. The Audit Oversight Committee has proposed to rename the OC Fraud Hotline as the Fraud, Ethics, and Compliance Hotline, with the specific purpose of publicizing that in addition to fraud complaints, ethics and other complaints are accepted. The Internal Audit Department also offers ethics training to agencies and departments.

Human Resources

The Human Resources Department addresses issues related to employee relations, such as hiring, rating, promotion and firing practices, and policies relating to, for example, nepotism and sexual harassment. In many cases, the Human Resources Department would also be the first referral from a department in cases of suspected misuse of funds or fraud.

Registrar of Voters

The Orange County Registrar of Voters (Registrar) is charged with receiving and filing election related forms, including campaign establishment and financial reporting (460) forms. To fulfill this responsibility, the Registrar maintains an electronic database of filings. The database is searchable by a number of criteria, including candidate name, committee name, and elections dates.

The Registrar also issues reminders of filings due from committees, and levies fines for late filings. Interestingly, the Registrar's office can levy fines for late filing by committees; however,

they have no power to fine committees which never file required forms. Following an election, the Registrar of Voters office conducts an audit of each form filed. Registrar of Voters senior management described these audits as “cursory”. In addition, the Registrar of Voters conducts numerous training programs for campaign staff and candidates regarding campaign and reporting legal requirements. In the Grand Jury’s opinion the Registrar of Voters office thereby fulfills all of its State mandated obligations.

Also, the California State Board of Equalization (the State’s taxing authority) does random audits of campaign filings. The Grand Jury did not obtain information about what percentage of filings are audited by the Board of Equalization.

The Clerk of the Board

The Clerk of the Board is charged with receiving and filing the State required Statement of Economic Interest California Form 700 from County officials. The Clerk maintains an electronic database of the forms and is required by the FPPC to audit at least 20% of the filings every year. Audits look for anomalies in forms, such as major investment and asset changes from year to year. *Audits do not investigate the truthfulness of filings.*

The Clerk of the Board also receives registration forms and filing fees from County lobbyists. An electronic database of filings is maintained that is accessible by lobbyists and searchable by the public by lobbyist name. Lobbyists are required to keep registration information up to date, however no audits are conducted and the process is an “honor system” according to senior staff in the Clerk’s office. The Clerk sends reminders to lobbyists each year to renew their filings, and fines are specified for late registration. One fine in 2014 is the only such fine that senior management of the Clerk’s office recalls ever being levied.

In addition, the Clerk of the Board receives and files a report when a County employee receives a “gift” such as lunch or dinner within the function of their job, such as when attending or speaking at a luncheon or dinner.

Grand Jury

The constitution and operations of the Grand Jury are specified under State law. Governance of the Grand Jury is under the Superior Court. The Grand Jury may investigate and issue reports regarding almost any aspect of County government as well as City government, School Districts, and Special Districts within the County. Such investigations can include ethics related issues and violations. The Grand Jury may subpoena individuals to testify, or records relating to an investigation. The Grand Jury may also bring an Accusation against a government official for corruption or malfeasance in office. The District Attorney is charged with prosecuting Accusations brought by the Grand Jury. No formal Accusations have been brought by the Orange County Grand Jury since 1994.

Grand Jury members are chosen from a pool of volunteer applicants and serve a one-year term. The limited Grand Jury budget precludes extensive use of outside lawyers, investigators, or other outside services for very lengthy and complex investigations.

Ethics Commissions in California Cities and Counties

The 2013-2014 Orange County Grand Jury surveyed city and county ethics commissions in California and other jurisdictions in order to understand this method of monitoring and enforcing ethics, and campaign finance and reporting compliance. A table showing the results of the survey is shown in the Appendix. The data in the table will give the reader an idea of the wide variation of commission characteristics relative to the government operations they oversee.

The following is a summary of the information the Grand Jury learned.

Characteristics

Name: All but one of the commissions studied has the name Ethics Commission. Kern County has a Campaign Finance Hearing Board. Ventura calls theirs the Campaign Finance Ethics Commission.

Age: The oldest California ethics commission (in its current format) is the Los Angeles City Ethics Commission, established in 1990.

Scope: The commissions which the Grand Jury studied address, to varying degrees, Federal, State and local laws and policies regarding:

- a) elections,
- b) election campaign financing,
- c) conflicts of interest of elected and appointed officials,
- d) reporting of financial interests of elected and appointed officials,
- e) public records disclosure, and
- f) fraud, waste, and other illegal or unethical behavior in government operations.

Authority: Authority for all the commissions comes from either a city charter or municipal code section or ordinance. Some ordinances were voter approved.

Governance: All are governed by a Board of Supervisors or a City Council, which controls budget.

Size: The size of the commissions is either three, five, or seven commissioners (not including hired staff).

Appointment: Done by a combination of appointed or elected officials. Only the Oakland Commission appoints some of its own members.

- Term:* Varies from three to six years.
- Pay:* Only Los Angeles City and Kern County Commissions provide pay for Commission service. The Los Angeles Commission provides \$50 per meeting.⁹ Kern County provides \$125 for a half day, and \$200 for a full day.
- Paid Staff:* Paid staff varies from none in San Jose and Kern County to 21 in Los Angeles. Note that commission members are not considered paid staff. Paid staff performs all of the functions of a commission except hearing and ruling on cases.
- Budget:* Of those commissions for which budget information was available, the highest was \$4.2 million for San Francisco, which included \$1.9 million of campaign matching funds.

Functions and Operations

The ethics commissions studied by this Grand Jury performed some or all of the following functions:

1. Receiving mandated filings
2. Collecting data
3. Educating regarding compliance
4. Monitoring compliance
5. Receiving complaints of possible violations
6. Issuing subpoenas, investigating and ruling on possible violations
7. Enforcing with fines and other sanctions
8. Issuing formal and informal opinions and advice regarding compliance
9. Making recommendations for additions and modification to applicable laws
10. Administering candidate matching funds programs

All of the commissions the Grand Jury studied have at least one currently practicing or former attorney as an appointed member, since much of a commission's work deals with interpreting and applying laws. Legal work for the commissions is performed either by full or part-time attorneys on the paid staff, attorneys working as independent contractors, the City Attorney, County Counsel, or volunteer attorneys.

⁹ The Grand Jury was told by Los Angeles Ethics Commission staff that current L.A. Ethics Commissions all decline to receive pay.

Commissions use varying degrees of automation for collecting, analyzing, and distributing data and information. Some use commercially available software packages, and some have developed their own applications. Functionality ranges from simply scanning and indexing documents by a few categories, to extensive analysis and some automated intelligence. Examples of the latter are sophisticated database search capabilities such as analyzing campaign contributions from suspiciously similar names or from connected businesses to uncover hidden campaign contribution limit violations.

One commission, Oakland, is charged with setting the salaries of City Council members.

METHOD OF STUDY

The Grand Jury performed the following tasks in the completion of this study:

1. Reviewed various ethics laws, codes of conduct, policies, guidelines, the Orange County campaign reform ordinance, and the County of San Bernardino campaign reform ordinance
2. Interviewed members of the Orange County Board of Supervisors and senior management and staff of the Office of the District Attorney, the Registrar of Voters, the Internal Audit Department, the Clerk of the Board, County Counsel, and the FPPC.
3. Reviewed characteristics of existing ethics commissions in California that have oversight responsibility over senior elected and appointed officials, including their functions, powers, budgets, history, and governance
4. Interviewed ethics commission management and staff of commissions in
 - a. Ventura County,
 - b. the City and County of San Francisco,
 - c. the City of Los Angeles,
 - d. the City of San Diego, and
 - e. the City of Seattle, Washington
5. Received information from the Office of County Counsel of San Bernardino County
6. Analyzed ethics commission operations and results, as well as past Grand Jury reports from Orange and other counties, and relevant literature, to determine which best practices might apply to Orange County

ANALYSIS

Deficiencies in Current Ethics and Campaign Reporting Enforcement

The Grand Jury found that there are a number of deficiencies in current ethics and campaign reporting enforcement in Orange County. Deficiencies include:

1. Ethics Oversight

There are many areas where literally no one in County government is monitoring ethical behavior. For example, officials who make decisions regarding County contracts, relations with outside parties such as labor unions, or lawsuits, are relied upon to monitor themselves for conflicts of interest, and recuse themselves from decisions where appropriate. No officially authorized body is correlating, for example, California Form 700 economic interest data, or California Form 460 campaign data with decisions and votes about contracts to monitor such potential conflicts. The public, the news media, and usually political opponents are the ones who point out these instances.

This kind of oversight is what ethics commissions do, to call out illegal behavior, or behavior which may not go so far as to be illegal, but would generally be regarded as unethical.

An example of the latter, and of a questionable provision of state and federal law, is when campaign contributions correlate closely with government contracts awarded to those who contribute. Because campaign contributions are not considered “personal gain” to a candidate under the law, the practice is not illegal. However, it could certainly be viewed questionably as unethical “quid-pro-quo.”

This is a particular problem when such contributions are given to independent PACs (Political Action Committees) for which contribution limits tend to be higher than limits for individual candidates, or to “Super” PACs, for which there are no contribution limits. When PACs then donate to candidates, the original source of the contributions can be disguised, and contribution limits can be thwarted.

2. Campaign and Lobbyist Reporting Oversight

While the Registrar of Voters and the Clerk of the Board fulfill their legal responsibilities over campaign and lobbyist reporting, neither has the authorization, not to mention the budget and the staff to be thorough oversight bodies. The Registrar of Voters office collects forms and campaign reporting information, but senior management of the office acknowledged in interviews with the Grand Jury that they only do a “cursory” review to verify the completeness and accuracy of information. Indeed, the Grand Jury found from an examination of samples of campaign reporting 460 forms from past elections that many had important required information missing such as names of campaign officials, addresses, contribution amounts, cumulative

contribution amounts, etc. Also, even when the Registrar knows that campaign forms are due and has sent out letters reminding treasurers to submit them, there is no authority for the Registrar to do anything further if forms are not filed.

The Clerk of the Board has responsibility to collect lobbyist registration forms and maintain reporting information. The Clerk, however, does not have the authority, the budget, or staff, to monitor the correctness of information submitted. Senior management was only able to identify one fine ever levied for a filing violation. Lobbyist registration is on an honor system.

3. TINCUP Oversight

As mentioned above, there is no official authorized body in the County that comprehensively monitors compliance with the TINCUP ordinance provisions. Complaints about violations of the Ordinance are referred to the District Attorney, who then may refer them to the State Attorney General or to the FPPC. The District Attorney has occasionally found violations and imposed fines; however, *since 1992 no criminal prosecutions have taken place under TINCUP.*

A very active private citizen in the County has for years taken on the responsibility of monitoring TINCUP compliance and has forwarded complaints to the District Attorney for investigation. This individual was the author of many of the provisions of TINCUP. However, this individual cannot do it forever, and there is no existing body which would take over these responsibilities.

4. Law and Policy Training, Advice, Opinions, and Recommendations for Change

Most of the ethics commissions which the Grand Jury studied, including the largest and most comprehensive ones (Los Angeles, San Francisco, and San Diego) offer government officials, candidates, and campaign officials extensive education and training, as well as informal advice and official written opinions about compliance. They also make recommendations for changes and additions to ethics laws and policies.

The Grand Jury learned from ethics commission staff in other jurisdictions and from Orange County elected officials that such advice, opinions, and particularly education and training is very valuable. Ethics laws and policies, and particularly campaign finance and reporting laws can be very complicated and difficult to follow. (That is why skilled campaign treasurers and staff are highly prized by candidates.) Proper training and advice helps candidates avoid innocent mistakes and oversights, which are the most common types of violations.

In Orange County, no official body is charged with offering advice or providing written opinions about, or suggesting changes to ethics or campaign finance and reporting laws or policies. Senior staff of the Registrar of Voters told the Grand Jury that inquiries about campaign laws are referred to County Counsel. Senior Staff of County Counsel told the Grand Jury that people making such inquiries are referred to their own private attorneys.

While ethics training is mandatory for County officials, training about campaign laws is not. Campaign law training is available from the Registrar of Voters and from the FPPC at the request of candidates.

5. Coordination

A critical deficiency in ethics and reporting enforcement is the lack of coordination among those charged with partial responsibilities in these areas. The agencies and departments performing various functions do not correlate their information and activities in any sophisticated way. For example, it would be valuable to correlate information the Clerk of the Board has about whom lobbyists are representing and about County officials' economic interests, with information the Registrar of Voters has about campaign contributions. It would also be valuable to coordinate information about ethics complaints the Internal Auditor receives with confidential investigations the District Attorney may be conducting, or with Form 460 Economic Interest forms the Registrar of Voters currently receives but does not analyze.

Of particular benefit would be a sophisticated database and analysis software to automate this correlation process. Such software exists. A software package that the Registrar of Voters, as well as offices in other counties use has some of this needed analysis capability. The City of Los Angeles Ethics Commission has developed and uses their own software system, which they offer for sale to other jurisdictions. The Los Angeles software can, for example, automatically detect when a large number of campaign contributions are coming from individuals who work for the same company. Commission staff is then alerted, and can investigate whether coercion is being exercised by the employer. Such instances have been detected and prosecuted in Los Angeles.

6. Audits

As mentioned above, the Registrar of Voters conducts cursory audits of campaign filings after an election. In addition to such cursory audits, which allow forms with critical missing information to go uncorrected, an audit *after* an election does nothing to affect the election itself. More timely audits *before* an election would allow voters to make decisions based on more information about a candidate's campaign and support.

These audits by the Registrar of Voters, along with the audits of 20% of lobbyist filings and the random audits by the Board of Equalization do not constitute a comprehensive audit program. A comprehensive program would include complete audits of important documents such as form 460 (campaign contributions), independent verification of information provided, and follow-up to correct errors and omissions. More importantly, a comprehensive audit program would uncover violations that are not intentional, and encourage correction before the formal process of issuing notices of violations, penalties and fines could take place. This would save time and effort for all parties involved.

7. Transparency

One of the hallmarks of government and campaign ethics is transparency. Transparency is simply making comprehensive, accurate, and up-to-date information available quickly and on-demand to the public. Such transparency is possible today as never before because of information technology and the Internet.

An important element of ethics commissions is that, to varying degrees, they use comprehensive databases and create public websites with information about campaign reporting and finance and ethics enforcement activities available to the public. Having this information and these activities spread among various groups, without coordination and consolidation, makes such transparency difficult if not impossible. Ethics commissions with this specific responsibility can and do create such transparency. The reader is invited to visit the San Francisco Ethics Commission website at <http://www.sfethics.org/> and the Los Angeles Ethics Commission website at <http://ethics.lacity.org/> as notable examples.

8. Independence

In interviews with ethics commission senior officials in other jurisdictions, the Grand Jury was consistently told of the importance of having a commission and staff which is as independent as possible from those whom they are charged with monitoring. Clearly, it is a conflict for government officials whom the commission monitors to have ultimate control over the commission, including appointment and budget. Clearly it is also a conflict for the DA's office to have responsibility for investigating and prosecuting violations of campaign laws, when, in fact, the DA is an elected official who campaigns for office. Both of these are cases of the "fox guarding the henhouse." Quoting Cityethics.org, a web based organization dedicated to "making government more ethical"

*"The fact that elected officials like to have the final say is itself a conflict of interest, because it is certainly not in the public interest to give them this final say. The more independent the ethics commission, the more it will be trusted by city residents, the less it will be used for political purposes and the more respect its decisions will be given. When an ethics system is not perceived as independent and ethics accusations are politicized, the ethics system can actually undermine the very confidence in government it is supposed to protect."*¹⁰

Every organization mentioned previously as having enforcement responsibilities in Orange County is under some degree of control by the Board of Supervisors, with the head of the organization either appointed directly by the Board, and/or the Board approving their budget appropriations.

¹⁰ <http://www.cityethics.org/content/model-code-introduction>, viewed 5/17/14

Even the Grand Jury is subject to budget approval by the Board of Supervisors. The Grand Jury is appointed to serve a one-year term and has a very minimal budget. It has no power to levy fines or impose sanctions. Because of limited budget and time, it would be impractical for the Grand Jury to conduct lengthy or complex investigations, hire experts, or purchase or pay for development of computer hardware and software to support analyzing campaign and lobbyist filings.

Advantages and Disadvantages of FPPC Oversight and Enforcement

Advantages

The FPPC has deep and lengthy experience in investigating and enforcing campaign and election law. They do so all over California and have done so in Orange County. They have the staff and infrastructure already in place to begin enforcement. Although their staff would have to learn the details of the TINCUP ordinance, it is similar to other such laws, including the ordinance the FPPC is now enforcing in San Bernardino County. Thus, effective oversight and enforcement of TINCUP could begin very quickly after the approval and contract process.

Depending on how an FPPC contract with Orange County would be structured, it may allow the County to have significant flexibility in how it uses FPPC services. The San Bernardino contract has the FPPC billing on an hourly basis. If this is the structure of an Orange County contract, without a long-term commitment or guarantee by the County, this “pay-as-you-go” approach would mean costs could be predictable and controllable. The County could have flexibility to cut back on or terminate services if they become too expensive or otherwise unsatisfactory. The Grand Jury learned however, that the FPPC may wish Orange County and other jurisdictions with which they contract to fund part-time or full-time positions to support the additional work, which may limit such flexibility.

Disadvantages

The primary disadvantage of FPPC enforcement of TINCUP is that it defeats one of the main purposes of an ethics oversight body, which is to be a coordinating and central body of *all* ethics and reporting monitoring and enforcement activities in the County. The TINCUP ordinance *only* addresses campaign reporting and contribution limits relative to twelve elected offices in the County. It does not address the entire spectrum that an ethics body would address, including ethics oversight for other elected officials in the County such as School Boards and Special Districts, non-elected officials including those on various boards and commissions, as well as lobbyist reporting. Neither does it include the important tasks of coordinating such enforcement and correlating collected information in a central database.

There is also a question about whether TINCUP’s current contribution limits would remain the same under FPPC enforcement. An FPPC spokesperson has been quoted as saying that

enforcement of TINCUP's current limits would require specific legislative authority.¹¹ When San Bernardino County hired the FPPC, they increased their local contribution limit to be the same as the State limit of \$4,100 for Assembly candidates.¹² The stated reason was to simplify the process for FPPC staff. A local ethics body enforcing Orange County's own campaign ordinance would entirely avoid this potential problem.

Because an FPPC contract may allow flexibility, it may have to be regularly renewed by the Board of Supervisors, and enforcement activities would be much easier to terminate than would those of a permanently established commission. The FPPC would remain strictly under the control of the Board, which could terminate the contract for whatever reason it wished. This factor significantly reduces the independence of enforcement compared to a permanently established County ethics body.

It is also noteworthy that the recent trend of U.S. Supreme Court decisions has been to strike down campaign contribution limits as violations of the First Amendment right to free speech.¹³ Proponents of eliminating contribution limits also point out that limits favor incumbents over newcomers. This is because newcomers must spend more money, and raise it from a smaller number of supporters who know them, to achieve the same name recognition and media exposure that incumbents already enjoy. If the trend continues and the Court eventually rules all contribution limits as unconstitutional, TINCUP contribution limits could be invalidated and become irrelevant. In that case, the efforts and costs to establish FPPC enforcement in Orange County will have been partly wasted and no longer needed.

The Grand Jury has concluded that the disadvantages of FPPC enforcement of TINCUP may outweigh the advantages. This conclusion is based on its limited scope, its negative impact on coordinated enforcement, its possible repeal of current TINCUP contribution limits, and its control by the Board of Supervisors versus truly independent enforcement.

Solutions for Orange County

The Grand Jury has concluded that the ideal solution for addressing the deficiencies in current ethics and campaign and lobbyist reporting oversight and enforcement is an ethics commission, similar to those studied and described above. An ethics commission would consist of a body of independent commissioners who adjudicate hearings regarding violations and penalties, and a paid staff, overseen by the Commissioners, to carry out all of the duties of the commission. These duties would include receiving and investigating complaints, conducting audits, collecting and analyzing consolidated data, providing training, education, and opinions, etc. The commission would be a single consolidated body performing the functions now spread among many departments and agencies in the County.

¹¹ http://www.voiceofoc.org/countywide/county_government/article_d206351e-94d2-11e3-85df-0019bb2963f4.html viewed 5/10/14

¹² <http://sbsentinel.com/2014/01/county-waters-down-political-donation-limitation-ordinance/>, viewed 5/26/14

¹³ See, e.g., <http://www.voanews.com/content/us-supreme-court-overturns-limits-on-political-campaign-donations/1884818.html>, viewed 5/17/14

Recognizing, however, that the Board of Supervisors is moving in the direction of hiring the FPPC for TINCUP oversight, enforcement, and possibly training,¹⁴ the Grand Jury believes that an independent office performing some of the functions of an ethics commission is still needed. It would function like administrative staff of an ethics commission, but would not include commissioners to conduct hearings or govern enforcement. Enforcement and some investigation would still be done in those agencies where it is currently being done. The office could be called the “Office of Ethics and Compliance”, and would have the following characteristics:

Scope: Data collection, monitoring, investigation and recommendations for enforcement of County ethics laws and policies including Code of Conduct, gift limitations, and conflict of interest. Possible TINCUP and State law violations would be referred to the FPPC or the DA. Monitoring and enforcement would not include fraud and waste or human resources related policies such as sexual harassment or nepotism, since these are now covered under the Human Resources Department and individual agency and department responsibilities.

Authority and Governance: County Ordinance

Paid Staff: A Director appointed by the Board of Supervisors on nomination by either a panel of the past three available retired Presiding Judges of the Superior Court, or by the Orange County Grand Jury Association; two to four full-time staff selected by and reporting to Director. Budget would be a consideration here, along with the degree to which staff attorneys would be used versus outside counsel. Legal services should be independent of County Counsel or the DA.

Jurisdiction: The Office should have jurisdiction over every County department, agency, commission, board, special district, and joint powers authority regardless of whether the head of such a body is elected or appointed, as well as over the elected leadership of the County.

Budget: Mandated budget from the County General Fund to support paid staff, outside services such as legal services, and operations; yearly mandated baseline with automatic cost-of-living increases. No more than 10% reduction cumulative allowed every three years. (See *Potential Costs*, below.)

Functions and Operations

- a) Receiving and maintaining campaign, lobbyist, and economic interest filings
- b) Collecting and maintaining filing data
- c) Education and training regarding compliance
- d) Monitoring compliance

¹⁴ The details of FPPC engagement have yet to be defined by the Board

- e) Receiving complaints of possible violations
- f) Issuing subpoenas and investigating possible violations
- g) Recommending settlements, fines, and penalties to appropriate enforcing agencies and following-up to see if recommendations were implemented
- h) Auditing economic interest, campaign, and lobbyist filings
- i) Issuing formal and informal opinions and advice regarding compliance
- j) Making recommendations for additions and modification to applicable laws

Independence: To maintain as much independence as possible for the Office, the Grand Jury recommends:

1. Permanent establishment through ordinance, and guaranteed budget
2. Independent counsel selected by the Office
3. Director appointment as noted above

Hotline: The Internal Audit Department currently manages the OC Fraud Hotline. As of this writing, the Audit Oversight Committee has proposed that the Hotline be renamed the Fraud, Compliance, and Ethics Hotline, emphasizing that it addresses all of these areas. The Grand Jury concurs with this proposal and recognizes the competent job that the Internal Audit Department has done with the Hotline. The responsibility for Hotline management should remain with the Internal Audit Department. Calls regarding possible ethics violations and related legal violations would be forwarded to the Commission for investigation.

Potential Costs

Costs of the Office would be primarily for staff and outside (primarily legal) services. The San Diego Ethics Commission has five staff members and hires outside attorneys for legal services. Their budget appropriation was \$781,000 in 2012 and \$977,000 in 2013. With a smaller staff, and smaller scope of responsibility than San Diego (i.e. not including local campaign ordinance enforcement that may be done by the FPPC), the Grand Jury estimates the cost for an Office of Ethics and Compliance in Orange County would be less than \$500,000 per year. Note that if costs for hiring the FPPC are budgeted at \$250,000/yr., the same as San Bernardino County, total

yearly costs for the whole program could be about \$750,000 for roughly the same scope of responsibility as the City of San Diego's ethics commission.

Implementation of an Office of Ethics and Compliance may result in some reductions of current costs. If a commission takes on some of the responsibilities for collection and reporting of campaign, economic interest, and lobbyist information from the Registrar of Voters and the Clerk of the Board, costs could be reduced in those departments. Taking on education and training responsibilities of the Registrar of Voters and Internal Audit would also reduce costs in those departments. Also, if the commission does some of the investigation and receiving of complaints now performed by the DA and Internal Audit, their current costs would also be reduced.

In order to further gauge the estimated costs for an Orange County ethics body compared to other jurisdictions, please refer to the discussion following the table shown in the Appendix.

The Grand Jury believes that at the very least, the Board of Supervisors should address the deficiencies in current ethics and campaign lobbyist reporting oversight and enforcement by:

1. Charging and appropriating funds for an existing agency in the County, perhaps the Internal Audit Department, to perform comprehensive oversight of ethics compliance. This would include not just receiving and forwarding complaints, but conducting investigations, recommending actions, offering advice to officials and candidates, and recommending additions and changes to laws and policies. The agency should be empowered to perform analysis across multiple sources of information to detect subtle or hidden violations (see no. 3, below) and offer regular (if not mandatory) training and education programs.
2. Charging and appropriating funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits, and some investigation and verification of data provided.
3. Charging and appropriating funds for an existing agency in the County (perhaps the CEO Office of Information Technology) to create and manage a consolidated, comprehensive database of economic interest and campaign reporting data and information. It should be available to the public via the Internet and should include complex search capability on a number of criteria.
4. Add an additional degree of independence for the three functions described above by mandating their appropriations through an ordinance which also sets a floor under the percentage of cuts to the appropriation allowed year to year.

Objections to an Orange County Ethics Body

The response of the Board of Supervisors to the 2012-2013 Grand Jury recommendation for an Orange County ethics body centered around two main objections:

1. In addition to the Grand Jury, a “host of coordinated accountability and oversight mechanisms...exist within the County for addressing improper behavior”, and
2. An Ethics Commission would be “another bureaucratic structure at taxpayer expense” that would be “practically unnecessary...irresponsible and wasteful.”¹⁵

The current deficiencies in the County for addressing improper behavior are outlined above. As to whether an ethics body would be bureaucratic and unnecessary, or establishing one would be irresponsible and wasteful, the Grand Jury considered the following:

- a) A staff of approximately three to five could hardly be called bureaucratic.
- b) Summaries of FPPC enforcement actions on the FPPC’s website appear to show that the FPPC has concluded only thirteen settlements of violations of election law in Orange County since 1990?¹⁶ This number can be compared, for example, to 10 such settlements in the City of San Diego and 49 settlements in the City and County of San Francisco in 2012 alone, both of which jurisdictions have ethics commissions. The conclusion has to be that ethics commissions work to uncover unethical and illegal behavior which is not uncovered elsewhere. The Grand Jury disagrees that this function is unnecessary.
- c) Would establishment of an ethics body be irresponsible? The Grand Jury finds it hard to understand why uncovering unethical, illegal, and corrupt behavior by those in positions of public trust is irresponsible. Indeed, it is irresponsible *not* to uncover, investigate, and prosecute such behavior.
- d) Would establishing an ethics body be wasteful? Orange County is the third largest government jurisdiction in California in terms of population, behind the County of Los Angeles and the City of Los Angeles, and roughly equal in population to San Diego County. The Grand Jury is proposing an estimated expense for an ethics body that is less than 0.01 of one percent of Orange County’s total budget.

Orange County receives less of a percentage of the property tax it pays to the State than any of the other 57 counties in California. This factor, as well as the recent ruling taking additional vehicle license fees from Orange County, and the current economic climate have put extreme pressures on Orange County’s budget. Nevertheless, calling the establishment of an ethics body wasteful means that it would not serve an important or useful function. The Grand Jury believes that there is no more important or useful

¹⁵ Response to Grand Jury report by County Executive Office, accessed 4/8/14 at http://www.ocgrandjury.org/pdfs/2012_2013_reports/County%20Executive%20Officer062513.pdf

¹⁶ See FPPC website at <http://www.fppc.ca.gov/Act/2009AppendixIV.pdf>, viewed 5/23/14

function by public officials than maintaining the trust of the population and assuring the most ethical and transparent political environment possible.

The Grand Jury has concluded establishing an ethics body, or at least addressing the deficiencies in current oversight and enforcement would greatly serve Orange County residents in creating an atmosphere of trust, transparency, and high ethical respect.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of existing ethics commissions, and of oversight and enforcement in Orange County of ethics laws and policies, and of campaign and lobbyist reporting, the 2013-2014 Orange County Grand Jury has arrived at six principal findings, as follows:

F.1. Ethics monitoring and enforcement is important, not just to punish violators, but to promote understanding of ethical guidelines and to remind public officials, employees, and candidates that their behavior is under close scrutiny. Vigorous ethics monitoring and enforcement is necessary to develop and maintain trust in government.

F.2. Governmental ethics includes much more than just campaign finance. It covers prohibitions against personal and financial gain, requirements for transparency, and requirements for fair process and merit based decision making. Most importantly, it includes prohibitions of behavior that is unethical but may not be illegal, such as campaign contributions as quid-pro-quo for government favors and lucrative contracts.

F.3. Orange County is subject to the same potential for corruption as anywhere else, yet monitoring and enforcement of ethics, and campaign and lobbyist reporting in the County is deficient in a number of areas, including oversight, law and policy advice and recommendations, audits, coordination, transparency, and independence.

F.4. Independence in monitoring and enforcing of ethics and reporting violations from those who are monitored is critical. Organizations performing these functions in Orange County, including the District Attorney, Internal Audit, Human Resources, The Registrar of Voters, the Clerk of the Board, and even the Grand Jury, are not truly independent since appointment of their head officials, and/or their budget appropriations are controlled by the Board of Supervisors.

F.5. Hiring the FPPC to enforce the County's TINCUP ordinance has some advantages, but would have a number of drawbacks:

- a) It could more than double TINCUP contribution limits.

- b) A contract with the FPPC would be under the control of the Board of Supervisors, while at the same time the FPPC would be responsible for policing the Board.
- c) Enforcement would only include civil and not criminal violations.
- d) It would be a pioneering and entirely new enforcement model in California versus the already established ethics commission model.
- e) It may soon become irrelevant because campaign finance regarding contribution limits may disappear in the near future given the current trend of decisions by the U.S. Supreme Court.

F.6. Ethics bodies in California function effectively to monitor and enforce campaign finance laws as well as other ethics laws and policies, and serve as a check and balance on government officials, employees, and candidates.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of existing ethics commissions, and of oversight and enforcement in Orange County of ethics laws and policies, and of campaign and lobbyist reporting, the 2013-2014 Orange County Grand Jury makes the following four recommendations:

R.1. The Board of Supervisors should place a proposition on the next available general election ballot to establish an Orange County Campaign Reporting and Ethics Commission, similar to commissions in other jurisdictions in California. (**F.1., F.2., F.3., F.4., F.5., F.6.**)

R.2. The Board of Supervisors should carefully weigh the drawbacks to FPPC enforcement outlined in the Findings before pursuing it as an option to enforcing the County's campaign finance ordinance. (**F.5.**)

R.3. If the Board of Supervisors contracts with the FPPC for enforcement of the County's campaign finance ordinance, it should establish an Office of Ethics and Compliance charged with receiving complaints, monitoring, and investigating possible ethics law and policy

violations, and offering training, advice and recommendations regarding such laws and policies. The Office should have the following characteristics:

- a) a director nominated independently from County government officials,
- b) a budget mandated by ordinance, with a floor on year-to-year reductions
- c) paid staff, including its own inside or outside counsel, and
- d) power to subpoena records and persons. (F.1., F.2., F.3., F.4., F.6.)

R.4. At a minimum, to address current deficiencies in ethics and campaign and lobbyist oversight and reporting, the Board of Supervisors should:

1. Charge and appropriate funds for an existing agency in the County to perform comprehensive oversight of ethics compliance.
2. Charge and appropriate funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits.
3. Charge and appropriate funds for an existing agency in the County to create and manage a consolidated, compressive database of economic interest and campaign reporting data and information, available to the public via the Internet. (F.1., F.2., F.3., F.4., F.6.)

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses to Findings **F.1.**, **F.2.**, **F.3.**, **F.4.**, **F.5.**, and **F.6.** are required from the Board of Supervisors

Responses to Recommendations **R.1.**, **R.2.**, **R.3.** and **R.4.** are required from the Board Supervisors

APPENDIX: Ethics Commission Survey Results
 (Figures are for FY 2012-2013 unless otherwise noted)

	ORANGE COUNTY	CITY OF SAN DIEGO	CITY OF LOS ANGELES	CITY AND COUNTY OF SAN FRANCISCO	COUNTY OF SAN BERNARDINO
Population	3,090,132	1,328,073	3,866,133	826,003	2,081,313
Total budget	\$5.6 billion	\$2.8 billion	\$20, billion	\$7.9 billion	\$4.3 billion
Total employees	17,000	19,500	42,000	19,919	
Agency name		City of San Diego Ethics Commission	Los Angeles City Ethics Commission	San Francisco Ethics Commission	Office of Compliance and Ethics (OCE)
Authority		City Charter, City Ordinance	Voter approved proposition, City Ordinance	Charter Amendment, voter approved	Appears to be part of county government structure.
Date established		2001	1990	1993	
Mission		City's governmental ethics laws including education, training, investigation, advice, recommendations, enforcement	Shape, administer, and enforce laws regarding governmental ethics, conflicts of interest, campaign financing, and lobbying,	Education, training, complaint investigation, statistical reporting, advice, audits, recommendations, enforcement,	Operate a strategic countywide compliance and ethics program, ensuring regulatory and ethical
Governance /Budget		City Council	City Council	Board of Supervisors	Appears to be county CEO.
Purview (elections, elected, staff, cities, county)		Political activities of elected officials, candidates, political committees, com. Treasurers, public employees, lobbyists, 1,500 people	Campaign finance audits, candidate matching funds, lobbyist registration and disclosure, city official financial	Elections, elected officials, candidates, city & county employees, lobbyists, school & college board. Jurisdiction over investigations, subpoena, opinions, enforcement proceedings, fines, oral, written informal & formal	
Actions		Investigations, subpoena power, outreach & education, advice letters, fines, audits	Investigations, campaign funding, training, education, whistleblower hotline, audits, fines.		Monitor changes in state laws, recommend policies, develop internal controls, audits, helpline.
Whistleblower hotline (Y, N)		Y -@ Auditor/Controller's office	Y	Y -@ Controller's Office	Yes, 3rd party is host.
Body size		7	5	5	Appears to be 2 listed on web-site.
Jurisdiction Population		1,328,073	3,866,133	826,003	
Jurisdiction Budget \$		\$2.8 billion	\$20 billion	\$6.7 billion	
Jurisdiction no. of employees		19,500.00	42,000		
How appointed		By Mayor on nomination of Council and City Att'y, approved by majority of Council	Appointed by the Mayor, City Council President, CC Pres Pro Tem, City Attorney, and Controller	One ea. appointed by Mayor, BoS, City Attorney, DA, Assessor	
Term		Four years	Five years	Six years	
Pay		None	\$50 per meeting/waived by all	No compensation except for "City benefits"	
Paid staff		5 (attorneys would be an asset)	21 -not covered by civil service procedures!	18 includes a full-time educator & 2 investigators but need more.	
Commission Budget \$		\$781K FY 2012 / \$977K FY 2013	\$2.4 million FY'12-13	\$4.2 million '12-13 (\$2.3 non-grant)	
Collect fines & fees?		Y -\$25,000 collected in 2013	Y -\$220,200 collected in 2013	Y - + Lobbyists, campaign consultants (\$82,000 2013)	
Products		Annual report, training, audits, info website, formal & informal advice letters, stipulations	Campaign finance audits	Annual report, training, audits, campaign info website	

APPENDIX: Ethics Commission Survey Results (cont'd)

(Figures are for FY 2012-2013 unless otherwise noted)

	COUNTY OF VENTURA	KERN COUNTY	CITY OF OAKLAND	CITY OF SAN JOSE	CITY OF SEATTLE
Population	834,398	855,498	399,699	983,574	
Total appropriations	\$1.6 billion		\$1 billion	\$2.9 billion	
Total employees			3,898	5,655	
Agency name	Ventura County Campaign Finance Ethics Commission	Campaign Finance Hearing Panel	Public Ethics Commission	San Jose Ethics Commission	Seattle Ethics and Elections Commission
Authority	County Ordinance	Voter approved ordinance	City Charter	Municiple Code	Budget set by City Council
Date established	2003 or 2004	2003	1996		1992
Mission	Consider formal complaints of and possible Ethics Ordinance violations		Ensure fairness, openness, honesty and integrity in city government.	Monitors compliance w/ all ethics and campaign ordinances	Administer, interpret and enforce the Seattle Ethics Code
Governance /Budget	Board of Supervisors	County Board of Supervisors	City Council	City Council	Mayor and City Council
Purview (elections, elected, staff, cities, county)	Campaign Finance for candidates -County only, <u>no</u> lobbyists, no training or education, no audits. County	Campaign finance violations under Kern County ordinance (campaign contributions)	Campaign finance, conflicts of interest, city council code of conduct, transparency, public financing, lobbyist	Campaign and ethics regulations of elected officials	Interpreting and applying the Seattle Ethics, elections, Election Pamphlet, and Whistleblower Codes.
Actions		Hears administrative actions re: alleged ordinaance violations	Set the salaries of city council members; investigations, audits, public hearings, subpoenas, fines, penalties.	of violations of the Code and makes recommendations for enforcement action where appropriate	Complaint driven investigations, includes whistle-blowers, has subpoena power -handles NO Sexual Harrassment
Whistleblower hotline (Y, N)		None listed			Yes
Body size	3	5	7	5	7
How appointed	By Board of Supervisors	Board of Supervisors	3 - by mayor and city council. 4 - recruited and selected by commission.	City Council	Mayor and city council - 3 each and 7th by Commission
Term	Four years	3 years	Three years	4 years	3 years / staggered -may be reappointed
Pay	None	\$200 per day for hearings	None		0
Paid staff	1/2 person (from the CEO's staff)	0	5	none	6.2 paid (some are part-time)
Commission appropriation		0	\$186,000		\$782,000
Collect fines & fees?		Collects fines and penalties.			\$3,000 - \$5,000 in a normal year
Products	Annual Report, revise ordinance prior to each election (every 2 years), letters		Annual report	Annual Report	Hearings / Public Notices & Reports

Commission Cost Discussion

Note that an estimated yearly cost of \$500,000 for an Orange County ethics body would be less than 0.01 of one percent of Orange County's total yearly budget. With comparable functions to those proposed for Orange County, the City of San Diego Ethics Commission's budget is more than double the percentage of the City's total budget compared to the Orange County cost estimate.

Note also that the Los Angeles Ethics Commission budget is 0.01 of one percent of the total City budget, with a total City budget and City staff more than three times the size of Orange County's. Note also that the City and County of San Francisco Ethics commission budget is whopping 0.06 of one percent of that jurisdiction's total budget for a much smaller jurisdiction. However, Los Angeles and San Francisco may not be as relevant since they collect and administer campaign matching funds as one of their main functions, a function not proposed for Orange County.

**SCHOOL BONDS – THE UNTOLD
STORY OF ASSESSED VALUES**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
History of Key Legislation Governing School Bond Financing	5
General Obligation Bonds	6
Why Do School Districts Use CABs?	7
An Overview of Orange County School District Bonded Debt	8
METHOD OF STUDY	10
ANALYSIS	11
Impact of Assessed Values	11
Savanna Elementary School District	14
Cypress Elementary School District	19
Westminster Elementary School District	26
Where Do We Go From Here?	31
FINDINGS	32
RECOMMENDATIONS	33
REQUIRED RESPONSES	34
APPENDICES	36

SUMMARY

The 2013-2014 Orange County Grand Jury has found that taxpayers in the Savanna, Westminster and Cypress Elementary School Districts in northern Orange County will potentially pay significantly higher property tax rates to repay school construction bonds in future years than what voters expected.

These potential higher taxes are likely to result from the assessed values of property in all three of these school districts not growing at the unrealistically high rates projected by the school districts when they asked their voters to approve the bond measures.

The Grand Jury has also found that the money raised through these bond issues has been spent on required capital investments. All three of these districts were faced with schools that in some cases had not been renovated in over 50 years. These districts are making tremendous progress in bringing their schools up to a 21st Century standard.

There has been a considerable amount of negative publicity surrounding Capital Appreciation Bonds (CABs) used for school construction financing over the last several years in Orange County. The issue exploded in 2012 with the revelation that a school district in San Diego County had obtained \$105 million for school construction by floating CABs that will repay the bond investors \$981 million over a 40-year term.¹ This translates to the school district paying approximately \$9 in interest for every \$1 of principal over the 40-year repayment period of the bonds.

The Orange County Register and Los Angeles Times have also published numerous articles on the use of CABs in southern California, including Orange County. The key point that comes out of these articles is that some school districts have chosen to employ very expensive CABs for financing school construction. These CABs can have the ratio of interest to principal paid over the term of the bonds as high as 20:1 on individual bonds. It's not hard to see why taxpayers become upset when they come to understand the amount of interest being paid on these CABs.

While the issue of paying excessive interest with CABs has been well documented, there has been very little attention focused on the potential for taxpayers in some of the districts with CABs to be faced with significant tax increases in the coming years. A very close approximation of the bond issue tax *rate* for each property owner in a school district is calculated each year by dividing the total annual bond issue debt service (principal and interest) for the school district by the total assessed value of the properties in the school district and multiplying that result by \$100,000. When a bond issue is put before the voters for approval, the school district must project the growth of assessed values in the school district over the term of the bond (for example, 25 years) in order to provide the voters with an estimate of future tax rates.

¹ San Diego Union Tribune, August 20, 2012

At the time bonds are sold, the district must confirm the bond issue tax rate does not exceed the following legally mandated thresholds over the term of the bond:

1. \$30 per \$100,000 of assessed values for elementary and high school districts
2. \$60 per \$100,000 of assessed values for unified school districts

Since the debt service required to repay the bond is known, based on the interest rate and term of the bond, the assumption that the school district makes for future growth of assessed values is critical. If the school district is conservative in their growth assumptions for assessed values based on historical averages, then the resulting bond issue tax rate for future years should not exceed the legally mandated \$30 or \$60 per \$100,000 of assessed value. *However, if the school district is overly optimistic in projecting future growth in assessed values, then it is very possible that the tax rates will exceed the legally mandated levels.* The Grand Jury has found there is a strong possibility that taxpayers in the Savanna, Westminster and Cypress Elementary School Districts will be faced with bond issue tax rates significantly higher than what was presented when the voters approved the bond issues.

REASON FOR THE STUDY

Due to the uproar over CABs (a CAB is a bond where payment of the principal and interest is deferred until the end of the term of the bond) created by the negative media attention, the California legislature passed AB 182 in October 2013 and it became effective on January 1, 2014. The key changes enacted to the Government and Education Codes² relating to school bonds were:

1. Interest rates were capped at 8 percent
2. The debt ratio of interest to principal paid for each bond series was limited to 4:1
3. CABs must be callable after 10 years (i.e. have the option to be paid off prior to maturity)
4. The maximum term of the CAB was reduced from 40 years to 25 years

These changes to the Government Code relating to school bonds will solve some of the most egregious problems with CABs. Unfortunately, many school districts are stuck with CABs that predate this change to the California Government Code.

However, there has been virtually no publicity concerning the implications of debt service repayment for CABs, specifically the magnitude of potentially higher taxes. There is potential for some school districts, through the County, to increase property taxes well beyond what was presented when the bonds were issued in order to repay the CABs. CABs are often back loaded, with the payment of both principal and interest deferred many years into the future. Through the power of compound interest over a long term, the annual debt service (principal and interest

²Amended Section 15146 and add Sections 15140.5, 15144.1-3 to Education Code, add Sections 53508.5-6 to Government Code relating to Bonds

payment) requirements in the later years of the bonds can increase by up to a factor of 10 or above from the debt service for the first year of the bond.

This study explores the implications of debt service repayment for CABs, particularly for the Westminster, Cypress and Savanna Elementary School Districts located in northern Orange County. Other issues concerning CABs, such as the excessive interest being paid where the debt ratio of interest to principal paid over the term of the bond can be as high as 20:1, have been explored in detail in the media. These other issues with CABs are not the focus of this study.

BACKGROUND AND FACTS

History of Key Legislation Governing School Bond Financing

Although this study is not intended to provide a detailed history of the laws governing school bond financing in California, it is important to highlight the more relevant provisions of the law. One key provision limits elementary (K-6 or K-8) and high school (7-12 or 9-12) districts to a bonding capacity limit of 1.25 percent of assessed property values in the district and unified (K-12) districts to a bonding capacity of 2.5 percent. These bonding capacity rates were enacted in a revision to the California State Constitution in 1879.³ The other key metric concerning school bond financing is the limitation of the tax rate paid by each property owner in the district for an approved school bond election. The projected tax is limited, based on the school district's AV projections, to no more than \$30 per \$100,000 of the property owner's assessed value for elementary and high school districts and \$60 per \$100,000 for unified districts. This provision comes from Proposition 39, which was passed by the California voters in 2000⁴ and the Strict Accountability in Local School Construction Bonds Act of 2000.

Proposition 13 is also important to understand within the context of school bond financing. Proposition 13 was passed by the California voters in 1978. Increases in assessed property values were limited to a maximum of 2% per year for property that had not been sold. Properties are re-assessed to market value when they are sold except under very specific circumstances detailed in Proposition 13. Local school districts were also prohibited from levying additional taxes to fund school bonds. As a result, local school districts, and the State as a whole, were severely limited in their ability to finance local school construction and reconstruction, after Proposition 13 was passed in 1978.

Several subsequent propositions were passed that figure prominently into school bond financing. Voters passed Proposition 46 in 1986, which returned the authority to local school districts to finance school bonds with the requirement that the bond issue be approved by two-thirds of the voters. Proposition 39, which was passed by California voters in 2000 and the Strict Accountability in Local School Construction Bonds Act of 2000, lowered the threshold for

³ *Financing School Facilities in California* by Eric Brunner, Department of Economics, Quinnipiac University, 2006

⁴ Not to be confused with Proposition 39 passed in November, 2012

school bond approval from two-thirds to 55% percent of the votes subject to these key provisions:

1. The district is required to set up a citizen’s oversight committee to monitor and ensure bond funds are being properly spent.
2. Specific projects must be identified and documented that will be built using funds from the bond issue.
3. The district must perform annual performance and financial audits.
4. The tax rate for the entire series of bonds from a single election cannot exceed \$30 per \$100,000 of assessed values for the district for elementary and high school districts, \$60 per \$100,000 of assessed values for unified districts over the term of the bonds.

School districts still have the option to ask for approval for a school bond subject to the provisions of Proposition 46, which requires two-thirds approval by the voters. The vast majority of school districts in California have chosen to ask for school bond approval subject to the provisions detailed above for Proposition 39 since only 55% of the voters must approve the bond issue.

The most recent change to the laws regarding school bond financing was the enactment of AB 182 in October 2013, to reform the use of CABs, which was previously discussed in this study.

General Obligation Bonds

General Obligation Bonds are voter-approved bonds that are backed by unlimited ad valorem taxation of the school district. Ultimately, the county of Orange, not the local school district, determines the tax levy to repay the bonds. School Bonds fall into the ad-valorem category of taxes, i.e. an ad-valorem tax is a tax that is in addition to the normal property taxes that a property owner pays. The bonds are repaid from tax revenue collected within the local school district. Since the bond repayment schedule is known, the tax rate required to repay the bonds is calculated annually by the Orange County Auditor-Controller after the assessed values for all of the properties within the school district are determined for the year.

When a school district puts together a bond issue, they have to project the growth in assessed values (AV) over the term on the bonds being issued. The tax rate required to repay the bonds is then calculated based on the assumed AVs and the known bond repayment schedule. By law, the school district issuing the bonds (Proposition 39 bonds) is required to confirm that the tax rate required to repay the bonds will not exceed \$30 per \$100,000 of AV for elementary and high school districts; \$60 per \$100,000 for unified school districts over the term of the bonds. This can become an issue when the school district issuing the bonds is overly optimistic in their projections for the growth in AVs in future years. If the school district overestimates the growth in AVs and is already projecting a tax rate close to the \$30 or \$60 threshold, it is conceivable the tax rate required to repay the bonds in future years will exceed the \$30 or \$60 per \$100,000 limit mandated by law. *If this happens, there is no recourse if the bonds cannot be refinanced due to*

a no-call provision in the bond or the presence of higher interest rates than when the bond was issued, which makes refinancing impractical. Even if the bond can be refinanced, the district will incur significant costs in the re-financing process. The school district taxpayers are on the hook to pay the taxes required to repay the bonds, even if the tax rate exceeds the \$30 or \$60 per \$100,000 legal limit.

There are two primary types of general obligation bonds typically used to finance school construction with a number of derivatives of each type of bond. The most common type of bond is called a current interest bond (CIB). A CIB typically pays the interest due twice a year and the principal is repaid either at the end of the term of the bond or in a series of annual principal payments toward the end of the term of the bond. A Capital Appreciation Bonds (CAB) typically defers the payment of both the principal and interest until the end of the term of the bond. The interest accretes, which means the interest due each year continues to accrue, or accumulate, until the entire amount of interest due is paid for the CAB at the end of the term of the CAB. Since the interest is not paid when it is accrued, the interest cost compounds, which can have a dramatic effect of the total interest paid over a long term, for example 30 or 40 years.

Since a CIB pays the interest in the same time frame it accrues, the overall interest cost is much less than a CAB, where all the interest is deferred until the end of the term of the bond. Most CIBs have a debt ratio of interest to principal between 1.5:1 and 3:1 over the term of the bonds. CABs can have debt ratios that can range from as low as 1.05:1 to as high as 20:1 over the term of the bonds. The recent enactment of AB 182 has limited the debt ratio for on new bond series to a maximum of 4:1.

Why Do School Districts Use CABs?

One of the big advantages of CABs is the school district may use the money immediately for school improvements but defer the payment of principal and interest into the future. This is particularly important for school districts with bond issue tax rates close to the \$30 or \$60 legal limit. The district can use the CAB money to make needed improvements in the near term, but not have to make debt service payments that would push the bond tax rate over the \$30 or \$60 limit until many years into the future.

Another advantage of CABs is they provide the school district with more funds to take advantage of state matching opportunities and federal subsidy opportunities. California has recently matched local school district construction costs at a 50/50 ratio for new construction and a 60/40 ratio for school modernization, although actual matching levels have been lower due to lower construction valuation levels assumptions at the state level. These funds have come from state school construction bond measures passed by the voters of California. Once the funds from the state bonds are exhausted, then the state is no longer in a position to match local districts. This is what has happened over the past few years.

The federal government also approved Build America Bonds (BAB) and Qualified School Construction Bonds (QSCB) as part of the 2009 American Recovery and Reinvestment Act. These programs have since closed, with no additional applications being accepted. The local school district employing BAB bonds receives a subsidy from the federal government for a portion of the interest on the bonds for a fixed period of time. Similarly, with QSCB bonds, the local school district receives a near 100% subsidy from the federal government for the interest paid on the bonds for a limited period of time. The net effect to the local school district is they can stretch their bond money further while relying on these matching funds from the state and interest subsidies from the federal government.

The disadvantages of CABs have been well documented in many media reports. The cost of deferring the payment of principal and interest well into the future results in a higher debt ratio of interest to principal; for example up to 20:1 for individual bonds in an extreme example. The debt ratio of interest to principal for all bonds per AB 182 is now capped at 4:1 for each bond series from a bond election. Another well-discussed disadvantage of CABs to the future taxpayer is their long term, up to 40 years, effectively transfers most of the obligation to repay the CAB to future generations of taxpayers. AB 182 limits the term of a CAB to 25 years.

An Overview of Orange County School District Bonded Debt

An Orange County School District School Bond Financing Analysis may be found in Table 1. The school districts are grouped into Elementary, High School and Unified categories. The 2013-2014 assessed values (AVs) for each school district are listed in the second column of the table. These are the most recent AVs available from the Orange County Assessor. The next column lists the Bonding Rate Limit. As mentioned previously, elementary and high school districts are limited to a bonding limit of 1.25% of AVs in the school district; unified school districts are limited to 2.5%. The Bonding Limit column is calculated by multiplying the 2013-2014 Assessed Values column by the Maximum Bonding Percentage column. The 2013-2014 Outstanding Bonding Indebtedness column data was obtained from the Annual Financial Report for each of the school districts. The Percentage Allowable Bonding column is calculated by dividing the 2013-2014 Outstanding Bonding Indebtedness column by the Bonding Limit column. This column is expressed as a percentage.

In viewing Table 1, the major issue is that that Savanna Elementary School District is at 182.8% of their bonding limit. They have exceeded the legal limit of 1.25% of AVs by a large margin. According to California law, an elementary or high school district is limited to bonding indebtedness of no more than 1.25% of the value of the assessed values in the school district.

After further investigation, the Grand Jury determined that Savanna did receive a waiver from the California State Board of Education in July 2012 to exceed the bonding indebtedness legal limit of 1.25%.⁵ This will be more thoroughly discussed in the Analysis portion of this study. Also apparent in Table 1 is that Anaheim City, Cypress and Westminster Elementary School

⁵ California State Board of Education, Meeting Agenda Items for July 18-19, 2012 Item W-14

Districts have bonded indebtedness well over 50% of the legal limit of 1.25%. After reviewing these three districts and the Savanna district, the Grand Jury decided to exclude Anaheim City Elementary School District and focus on the remaining three elementary school districts:

1. Savanna
2. Cypress
3. Westminster

Anaheim City Elementary School District was excluded from further study because it became apparent very quickly that they did not have the same issue as the other three districts have with their future tax rates potentially exceeding the legal limit of \$30 per \$100,000 of AV.

Table 1

Orange County School District School Bond Financing Analysis					
Elementary Districts	2013-2014 Assessed Values	Bond Rate Limit	Bonding Limit	2013-2014 Outstanding Bonding Indebtness	Percentage Allowable Bonding
Anaheim City	\$ 20,537,299,645	1.25%	\$ 256,716,246	\$ 171,046,239	66.6%
Buena Park	\$ 5,541,848,055	1.25%	\$ 69,273,101	\$ 12,714,418	18.4%
Centralia	\$ 4,157,856,930	1.25%	\$ 51,973,212	\$ 15,038,915	28.9%
Cypress	\$ 5,268,689,615	1.25%	\$ 65,858,620	\$ 40,518,130	61.5%
Fountain Valley	\$ 6,601,757,498	1.25%	\$ 82,521,969		0.0%
Fullerton	\$ 13,140,365,106	1.25%	\$ 164,254,564	\$ 37,805,458	23.0%
Huntington Beach City	\$ 15,622,257,160	1.25%	\$ 195,278,215	\$ 26,670,075	13.7%
La Habra City	\$ 4,651,050,053	1.25%	\$ 58,138,126	\$ 18,514,265	31.8%
Magnolia	\$ 3,141,651,072	1.25%	\$ 39,270,638	\$ 18,003,305	45.8%
Ocean View	\$ 12,309,661,279	1.25%	\$ 153,870,766		0.0%
Savanna	\$ 1,829,452,922	1.25%	\$ 22,868,162	\$ 41,808,730	182.8%
Westminster	\$ 7,584,638,808	1.25%	\$ 94,807,985	\$ 78,391,352	82.7%
High School Districts					
Anaheim Union	\$ 34,934,950,184	1.25%	\$ 436,686,877	\$ 109,472,743	25.1%
Fullerton Joint Union	\$ 24,554,665,530	1.25%	\$ 306,933,319	\$ 60,299,736	19.6%
Huntington Beach Union	\$ 42,118,314,745	1.25%	\$ 526,478,934	\$ 222,793,895	42.3%
Unified Districts					
Brea Olinda	\$ 7,280,360,670	2.50%	\$ 182,009,017	\$ 20,334,028	11.2%
Capistrano	\$ 67,392,524,588	2.50%	\$ 1,684,813,115	\$ 50,118,041	3.0%
Garden Grove	\$ 20,429,829,319	2.50%	\$ 510,745,733	\$ 127,641,651	25.0%
Irvine	\$ 24,370,885,513	2.50%	\$ 609,272,138		0.0%
Laguna Beach	\$ 15,276,496,280	2.50%	\$ 381,912,407	\$ 29,510,000	7.7%
Los Alamitos	\$ 8,098,978,819	2.50%	\$ 202,474,470	\$ 69,808,184	34.5%
Newport-Mesa	\$ 52,604,383,862	2.50%	\$ 1,315,109,597	\$ 269,022,367	20.5%
Orange	\$ 28,645,436,055	2.50%	\$ 716,135,901		0.0%
Placentia-Yorba Linda	\$ 23,131,873,978	2.50%	\$ 578,296,849	\$ 268,817,022	46.5%
Saddleback Valley	\$ 30,550,793,673	2.50%	\$ 763,769,842	\$ 121,645,000	15.9%
Santa Ana	\$ 25,461,744,469	2.50%	\$ 636,543,612	\$ 329,329,107	51.7%
Tustin	\$ 20,091,547,528	2.50%	\$ 502,288,688	\$ 162,786,785	32.4%

Source: Annual Report for each School District

METHOD OF STUDY

This topic required extensive research. Numerous newspaper articles were reviewed from *The Orange County Register*, *Los Angeles Times* and *San Diego Union-Tribune*. An extensive Internet search was conducted to learn about the mechanics of bond financing and the related mathematics.

Three major spreadsheets were assembled in the course of researching this report. The first spreadsheet, similar but more comprehensive than Table 1, was assembled to assess the overall debt levels for all Orange County school districts. This spreadsheet included the same bonded indebtedness calculations found in Table 1, but it also contained other debt information for Certificates of Participation, Qualified Zone Academy Bonds, Bond Anticipation Notes, Build America Bonds and Qualified School Construction Bonds. After researching all of these other types of debt, the Grand Jury made the decision to focus this report primarily on the issue of bonded indebtedness and the related debt service issues and potentially higher taxes that may result from this bonded indebtedness. Information for this first spreadsheet was obtained from the Orange County Department of Education⁶ and Electronic Municipal Market Access (EMMA).⁷ The EMMA website was used to research the Official Statements (legal document describing the bond issue for investors) for the individual bond issues. Table 2 was also derived from the first spreadsheet.

The second spreadsheet was put together to determine the average increase in assessed values in each school district over the last five, ten and twenty years. The data for the historical assessed values were obtained from the Orange County Assessor's office. A compounded annual growth rate (CAGR) as well as an average growth rate (average of the annual growth rates) was calculated for a five, ten and twenty year period. In all cases the CAGR and the average growth rates were very similar. Tables 3, 5 and 7 were derived from the second spreadsheet.

Debt service was the focus of the third spreadsheet. The master spreadsheet is made up of separate worksheets for each of the school districts. Each worksheet is built around projecting forward the tax rate based on different AV growth rate assumptions. Tables 4, 6 and 8 were derived from the third spreadsheet.

⁶ <http://www.ocde.us/Pages/default.aspx>

⁷ <http://emma.msrb.org/Home>

The Grand Jury also interviewed senior school district officials from the following school districts:

1. Santa Ana Unified School District
2. Savanna Elementary School District
3. Representative for Independent Financial Firm for Savanna Elementary School District
4. Cypress Elementary School District
5. Representative for Independent Financial Firm for Cypress Elementary School District
6. Westminster Elementary School District
7. Representative for Independent Financial Firm for Westminster Elementary School District.

In addition, the Grand Jury also interviewed several top officials from the Orange County Department of Education and a financial advisor not affiliated with the Savanna, Cypress and Westminster Elementary School Districts.

ANALYSIS

Impact of Assessed Values

It costs about the same amount of money, except perhaps the cost of the land, to build a school in Newport Beach as it does to build a school in Westminster. However, the assessed values in Newport Beach are obviously much higher, which gives the Newport Mesa Unified School District much more funding per pupil for school construction and renovation. As discussed earlier, there are two metrics for school bonds that all California school districts must conform to:

1. Total bonded indebtedness cannot exceed 1.25% of assessed values in the district for elementary and high school districts and 2.5% of assessed values for unified school districts.
2. Annual bond debt service may not exceed \$30 per \$100,000 of assessed values in the district for elementary and high school districts and \$60 per \$100,000 of assessed values for unified school districts.

Note that the limiting factor for both of these metrics is assessed values. Table 2 clearly shows the effect of assessed values for the different school districts in Orange County. For each school district, the Assessed Values for 2013-2014 is divided by the Average Daily Attendance (ADA) to yield the 2013-2014 Assessed Value per Student (ADA).

As can be seen at the bottom of Table 2 on page 13, the overall average for 2013-2014 Assessed Values per Student (ADA) for all school districts in Orange County is approximately \$1,100,000. Laguna Beach Unified has the highest Assessed Value per Student at \$5,285,985. At the other end of the scale, Garden Grove Unified has the lowest Assessed Value per Student at \$443,346.

What does this mean in terms of school bond financing? It means that Laguna Beach Unified, because of its much higher assessed values, has a bonding capacity of over ten times that of Garden Grove Unified on a per student basis. It also means that Laguna Beach Unified can support a bond annual debt service of over ten times than what Garden Grove Unified can support on a per student basis. *The net result is school districts with below average assessed values per student relative to the county as a whole are at a distinct disadvantage in terms of their ability to finance school construction through bond issues.*

The main emphasis of this report is to examine the debt service issues and potential tax increases in three northern Orange County Elementary School Districts:

1. Savanna
2. Westminster
3. Cypress

Savanna and Westminster Elementary School Districts have Assessed Values per Student significantly below the Orange County average of approximately \$1,100,000 at \$784,500 and \$808,425 respectively. Cypress, on the other hand, has an Assessed Value per Student of \$1,397,901, which is above the Orange County approximate average of \$1,100,000.

Table 2

Assessed Value per Student by School District			
	2013-2014 Assessed Values	2012-2013 Average Daily Attendance	2013-2014 Assessed Values per Student (ADA)*
Elementary Districts			
Anaheim City	\$ 20,537,299,645	18,415	\$ 1,115,248
Buena Park	\$ 5,541,848,055	5,157	\$ 1,074,626
Centralia	\$ 4,157,856,930	4,339	\$ 958,252
Cypress	\$ 5,268,689,615	3,769	\$ 1,397,901
Fountain Valley	\$ 6,601,757,498	6,150	\$ 1,073,457
Fullerton	\$ 13,140,365,106	13,460	\$ 976,253
Huntington Beach City	\$ 15,622,257,160	6,877	\$ 2,271,667
La Habra City	\$ 4,651,050,053	5,059	\$ 919,362
Magnolia	\$ 3,141,651,072	6,125	\$ 512,923
Ocean View	\$ 12,309,661,279	9,187	\$ 1,339,900
Savanna	\$ 1,829,452,922	2,332	\$ 784,500
Westminster	\$ 7,584,638,808	9,382	\$ 808,425
High School Districts			
Anaheim Union	\$ 34,934,950,184	30,535	\$ 1,144,095
Fullerton Joint Union	\$ 24,554,665,530	13,941	\$ 1,761,327
Huntington Beach Union	\$ 42,118,314,745	15,660	\$ 2,689,548
Unified Districts			
Brea Olinda	\$ 7,280,360,670	5,733	\$ 1,269,904
Capistrano	\$ 67,392,524,588	51,678	\$ 1,304,085
Garden Grove	\$ 20,429,829,319	46,081	\$ 443,346
Irvine	\$ 24,370,885,513	28,313	\$ 860,767
Laguna Beach	\$ 15,276,496,280	2,890	\$ 5,285,985
Los Alamitos	\$ 8,098,978,819	9,586	\$ 844,876
Newport-Mesa	\$ 52,604,383,862	20,951	\$ 2,510,829
Orange	\$ 28,645,436,055	28,700	\$ 998,099
Placentia-Yorba Linda	\$ 23,131,873,978	24,817	\$ 932,098
Saddleback Valley	\$ 30,550,793,673	29,189	\$ 1,046,654
Santa Ana	\$ 25,461,744,469	55,398	\$ 459,615
Tustin	\$ 20,091,547,528	23,139	\$ 868,298
		476,863	\$ 1,100,000*

Source: Orange County Department of Education (ADA) and Annual Reports for all of the school districts

*This average is approximate because there is some double-counting of the AV's in the High School Districts. Fullerton Joint Union High School District is partially located in LA County, which also affects the AV's shown for the district.

Savanna Elementary School District

Savanna Elementary School District is the smallest school district in Orange County, with an Average Daily Attendance (ADA) of 2,332 students. The District is located in parts of the cities of Anaheim, Buena Park, Cypress and Stanton and consists of four elementary schools. Prior to 2008, the district had never asked the voters to approve a bond issue. All of the schools were over 50 years old and very little had been done over the years to renovate the schools. The voters approved Measure N in 2008, authorizing the district to borrow \$24,935,000. The district has issued two series of bonds against the Measure N authorization. The 2008A bonds were issued in May 2009 for an aggregate principal amount of \$7,499,721. The 2008B bonds were issued in February 2012 for an aggregate principal amount of \$12,110,064.

This bond issue was originally intended to cover the renovation of all four elementary schools. According to senior management of the district, the district applied for state matching funds. These matching funds were required to supplement the bond money to complete the renovation of the four schools. Unfortunately for the district, the state matching funds dried up when the state's economic crisis worsened, so the district did not receive the planned matching funds. As a result, the district found itself short of the funds required to complete the renovation of the third and fourth schools. Further complicating this situation was one of the two remaining unrenovated schools' population was largely minority. The district's senior management was very concerned about creating the perception they were less concerned about renovating that school.

The district made the decision to ask the voters to approve a second bond authorization and preemptively applied to the California State Board of Education for a waiver for bonded indebtedness. This second bond issue would put the district well over the legal limit of 1.25% of bonded indebtedness relative to total assessed property values in the district. Declining property values in the district also contributed to the district exceeding the legal limit of 1.25% for bonded indebtedness. The California State Board of Education approved the waiver for Savanna's bonded indebtedness in July 2012.

The voters approved a second bond issue, Measure G, in June 2012 authorizing the district to borrow up to \$28,750,000 to complete the renovations for the two remaining schools and other specified projects. The district then issued 2012 Series A Bonds in August 2012 for an aggregate amount of \$22,608,945. The district issued a combination of Current Interest Bonds (CIBs), Capital Appreciation Bonds (CABs) and Convertible Capital Appreciation Bonds (CCABs). The CABs maturing in the years 2033 through 2037 have debt ratios ranging from 11.48:1 in the year 2033 to 18.29:1 in 2037.

The Grand Jury toured some of the schools that were renovated using the funds raised in the bond measures. The Grand Jury was very impressed with the work that had been done to bring the schools up to a 21st Century standard. The district is rightfully proud of the work that has been done and is continuing to be done to ensure that their schools meet or exceed all of the modern educational requirements.

As discussed previously, the issues with having high debt ratios with CABs have been widely studied over the last several years. This report will now explore the implications for repaying the debt on these bonds and the potential for future tax increases beyond what was promised to the voters when these two bond issues were approved.

Please refer to Table 3 to see the 20-year history for the growth of Assessed Values (AV) in the Savanna Elementary School District.

Table 3

Savanna Elementary School District Historical Assessed Values		
Year	Total Assessed Values Assessor Data	% Growth
7/1/2013	\$1,829,452,922	4.96%
7/1/2012	\$1,743,072,375	1.10%
7/1/2011	\$1,724,080,614	0.11%
7/1/2010	\$1,722,157,560	0.45%
7/1/2009	\$1,714,453,828	-6.66%
7/1/2008	\$1,836,830,506	1.78%
7/1/2007	\$1,804,778,797	8.68%
7/1/2006	\$1,660,616,201	11.31%
7/1/2005	\$1,491,820,584	11.02%
7/1/2004	\$1,343,684,130	10.56%
7/1/2003	\$1,215,313,174	7.19%
7/1/2002	\$1,133,796,292	7.36%
7/1/2001	\$1,056,068,804	7.55%
7/1/2000	\$981,963,388	8.98%
7/1/1999	\$901,049,545	3.22%
7/1/1998	\$872,898,755	3.59%
7/1/1997	\$842,677,907	0.59%
7/1/1996	\$837,773,304	-1.16%
7/1/1995	\$847,605,403	-3.52%
7/1/1994	\$878,528,693	-0.98%
7/1/1993	\$887,201,361	
	20 Year Average	3.81%
	10 Year Average	4.33%
	5 Year Average	-0.01%

Source: Orange County Assessor

	20 Years	10 Years	5 years
Compounded Annual Growth Rate (CAGR)	3.68%	4.17%	-0.08%

Note the Compounded Annual Growth Rates (CAGR) for AV in the Savanna Elementary School District for the last 20, 10 and 5 years have been 3.68%, 4.17% and -0.08% respectively. This history of AV growth is important to consider when projecting forward into the future and making assumptions about what the future growth in AV will be. Please refer to Table 4 to review the Savanna Elementary School District Debt Service Analysis.

School Bonds – The Untold Story of Assessed Values

Table 4

Savanna Elementary School District Debt Service Analysis								
Year	Total Debt Service 2008 Bonds	Assessed Values @ 4% Annual Growth	Assessed Values @7% Annual Growth	2008 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	2008 Bonds Tax Rate per \$100k of AV @ 7% AV Growth	Total Debt Service 2012 Bonds	2012 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	2012 Bonds Tax Rate per \$100k of AV @ 7% AV Growth
2013		\$1,829,452,922	\$1,829,452,922					
2014	\$556,163	\$1,902,631,039	\$1,957,514,627	\$29.23	\$28.41	\$530,969	\$27.91	\$27.12
2015	\$584,363	\$1,978,736,280	\$2,094,540,650	\$29.53	\$27.90	\$560,969	\$28.35	\$26.78
2016	\$636,663	\$2,057,885,732	\$2,241,158,496	\$30.94	\$28.41	\$605,369	\$29.42	\$27.01
2017	\$697,813	\$2,140,201,161	\$2,398,039,591	\$32.61	\$29.10	\$673,119	\$31.45	\$28.07
2018	\$762,751	\$2,225,809,207	\$2,565,902,362	\$34.27	\$29.73	\$717,319	\$32.23	\$27.96
2019	\$826,351	\$2,314,841,576	\$2,745,515,527	\$35.70	\$30.10	\$764,519	\$33.03	\$27.85
2020	\$892,951	\$2,407,435,239	\$2,937,701,614	\$37.09	\$30.40	\$814,519	\$33.83	\$27.73
2021	\$962,351	\$2,503,732,648	\$3,143,340,727	\$38.44	\$30.62	\$864,019	\$34.51	\$27.49
2022	\$1,029,151	\$2,603,881,954	\$3,363,374,578	\$39.52	\$30.60	\$915,269	\$35.15	\$27.21
2023	\$1,092,363	\$2,708,037,232	\$3,598,810,799	\$40.34	\$30.35	\$968,019	\$35.75	\$26.90
2024	\$1,160,363	\$2,816,358,722	\$3,850,727,555	\$41.20	\$30.13	\$1,027,419	\$36.48	\$26.68
2025	\$1,231,113	\$2,929,013,070	\$4,120,278,483	\$42.03	\$29.88	\$1,089,860	\$37.21	\$26.45
2026	\$1,303,863	\$3,046,173,593	\$4,408,697,977	\$42.80	\$29.57	\$1,154,860	\$37.91	\$26.20
2027	\$1,381,813	\$3,168,020,537	\$4,717,306,836	\$43.62	\$29.29	\$1,219,860	\$38.51	\$25.86
2028	\$1,464,975	\$3,294,741,359	\$5,047,518,314	\$44.46	\$29.02	\$1,294,860	\$39.30	\$25.65
2029	\$1,552,513	\$3,426,531,013	\$5,400,844,596	\$45.31	\$28.75	\$1,368,485	\$39.94	\$25.34
2030	\$1,647,738	\$3,563,592,253	\$5,778,903,718	\$46.24	\$28.51	\$1,448,485	\$40.65	\$25.07
2031	\$1,743,875	\$3,706,135,943	\$6,183,426,978	\$47.05	\$28.20	\$1,535,723	\$41.44	\$24.84
2032	\$1,844,475	\$3,854,381,381	\$6,616,266,866	\$47.85	\$27.88	\$1,625,723	\$42.18	\$24.57
2033	\$1,949,475	\$4,008,556,636	\$7,079,405,547	\$48.63	\$27.54	\$1,725,035	\$43.03	\$24.37
2034	\$2,060,000	\$4,168,898,902	\$7,574,963,935	\$49.41	\$27.19	\$1,825,035	\$43.78	\$24.09
2035	\$2,179,425	\$4,335,654,858	\$8,105,211,411	\$50.27	\$26.89	\$1,935,035	\$44.63	\$23.87
2036	\$2,304,425	\$4,509,081,052	\$8,672,576,210	\$51.11	\$26.57	\$2,050,035	\$45.46	\$23.64
2037	\$2,439,425	\$4,689,444,294	\$9,279,656,544	\$52.02	\$26.29	\$2,170,035	\$46.27	\$23.38
2038	\$2,569,425	\$4,877,022,066	\$9,929,232,502	\$52.68	\$25.88	\$2,295,035	\$47.06	\$23.11
2039	\$2,714,425	\$5,072,102,949	\$10,624,278,778	\$53.52	\$25.55	\$2,429,835	\$47.91	\$22.87
2040	\$2,864,425	\$5,274,987,067	\$11,367,978,292	\$54.30	\$25.20	\$2,577,035	\$48.85	\$22.67
2041	\$3,019,425	\$5,485,986,549	\$12,163,736,772	\$55.04	\$24.82	\$2,725,835	\$49.69	\$22.41
2042	\$3,184,425	\$5,705,426,011	\$13,015,198,347	\$55.81	\$24.47	\$2,890,835	\$50.67	\$22.21
2043	\$3,359,425	\$5,933,643,052	\$13,926,262,231	\$56.62	\$24.12	\$3,061,532	\$51.60	\$21.98
2044	\$3,547,563	\$6,170,988,774	\$14,901,100,587	\$57.49	\$23.81	\$3,241,035	\$52.52	\$21.75
2045	\$3,741,463	\$6,417,828,325	\$15,944,177,628	\$58.30	\$23.47	\$3,431,035	\$53.46	\$21.52
2046	\$3,949,438	\$6,674,541,458	\$17,060,270,062	\$59.17	\$23.15	\$3,632,160	\$54.42	\$21.29
2047	\$4,164,125	\$6,941,523,116	\$18,254,488,966	\$59.99	\$22.81	\$3,847,480	\$55.43	\$21.08
2048	\$4,393,500	\$7,219,184,041	\$19,532,303,194	\$60.86	\$22.49	\$4,077,251	\$56.48	\$20.87
2049	\$4,634,863	\$7,507,951,403	\$20,899,564,418	\$61.73	\$22.18	\$4,317,209	\$57.50	\$20.66
2050	\$4,890,513	\$7,808,269,459	\$22,362,533,927	\$62.63	\$21.87	\$4,571,230	\$58.54	\$20.44
2051	\$5,157,413	\$8,120,600,237	\$23,927,911,302	\$63.51	\$21.55	\$4,840,200	\$59.60	\$20.23
2052	\$5,157,413	\$8,445,424,247	\$25,602,865,093	\$61.07	\$20.14	\$5,130,000	\$60.74	\$20.04

Source: Official Statement for Savanna Elementary School District General Obligation Bonds, 2012 Election, Series A dated August 16, 2012

The first column in Table 4 shows the year, the second column provides the annual debt service for the 2008 Bonds and the third column shows the Savanna AV projected into the future assuming a 4% annual growth rate, which is similar to the 20 year historical average for assessed values growth shown in Table 3. The fourth column shows the Savanna AV projected into the future assuming a 7% annual growth rate and the fifth and sixth columns show the 2008 Bonds calculated tax rate with AV growth of 4% and 7% respectively. Columns 7-9 show the debt service for the 2012 Bonds and the calculated tax rates for AV growth of 4% and 7% respectively.

As mentioned previously, the average AV growth over the last 20 years for the Savanna Elementary School District is around 4%. Assuming this is the average AV growth going forward, Table 4 very clearly shows the dramatic projected increase in tax rates in future years. For the 2008 Bonds, the tax rate increases to over \$40 per \$100,000 of AV in 2023, over \$50 in 2035 and over \$60 in 2048. When the voters approved this bond issue, the district projected the tax rate would never exceed the legal maximum rate of \$30 per \$100,000 of AV. The district also promised the State Board of Education when they applied for the waiver for bonded indebtedness that they would not exceed the legal tax rate of \$30 per \$100,000 of AV.

There is a similar trend for the 2012 Bonds future tax rates based on AV growth going forward averaging 4%. For the 2012 Bonds, the tax rate increases to over \$40 per \$100,000 of AV in 2030, over \$50 in 2042 and over \$60 in 2052. The district projected this tax rate would also never exceed the legal maximum rate of \$30 per \$100,000 of AV.

Table 4 also shows that if AV growth averages 7% then the problem goes away; the tax rate for both bonds never exceeds the legal maximum rate of \$30 per \$100,000 of AV.

How likely is the 7% AV growth scenario?

The district and their financial advisory firm argue that this is the much more likely scenario. The financial advisor presented their historical data for AV that was used to prepare the tax rate assumptions for both the 2008 and 2012 bond issues. Their data, which is based on 35 years of historical AV in the district, shows an average AV growth of over 6.5% during that 35 year period.

The Grand Jury sees a flaw with this methodology and data. The early years of this 35 year historical AV growth data include a considerable amount of original development that is purely incremental to the AV base, (i.e. the AV growth rate is inflated because new development adds to the AV but does not represent year over year growth of the same properties). The district is almost entirely built out today; almost all AV growth must come from year over year growth for largely the same property base. Normal property sales that result in re-assessments of properties will also add to the AV base going forward. The district and their financial advisor make the point that in-fill and higher density developments are taking place. It is difficult to see how the

district can *average* 7% growth over the next 40 years given the history of AV growth in the district over the last 20 years.

To the degree that the AV growth falls short of 7% over the next 40 years, the district's taxpayers are on the hook to pay the taxes in excess of the legal limit of \$30 per \$100,000 of AV.

So what does this mean to the typical homeowner in the district? Assume the district's AVs will continue to grow at the historical annual rate of 4% per year and the homeowner's home AV grows at the Proposition 13 mandated annual rate of 2% per year. The district taxpayer will pay an *additional* \$2,025 of taxes for every \$100,000 of AV for his house between now and when the last bonds mature in 2052, or an average of \$50.63 per year for every \$100,000 of AV. A homeowner with a house assessed at \$500,000 today will pay an additional \$10,127 in taxes between now and when the bonds mature. Note that no discounted cash flow or present value techniques were used in these calculations to avoid additional complexity. Please see Appendix A at the back of the report for the detailed calculations.

When a school district issues a bond, the interest rates for the bond issue are based on market conditions and the credit worthiness of the particular school district. Once the bond issue goes to the market, the interest rates are established and the debt payment schedules for the terms of the bonds can be calculated. The school district and its financial advisors are required to certify for each bond issue that, based on their good faith estimates for AV growth, the tax rate will be less than the legal maximum of either \$30 per \$100,000 of AV for Elementary and High School Districts or \$60 per \$100,000 for Unified School Districts over the term of the bonds.

Clearly there is room for differences of opinion in what constitutes a good faith estimate. However, one reasonable interpretation of a good faith estimate is that it has equal chances of being either too high or too low. By that standard, the district and their financial advisor's estimate of the district's AV growth *averaging* close to 7% growth over the next 40 years appears to be unreasonable to the Grand Jury.

Cypress Elementary School District

Cypress Elementary School District is another relatively small school district, third smallest in terms of average daily attendance (ADA) in Orange County, with 3,769 students and six elementary schools. Similar to Savanna, all of the schools are over 50 years old.

The voters approved a bond measure authorizing the district to borrow up to \$53,600,000 for school renovations in November 2008. The district issued the 2008 Series A Bonds in the aggregate amount of \$16,999,051.95 in May 2009. Close to 90% of these bonds were CIBs. The district also issued Bond Anticipation Notes in the aggregate amount of \$6,998,642 in May 2009. A Bond Anticipation Note is essentially a promissory note for a term of no longer than five years that promises to pay the proceeds of the note with a future bond issue that has already been approved by the voters.

The district then issued 2008 Series B-1 and B-2 bonds in April 2011 in the aggregate amounts of \$20,139,078 and \$4,535,000 respectively. The Series B-2 Bond was a Qualified School Construction Bond (QSCB). The Series B-1 Bonds were mostly CABs but did include some CIBs as well. The longer maturity CABs in the B-2 bonds had debt ratios approaching 20:1.

In late 2012, similar to Savanna district, the Cypress district found itself in a situation in which anticipated state matching funds required to complete all of the planned renovations were not forthcoming from the state. The district only received or got commitments to receive approximately \$9 million in matching funds from the state. This left a significant shortfall that had to be made up in some manner to complete the planned school renovations.

The district considered a number of alternatives to close this funding gap. They also were open to deferring some of the school renovations to reduce the overall cost. The district had funds of approximately \$6 million from bonds that had been issued but not yet spent. They also considered, but ultimately rejected issuing approximately \$4 million of Series C bonds, which would have been entirely made up of CABs. The debt ratio on the CABs would have been over 10:1 and the bonds would have had terms up to 40 years. The district's senior management was rightfully concerned that they would get a lot of negative publicity if they chose to issue the Series C CABs.

Ultimately the solution the district chose to fill most of the funding gap left from the lack of state matching funds was to issue Certificates of Participation (COP) for \$7,365,000 in February 2013. A non-technical definition of a COP is that it is a financial instrument, similar to a bond, that entitles the purchaser to a pro-rata share of a specific pledged revenue stream, usually lease payments, by the issuer (Cypress Elementary School District) that are typically subject to annual appropriation. In this case, the district transferred a school (Juliet Morris Elementary School) and the school grounds to the Cypress School District Public Financing Corporation. The district then entered into a lease with Cypress School District Public Financing Corporation to use the Juliet Morris Elementary School for normal educational activities. The lease payments that the district will make will flow to a financial trustee, who will then redistribute those payments to the owners of the Certificates of Participation.

The Grand Jury found that this type of a lease-leaseback arrangement is a common technique employed by school districts. There is nothing unusual about this particular transaction.

The district specified that the COP's be callable in five years, not the ten years that is a common practice. The district paid a slightly higher interest rate, but that was an acceptable trade off to be able to pay off the COP's early.

The Cypress district is contractually entitled to redevelopment revenue from four redevelopment agencies (RDA's): Buena Park RDA, La Palma RDA, Orange County RDA and Cypress RDA. These contracts were in place before the RDA's were eliminated in 2011. As a result, this RDA revenue from the four cities was not eliminated due to the termination of all RDA's. The district

will receive approximately \$1 million a year of RDA revenue through 2018. The RDA revenues fall off to approximately \$725,000 a year through 2023 and then fall off again to approximately \$150,000 per year until they terminate in 2035. The district's strategy is to utilize these known RDA revenues to accelerate the payment of all of the COP's by 2018. The COP's are scheduled to mature over the years 2017 – 2028.

The Grand Jury applauds Cypress Elementary School District for trying to fully utilize all available facilities revenue sources rather than issuing very expensive CABs. The district has the good fortune to be located in an area where they could rely on the RDA revenue to essentially pay off the COP's.

The Grand Jury was also very impressed with the renovations that have been completed by the Cypress district. The Grand Jury toured several of the newly renovated schools as well as part of an un-renovated school. There was very visible progress that has been accomplished. The district has every reason to be proud of their new facilities.

Unfortunately, the district has issues similar to Savanna with its 2008 bonds and related debt service. Again, the problem lies with what appears to be overly optimistic projections on the future growth of the district's AVs. Please see Table 5 below.

Table 5

Cypress Elementary School District Historical Assessed Values		
Year	Total Assessed Values Assessor Data	% Change
7/1/2013	\$5,268,689,615	3.17%
7/1/2012	\$5,106,668,147	2.03%
7/1/2011	\$5,004,901,750	0.88%
7/1/2010	\$4,961,208,446	-0.12%
7/1/2009	\$4,967,060,242	-1.36%
7/1/2008	\$5,035,493,741	3.11%
7/1/2007	\$4,883,384,943	7.28%
7/1/2006	\$4,552,080,723	8.95%
7/1/2005	\$4,178,141,871	7.91%
7/1/2004	\$3,871,751,393	7.97%
7/1/2003	\$3,585,805,544	6.32%
7/1/2002	\$3,372,732,800	6.68%
7/1/2001	\$3,161,587,814	5.69%
7/1/2000	\$2,991,406,549	8.41%
7/1/1999	\$2,759,378,829	4.07%
7/1/1998	\$2,651,426,519	6.05%
7/1/1997	\$2,500,264,896	2.24%
7/1/1996	\$2,445,486,607	1.38%
7/1/1995	\$2,412,112,063	0.30%
7/1/1994	\$2,404,881,998	0.51%
7/1/1993	\$2,392,769,380	
	20 Year Average	4.07%
	10 Year Average	3.98%
	5 Year Average	0.92%

Source: Orange County Assessor

	20 Years	10 Years	5 Years
Compounded Annual Growth Rate (CAGR)	4.02%	3.92%	0.91%

As can be seen in Table 5, the Compounded Annual Growth Rates (CAGR) for AV growth in the district for the last 20, 10 and 5 years are 4.02%, 3.92% and 0.91% respectively. The district and their financial firm presented data to the Grand Jury that they used to project the AV growth in the calculation of the anticipated future tax rates for the 2008 bonds. Their data shows a 30-year average growth in AV of 6.01% between the years 1982 and 2011.

The earlier years of this data clearly contain significant original development that inflated the AV growth in those years. The district is largely built out today. There is still opportunity for in-fill development, but there is very little opportunity for large developments that would significantly add incrementally to the AVs, as was the case in the 1980's. The Grand Jury believes that the last 20 years of AV data are much more representative on what the district can count on going forward for projected AV growth.

As mentioned previously for Savanna, a good test for any estimate is to ask whether there is an equal chance of the estimate being too high or too low. By this standard, the AV growth estimates that the Cypress district and their financial firm used appear to be unreasonably high. The implications of that decision may be found the potential future tax rates for the 2008 bonds that are in Table 6 below.

School Bonds – The Untold Story of Assessed Values

Table 6

Cypress Elementary School District Debt Service Analysis							
Year	Debt Service 2008 Series A Bonds	Debt Service 2008 Series B-1 and B-2 Bonds	Total Debt Service 2008 Bonds	Assessed Values @ 4% Annual Growth	2008 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	Assessed Values @ 6% Annual Growth	2008 Bonds Tax Rate per \$100k of AV @ 6% AV Growth
2013				\$5,268,689,615		5,268,689,615	
2014	\$863,650	\$458,607	\$1,322,257	\$5,479,437,200	24.13	5,584,810,992	\$23.68
2015	\$913,100	\$458,607	\$1,371,707	\$5,698,614,688	24.07	5,919,899,651	\$23.17
2016	\$970,900	\$483,608	\$1,454,508	\$5,926,559,275	24.54	6,275,093,630	\$23.18
2017	\$1,033,700	\$508,607	\$1,542,307	\$6,163,621,646	25.02	6,651,599,248	\$23.19
2018	\$1,093,500	\$938,607	\$2,032,107	\$6,410,166,512	31.70	7,050,695,203	\$28.82
2019	\$1,160,300	\$1,033,607	\$2,193,907	\$6,666,573,172	32.91	\$7,473,736,915	\$29.35
2020	\$1,228,700	\$1,121,308	\$2,350,008	\$6,933,236,099	33.89	\$7,922,161,130	\$29.66
2021	\$1,298,500	\$1,213,788	\$2,512,288	\$7,210,565,543	34.84	\$8,397,490,798	\$29.92
2022	\$1,372,250	\$1,291,016	\$2,663,266	\$7,498,988,165	35.52	\$8,901,340,246	\$29.92
2023	\$1,450,500	\$1,375,235	\$2,825,735	\$7,798,947,692	36.23	\$9,435,420,661	\$29.95
2024	\$1,537,750	\$1,453,962	\$2,991,712	\$8,110,905,599	36.89	\$10,001,545,900	\$29.91
2025	\$1,628,250	\$1,547,346	\$3,175,596	\$8,435,341,823	37.65	\$10,601,638,654	\$29.95
2026	\$1,721,500	\$1,640,250	\$3,361,750	\$8,772,755,496	38.32	\$11,237,736,974	\$29.91
2027	\$1,822,000	\$1,746,000	\$3,568,000	\$9,123,665,716	39.11	\$11,912,001,192	\$29.95
2028	\$1,929,000	\$1,850,000	\$3,779,000	\$9,488,612,345	39.83	\$12,626,721,264	\$29.93
2029	\$2,031,750	\$1,975,000	\$4,006,750	\$9,868,156,838	40.60	\$13,384,324,540	\$29.94
2030	\$2,145,000	\$2,100,000	\$4,245,000	\$10,262,883,112	41.36	\$14,187,384,012	\$29.92
2031	\$2,260,000	\$2,240,000	\$4,500,000	\$10,673,398,436	42.16	\$15,038,627,053	\$29.92
2032	\$2,380,000	\$2,394,438	\$4,774,438	\$11,100,334,374	43.01	\$15,940,944,676	\$29.95
2033		\$5,059,438	\$5,059,438	\$11,544,347,749	43.83	\$16,897,401,356	\$29.94
2034	\$2,645,000	\$2,719,438	\$5,364,438	\$12,006,121,659	44.68	\$17,911,245,438	\$29.95
2035		\$5,684,438	\$5,684,438	\$12,486,366,525	45.53	\$18,985,920,164	\$29.94
2036		\$6,025,263	\$6,025,263	\$12,985,821,186	46.40	\$20,125,075,374	\$29.94
2037		\$6,389,091	\$6,389,091	\$13,505,254,034	47.31	\$21,332,579,896	\$29.95
2038		\$6,740,921	\$6,740,921	\$14,045,464,195	47.99	\$22,612,534,690	\$29.81
2039		\$7,109,554	\$7,109,554	\$14,607,282,763	48.67	\$23,969,286,771	\$29.66
2040		\$7,499,438	\$7,499,438	\$15,191,574,073	49.37	\$25,407,443,978	\$29.52
2041		\$7,913,770	\$7,913,770	\$15,799,237,036	50.09	\$26,931,890,616	\$29.38
2042		\$8,351,424	\$8,351,424	\$16,431,206,518	50.83	\$28,547,804,053	\$29.25
2043		\$8,810,346	\$8,810,346	\$17,088,454,778	51.56	\$30,260,672,297	\$29.11
2044		\$9,293,426	\$9,293,426	\$17,771,992,970	52.29	\$32,076,312,634	\$28.97
2045		\$9,804,744	\$9,804,744	\$18,482,872,688	53.05	\$34,000,891,392	\$28.84
2046		\$10,344,991	\$10,344,991	\$19,222,187,596	53.82	\$36,040,944,876	\$28.70
2047		\$10,859,285	\$10,859,285	\$19,991,075,100	54.32	\$38,203,401,569	\$28.42
2048		\$11,404,438	\$11,404,438	\$20,790,718,104	54.85	\$40,495,605,663	\$28.16
2049		\$11,973,688	\$11,973,688	\$21,622,346,828	55.38	\$42,925,342,002	\$27.89
2050		\$12,574,938	\$12,574,938	\$22,487,240,701	55.92	\$45,500,862,523	\$27.64

Source: Official Statement for Cypress Elementary School District General Obligation Bonds, 2008 Election, dated April 16, 2011. Federal interest subsidy for Series B-2 QSCB bonds has been subtracted from the debt service.

Table 6 is very similar to Table 4, which displayed the tax rates for Savanna Elementary School District. Columns 1-3 show the year and the annual debt service for the Series A and Series B-1 and B-2 bonds. Column 4 shows the total annual debt service for the three separate series of 2008 bonds: Series A, B-1 and B-2. Column 5 shows the AVs for future years assuming a 4% annual growth rate, which is in line with the average AV growth over the past 20 years. Column 6 shows the tax rate for the 2008 bonds that will result in each year with a growth in the AV of 4% on an annual basis. Column 7 shows the AV for future years assuming a 6% annual growth rate and Column 8 shows the tax rate for the 2008 bonds that will result in each year with a growth in the AV of 6% on an annual basis.

Assuming AVs continue to grow at an average rate of 4%, the 20 year historical average, the 2008 bonds will exceed the expected tax rate of \$30 per \$100,000 of AV in 2018 and continue to climb, reaching \$55.92 per \$100,000 of AV in 2050 as shown in Table 6. The district's taxpayers were presented tax rates would remain under \$30 per \$100,000 of AV when they approved the bond issue in 2008. That projection was made with the assumption that AV growth would *average* 6% over the next 40 years. It is more understandable that the district made this assumption in 2008, since this was before the impact of the last recession on property values became apparent. However, when the district issued the Series B-1 and B-2 bonds in 2011, the impact of the recession on property values was very obvious. The district and their financial advisor did not change their assumed AV growth for the 2011 Series B-1 and B-2 bonds; they left the assumed AV growth at 6%.

So what does this mean to the typical homeowner in the district? Assume the district's AVs will continue to grow at the historical annual rate of 4% per year and the homeowner's home AV grows at the Proposition 13 mandated annual rate of 2% per year. The district taxpayer will pay an *additional* \$809 of taxes for every \$100,000 of AV for his house between now and when the last bonds mature in 2052, or an average of \$20.23 per year for every \$100,000 of AV. A homeowner with a house assessed at \$500,000 today will pay an additional \$4,047 in taxes between now and when the bonds mature. Note that no discounted cash flow or present value techniques were used in these calculations to avoid additional complexity. Please see Appendix B at the back of the report for the detailed calculations.

If AV growth does average 6% between now and the year 2050, then the problem goes away and the tax rate for the 2008 bonds never exceeds the legal maximum of \$30 per \$100,000 of AV. Please see columns 7 and 8 on Table 6 for the future AVs and resultant tax rates under the 6% AV growth rate scenario.

How likely is it that AVs will grow at an *average* rate of 6% for the next 40 years in the district? The Grand Jury does not think that is very realistic.

Westminster Elementary School District

Westminster Elementary School District is the largest of the three school districts in Orange County examined in greater detail by the Grand Jury. The district currently operates 13 elementary schools, three middle schools, one child development school and a special programs center. The average daily attendance (ADA) for the district is 9,382 students. Similar to Savanna and Cypress, Westminster is an older, established district in northern Orange County with aged schools in need of renovations.

The voters of the Westminster Elementary School District approved Measure O in November 2008, authorizing the district to borrow \$130,000,000. The district has issued three series of bonds and two Bond Anticipation Notes (BANs) against the Measure O authorization. The 2009A bonds were issued in October 2009 for an aggregate principal amount of \$34,995,681. The two series of BANs were issued for \$17,000,000 and \$18,000,000 in September 2010. Both BANs have since been paid off with the proceeds from the second and third series of bonds issued from the 2008 election. The second series of bonds from the 2008 election, Series 2013A, was issued in March 2013 for an aggregate principal amount of \$20,998,754. The third series of bonds from the 2008 election, Series 2013B, was issued in December 2013 for an aggregate principal amount of \$22,324,915.

As was the case in the Savanna and Cypress districts, the Grand Jury was impressed with the school renovations that have been completed. District officials led the Grand Jury on a tour of several of their renovated schools. The district has been very judicious in how they have spent their money and are justifiably proud of their improved facilities.

The loss of state matching funds was not nearly as significant for Westminster as it was for Savanna and Cypress. District officials explained to the Grand Jury that they utilized state matching funds to complete renovations of the elementary schools in the district from 2004 through 2007. Since the district utilized the state matching funds during that time period, they had lower priority for receiving new state matching funds.

The Series 2013B bonds were issued in December 2013, less than a month before AB 182, which restricts CABs, was scheduled to take effect. The bonds had terms up to 40 years, well in excess of the limitation of a 25-year term contained in AB 182. The debt ratio for all of the CIBs and CABs in Series 2013B is 5.78:1, well in excess of the 4:1 standard. The two longest term CABs in the 2013B Series have debt ratios of 10.83:1 and 16.17:1.

Similar to Savanna and Cypress, there are also issues with how Westminster projected AV into the future and the resultant potential impact on tax rates. Westminster was very “creative” in their approach.

The Grand Jury reviewed the data used by Westminster to project future AV growth. The AV growth is projected by Westminster to average 4.219% for the next 40 years. On the surface, that sounds very reasonable. The Grand Jury’s 20-year historical data for Westminster AVs may

be found in Table 7 below. As can be seen in Table 7, the 20 year average growth in AVs is 4.05%; the Compounded Annual Growth Rate (CAGR) for the last 20 years was 3.98%.

The problem with the Westminster’s future AV projection of average annual growth of 4.219% is how they projected the AVs year by year. From 2017 to 2041 the projected growth in AVs never falls below 5% annually, cycling between a high 8% and a low of 5% every five years. But suddenly, the AV growth slows dramatically from 2044 through 2053, never getting above 2%. How does the district explain that logic? The short answer is top district officials and the district’s financial firm could not explain to the Grand Jury how they came to this assumption other than to make very general statements that this was their best estimate of future AVs.

What are the ramifications of Westminster’s “creative” AV projections? The tax rate that Westminster projects for the combined series of bonds (Series 2009A, Series 2013A and Series 2013B) barely stays below the legal limit of \$30 per \$100,000 of AV from 2017 to 2053. The only way this can happen is for the AVs to grow at close to an average of close to 6% through 2041. Please refer to Table 7 below for the last 20 years historical growth for AVs.

Table 7

Westminster Elementary School District Assessed Values		
Year	Total Assessed Values Assessor Data	% Change
7/1/2013	\$7,584,638,808	2.44%
7/1/2012	\$7,403,653,626	1.75%
7/1/2011	\$7,276,559,130	-1.84%
7/1/2010	\$7,413,274,893	4.46%
7/1/2009	\$7,096,805,673	-0.58%
7/1/2008	\$7,137,979,035	1.97%
7/1/2007	\$7,000,205,684	7.53%
7/1/2006	\$6,509,868,902	12.23%
7/1/2005	\$5,800,681,191	1.96%
7/1/2004	\$5,689,269,060	6.60%
7/1/2003	\$5,337,163,590	6.06%
7/1/2002	\$5,032,037,822	6.20%
7/1/2001	\$4,738,085,580	7.09%
7/1/2000	\$4,424,277,723	8.96%
7/1/1999	\$4,060,339,721	9.17%
7/1/1998	\$3,719,278,844	1.86%
7/1/1997	\$3,651,403,093	4.58%
7/1/1996	\$3,491,397,392	1.12%
7/1/1995	\$3,452,676,674	-0.96%
7/1/1994	\$3,486,099,822	0.39%
7/1/1993	\$3,472,512,246	
	20 Year Average	4.05%
	10 Year Average	3.65%
	5 Year Average	1.25%

Source: Orange County Assessor

	20 Years	10 Years	5 Years
Compounded Annual Growth Rate (CAGR)	3.98%	3.57%	1.22%

As was the case with Savanna and Cypress, AV growth in the district over the last 20 years has averaged close to 4% annually. Clearly, there are years with stronger growth during good economic times and years with negative growth during challenging economic times. Given the

AV growth averaging 4% over the last 20 years, what is the probability that AV growth will average close to 6% between now and 2041? Not likely in the opinion of the Grand Jury.

Table 8 shows the Debt Service Analysis for Westminster Elementary School District. It is very similar to Table 4 for Savanna Elementary School District and Table 6 for Cypress Elementary School District. Columns 1 – 3 show the year, Debt Service for the Series 2009A Bonds and Debt Service for the Series A&B 2013 Bonds. AV growth calculated at 4% annual growth and the 2008 Election Tax Rate per \$100K of AV at 4% annual growth are shown in columns 4 and 5. AV growth calculated at 6% annual growth and the 2008 Election Tax Rate per \$100K of AV at 6% annual growth are shown in columns 6 and 7.

The district will exceed the \$30 per \$100,000 of AV legal tax rate in 2018 if AV growth continues at the historical level of 4%. Assuming 4% annual AV growth, the tax rate steadily climbs, peaking at \$48.04 in 2043 before beginning to fall off, dropping to \$36.18 in 2053. Please refer to Table 8 below.

School Bonds – The Untold Story of Assessed Values

Table 8

Westminster Elementary School District Debt Service Analysis							
Year	Debt Service Series 2009A-1 Bonds	Debt Service Series A&B 2013 Bonds	2008 Election Total Debt Service	Assessed Values @ 4% Annual Growth	2008 Election Tax Rate per \$100k of AV @ 4% AV Growth	Assessed Values @ 6% Annual Growth	2008 Election Tax Rate per \$100k of AV @ 6% AV Growth
2013				\$7,584,638,808		\$7,584,638,808	
2014	\$1,814,000	\$341,704	\$2,155,704	\$7,888,024,360	\$27.33	\$8,039,717,136	\$26.81
2015	\$1,544,000	\$598,213	\$2,142,213	\$8,203,545,335	\$26.11	\$8,522,100,165	\$25.14
2016	\$2,084,000	\$269,613	\$2,353,613	\$8,531,687,148	\$27.59	\$9,033,426,175	\$26.05
2017	\$2,224,000	\$369,613	\$2,593,613	\$8,872,954,634	\$29.23	\$9,575,431,745	\$27.09
2018	\$1,889,000	\$916,463	\$2,805,463	\$9,227,872,819	\$30.40	\$10,149,957,650	\$27.64
2019	\$2,474,000	\$526,463	\$3,000,463	\$9,596,987,732	\$31.26	\$10,758,955,109	\$27.89
2020	\$2,574,000	\$606,463	\$3,180,463	\$9,980,867,241	\$31.87	\$11,404,492,415	\$27.89
2021	\$2,659,000	\$681,463	\$3,340,463	\$10,380,101,931	\$32.18	\$12,088,761,960	\$27.63
2022	\$2,764,000	\$776,463	\$3,540,463	\$10,795,306,008	\$32.80	\$12,814,087,678	\$27.63
2023	\$2,899,000	\$926,463	\$3,825,463	\$11,227,118,249	\$34.07	\$13,582,932,938	\$28.16
2024	\$3,074,000	\$1,021,463	\$4,095,463	\$11,676,202,979	\$35.08	\$14,397,908,915	\$28.44
2025	\$3,284,000	\$1,056,463	\$4,340,463	\$12,143,251,098	\$35.74	\$15,261,783,450	\$28.44
2026	\$3,484,000	\$1,074,100	\$4,558,100	\$12,628,981,142	\$36.09	\$16,177,490,457	\$28.18
2027	\$3,659,000	\$1,176,525	\$4,835,525	\$13,134,140,387	\$36.82	\$17,148,139,884	\$28.20
2028	\$3,804,000	\$1,418,400	\$5,222,400	\$13,659,506,003	\$38.23	\$18,177,028,277	\$28.73
2029	\$3,919,000	\$1,670,000	\$5,589,000	\$14,205,886,243	\$39.34	\$19,267,649,974	\$29.01
2030	\$4,134,000	\$1,790,000	\$5,924,000	\$14,774,121,693	\$40.10	\$20,423,708,972	\$29.01
2031	\$4,337,250	\$1,885,000	\$6,222,250	\$15,365,086,560	\$40.50	\$21,649,131,510	\$28.74
2032	\$4,602,500	\$1,992,375	\$6,594,875	\$15,979,690,023	\$41.27	\$22,948,079,401	\$28.74
2033	\$4,920,750	\$2,199,288	\$7,120,038	\$16,618,877,624	\$42.84	\$24,324,964,165	\$29.27
2034	\$5,213,250	\$2,334,888	\$7,548,138	\$17,283,632,729	\$43.67	\$25,784,462,015	\$29.27
2035		\$7,849,150	\$7,849,150	\$17,974,978,038	\$43.67	\$27,331,529,736	\$28.72
2036		\$8,318,913	\$8,318,913	\$18,693,977,159	\$44.50	\$28,971,421,520	\$28.71
2037		\$8,987,125	\$8,987,125	\$19,441,736,246	\$46.23	\$30,709,706,811	\$29.26
2038		\$9,530,375	\$9,530,375	\$20,219,405,696	\$47.13	\$32,552,289,220	\$29.28
2039		\$9,909,686	\$9,909,686	\$21,028,181,923	\$47.13	\$34,505,426,573	\$28.72
2040		\$10,504,475	\$10,504,475	\$21,869,309,200	\$48.03	\$36,575,752,167	\$28.72
2041		\$11,032,335	\$11,032,335	\$22,744,081,568	\$48.51	\$38,770,297,298	\$28.46
2042		\$11,474,615	\$11,474,615	\$23,653,844,831	\$48.51	\$41,096,515,135	\$27.92
2043		\$11,816,899	\$11,816,899	\$24,599,998,624	\$48.04	\$43,562,306,043	\$27.13
2044		\$12,056,156	\$12,056,156	\$25,583,998,569	\$47.12	\$46,176,044,406	\$26.11
2045		\$12,177,338	\$12,177,338	\$26,607,358,512	\$45.77	\$48,946,607,070	\$24.88
2046		\$12,235,055	\$12,235,055	\$27,671,652,853	\$44.22	\$51,883,403,495	\$23.58
2047		\$12,358,928	\$12,358,928	\$28,778,518,967	\$42.94	\$54,996,407,704	\$22.47
2048		\$12,545,010	\$12,545,010	\$29,929,659,725	\$41.91	\$58,296,192,167	\$21.52
2049		\$12,797,466	\$12,797,466	\$31,126,846,114	\$41.11	\$61,793,963,697	\$20.71
2050		\$12,988,403	\$12,988,403	\$32,371,919,959	\$40.12	\$65,501,601,518	\$19.83
2051		\$13,120,909	\$13,120,909	\$33,666,796,757	\$38.97	\$69,431,697,610	\$18.90
2052		\$13,187,328	\$13,187,328	\$35,013,468,628	\$37.66	\$73,597,599,466	\$17.92
2053		\$13,175,000	\$13,175,000	\$36,414,007,373	\$36.18	\$78,013,455,434	\$16.89

Source: Official Statement for Westminster Elementary School District General Obligation Bonds, 2008 Election, Series 2013B, dated December 5, 2013.

So what does this mean to the typical homeowner in the district? Assume the district's AVs will continue to grow at the historical annual rate of 4% per year and the homeowner's home AV grows at the Proposition 13 mandated annual rate of 2% per year. The district taxpayer will pay an *additional* \$628 of taxes for every \$100,000 of AV for his house between now and when the last bonds mature in 2052. A homeowner with a house assessed at \$500,000 today will pay an additional \$3,142 in taxes between now and when the bonds mature, or an average of \$15.70 per year for every \$100,000 of AV. Note that no discounted cash flow or present value techniques were used in these calculations to avoid additional complexity. Please see Appendix C at the back of the report for the detailed calculations.

The future growth rate of AVs is again the key issue. What is the probability that the growth rate for the Westminster Elementary School District AVs will *average* 6% between today and 2041 given the average growth rate for AVs in the district is 4% for the last 20 years? The Grand Jury does not believe the district's AV growth rate will average 6% through 2041.

Where Do We Go From Here?

The Grand Jury believes this report makes a very strong case on why taxpayers in the Savanna, Cypress and Westminster Elementary School Districts should expect unanticipated tax increases in the future because the three school districts made unrealistic assumptions on AV growth. The question now becomes: What can be done going forward to require all of the school districts in Orange County to become much more transparent about the AV assumptions that underpin future bond issues that are put before the voters for approval?

The Grand Jury interviewed several top officials at Orange County Department of Education (OCDE) to review this issue with them and to see if OCDE could play a role in overseeing the school district AV assumptions for future bond issues. OCDE told the Grand Jury they did not have any legal authority to provide that oversight. However, the Grand Jury does not see any reason why OCDE could not be part of oversight process with the concurrence of the school district sponsoring the bond issue.

The only other solution to getting improved transparency for AV assumptions used in new bond issues is to ask all of the school districts in Orange County to voluntarily disclose their AV assumptions and supporting historical data in materials made available to voters. The districts would be asked to explain the basis of their AV assumptions and provide justification for why their AV assumptions are equally likely to either be too high or too low.

There is no question that many school districts are in difficult positions with respect to upgrading their schools to meet the 21st century requirements. In many cases, they are reluctant to go back to the voters to get approval for a new bond issue because they know the public is much more aware of the negative publicity surrounding bond issues, particularly CABs. As can be seen in Tables 4, 6 and 8 for Savanna, Cypress and Westminster Elementary School Districts, one way to stretch bond dollars further is to project higher AV annual growth rates. It is clear that when

looking at these tables that the higher AV growth rate results in a lower tax rate. This is critical when the district is trying to keep the tax rate under the legal maximum for elementary school districts of \$30 per \$100,000 of AV. *It is not fair to the taxpayers to project unrealistic AVs.*

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of *School Bonds – The Untold Story of Assessed Values*, the 2013-2014 Orange County Grand Jury has arrived at nine principal findings, as follows:

F.1. Taxpayers in the Westminster, Cypress and Savanna Elementary School Districts will potentially be faced with significantly higher tax rates in future years to repay school construction bonds.

F.2. The funds raised through these school bonds for the Westminster, Cypress and Savanna Elementary School Districts have been spent on much needed capital improvements. All three of these districts were faced with schools that in some cases had not been renovated in over 50 years. These districts are making tremendous progress in bringing their schools up to a 21st Century standard.

F.3. Savanna Elementary School District received a waiver from the State Board of Education in July 2012 to exceed the bonded indebtedness limit of 1.25% of assessed values (AVs). Savanna applied for the waiver before exceeding the bonded indebtedness limit.

F.4. School districts located in lower AV areas are at a distinct disadvantage in terms of their bonding capacity per student. For instance, Laguna Beach Unified School District has over ten times the bonding capacity per student as Garden Grove Unified School District.

F.5. The 20 year average for growth in AVs for the Savanna, Cypress and Westminster Elementary School Districts are approximately 4% per year.

F.6. The assumptions made for the expected growth in AVs in the future years has a very significant effect on the corresponding tax rates. For example, in the Savanna Elementary School District, the tax rate will be \$60.74 per \$100,000 of AV in the year 2052 if the AVs continue to grow at an average of 4% per year. The tax rate falls to \$20.04 per \$100,000 of AV in the year 2052 if the AVs grow at an average rate of 7%.

F.7. The homeowners and property owners will pay additional taxes of \$2,025, \$809 and \$628 per \$100,000 of AV over the term of the bonds in the Savanna, Cypress and Westminster Elementary School Districts respectively if AVs continue to grow at the historical rate of 4%.

F.8. The methodology used by the Savanna, Cypress and Westminster Elementary School Districts to estimate the future growth rates for AVs does not appear to be reliable to the Grand Jury. Savanna and Cypress relied on average growth of AVs over a 35-year period. The first 10 to 15 years of this historical data includes a considerable amount of original development, thereby inflating the average AV growth rate. Westminster developed an estimate of AV growth that appears to have no historical or factual basis. AV growth is projected to average around 6% from the years 2017 – 2041, and then tails off dramatically for the last 10 years of the bonds, averaging less than 2%. Using this estimate, Westminster projects the district will never exceed the legal tax rate of \$30 per \$100,000.

F.9. Orange County Department of Education (OCDE) does not have any statutory authority to ensure all Orange County school districts properly disclose assessed value assumptions for bond measures being presented to voters for approval.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of *School Bonds – The Untold Story of Assessed Values*, the 2013-2014 Orange County Grand Jury makes the following two recommendations:

R.1. All school districts in Orange County should include a clear explanation of the assumed future growth rate of assessed values in the bond election materials made available to voters for future bond issues. This explanation should reference the *relevant* historical assessed value data for the individual district. For instance, if the district is fundamentally built out, the historical assessed value data should not include years with significant development because that is not indicative of the district’s current and future situation. **(F.1., F.5., F.6., F.7., F.8.)**

R.2. Although there is no statutory requirement, the Orange County Department of Education (OCDE) should evaluate whether to assume voluntary oversight responsibility, with concurrence of the individual school district issuing the bonds, to ensure all Orange County school districts properly disclose their assessed value assumptions used for future bond measures. **(F.9)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which

it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Savanna, Cypress and Westminster Elementary School Districts: F.1., F.2., F.5., F.6., F.7., F.8.

Savanna Elementary School District: F.3.

Superintendent of Schools, Orange County Department of Education: F.4., F.9.

Elementary Districts: Anaheim City, Buena Park, Centralia, Cypress, Fountain Valley, Fullerton, Huntington Beach, La Habra, Magnolia, Ocean View, Savanna, Westminster: R1

High School Districts: Anaheim Union, Fullerton Joint, Huntington Beach: R1

Unified Districts: Brea-Olinda, Capistrano, Garden Grove, Irvine, Laguna Beach, Los Alamitos, Newport-Mesa, Orange, Placentia-Yorba Linda, Saddleback Valley, Santa Ana, Tustin: R1

Superintendent of Schools, Orange County Department of Education: R.1., R.2.

APPENDICES

Appendix A – Additional Tax Calculation for Savanna Elementary School District

Savanna Elementary School District Excess Tax Analysis									
Year	Total Debt Service 2008 Bonds	Assessed Values @ 4% Annual Growth	2008 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	Total Debt Service 2012 Bonds	2012 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	AV of Home	Taxes in Excess of \$30 per \$100K of AV 2008 Bonds	Taxes in Excess of \$30 per \$100K of AV 2012 Bonds	
2013		\$1,829,452,922							
2014	\$556,163	\$1,902,631,039	\$29.23	\$530,969	\$27.91	\$500,000			
2015	\$584,363	\$1,978,736,280	\$29.53	\$560,969	\$28.35	\$510,000			
2016	\$636,663	\$2,057,885,732	\$30.94	\$605,369	\$29.42	\$520,200			
2017	\$697,813	\$2,140,201,161	\$32.61	\$673,119	\$31.45	\$530,604		\$8	
2018	\$762,751	\$2,225,809,207	\$34.27	\$717,319	\$32.23	\$541,216		\$12	
2019	\$826,351	\$2,314,841,576	\$35.70	\$764,519	\$33.03	\$552,040	\$31	\$17	
2020	\$892,951	\$2,407,435,239	\$37.09	\$814,519	\$33.83	\$563,081	\$40	\$22	
2021	\$962,351	\$2,503,732,648	\$38.44	\$864,019	\$34.51	\$574,343	\$48	\$26	
2022	\$1,029,151	\$2,603,881,954	\$39.52	\$915,269	\$35.15	\$585,830	\$56	\$30	
2023	\$1,092,363	\$2,708,037,232	\$40.34	\$968,019	\$35.75	\$597,546	\$62	\$34	
2024	\$1,160,363	\$2,816,358,722	\$41.20	\$1,027,419	\$36.48	\$609,497	\$68	\$39	
2025	\$1,231,113	\$2,929,013,070	\$42.03	\$1,089,860	\$37.21	\$621,687	\$75	\$45	
2026	\$1,303,863	\$3,046,173,593	\$42.80	\$1,154,860	\$37.91	\$634,121	\$81	\$50	
2027	\$1,381,813	\$3,168,020,537	\$43.62	\$1,219,860	\$38.51	\$646,803	\$88	\$55	
2028	\$1,464,975	\$3,294,741,359	\$44.46	\$1,294,860	\$39.30	\$659,739	\$95	\$61	
2029	\$1,552,513	\$3,426,531,013	\$45.31	\$1,368,485	\$39.94	\$672,934	\$103	\$67	
2030	\$1,647,738	\$3,563,592,253	\$46.24	\$1,448,485	\$40.65	\$686,393	\$111	\$73	
2031	\$1,743,875	\$3,706,135,943	\$47.05	\$1,535,723	\$41.44	\$700,121	\$119	\$80	
2032	\$1,844,475	\$3,854,381,381	\$47.85	\$1,625,723	\$42.18	\$714,123	\$127	\$87	
2033	\$1,949,475	\$4,008,556,636	\$48.63	\$1,725,035	\$43.03	\$728,406	\$136	\$95	
2034	\$2,060,000	\$4,168,898,902	\$49.41	\$1,825,035	\$43.78	\$742,974	\$144	\$102	
2035	\$2,179,425	\$4,335,654,858	\$50.27	\$1,935,035	\$44.63	\$757,833	\$154	\$111	
2036	\$2,304,425	\$4,509,081,052	\$51.11	\$2,050,035	\$45.46	\$772,990	\$163	\$120	
2037	\$2,439,425	\$4,689,444,294	\$52.02	\$2,170,035	\$46.27	\$788,450	\$174	\$128	
2038	\$2,569,425	\$4,877,022,066	\$52.68	\$2,295,035	\$47.06	\$804,219	\$182	\$137	
2039	\$2,714,425	\$5,072,102,949	\$53.52	\$2,429,835	\$47.91	\$820,303	\$193	\$147	
2040	\$2,864,425	\$5,274,987,067	\$54.30	\$2,577,035	\$48.85	\$836,709	\$203	\$158	
2041	\$3,019,425	\$5,485,986,549	\$55.04	\$2,725,835	\$49.69	\$853,443	\$214	\$168	
2042	\$3,184,425	\$5,705,426,011	\$55.81	\$2,890,835	\$50.67	\$870,512	\$225	\$180	
2043	\$3,359,425	\$5,933,643,052	\$56.62	\$3,061,532	\$51.60	\$887,922	\$236	\$192	
2044	\$3,547,563	\$6,170,988,774	\$57.49	\$3,241,035	\$52.52	\$905,681	\$249	\$204	
2045	\$3,741,463	\$6,417,828,325	\$58.30	\$3,431,035	\$53.46	\$923,794	\$261	\$217	
2046	\$3,949,438	\$6,674,541,458	\$59.17	\$3,632,160	\$54.42	\$942,270	\$275	\$230	
2047	\$4,164,125	\$6,941,523,116	\$59.99	\$3,847,480	\$55.43	\$961,116	\$288	\$244	
2048	\$4,393,500	\$7,219,184,041	\$60.86	\$4,077,251	\$56.48	\$980,338	\$303	\$260	
2049	\$4,634,863	\$7,507,951,403	\$61.73	\$4,317,209	\$57.50	\$999,945	\$317	\$275	
2050	\$4,890,513	\$7,808,269,459	\$62.63	\$4,571,230	\$58.54	\$1,019,944	\$333	\$291	
2051	\$5,157,413	\$8,120,600,237	\$63.51	\$4,840,200	\$59.60	\$1,040,343	\$349	\$308	
2052	\$5,157,413	\$8,445,424,247	\$61.07	\$5,130,000	\$60.74	\$1,061,149	\$330	\$326	
Source: Official Statement for Savanna Elementary School District General Obligation Bonds, August 16, 2012							\$5,835	\$4,599	\$10,434

Appendix B – Additional Tax Calculation for Cypress Elementary School District

Cypress Elementary School District Excess Tax Analysis					
Year	Total Debt Service 2008 Bonds	Assessed Values @ 4% Annual Growth	2008 Bonds Tax Rate per \$100k of AV @ 4% AV Growth	AV of Home	Excess of \$30 per \$100K of AV
2013		\$5,268,689,615		\$500,000	
2014	\$1,322,257	\$5,479,437,200	24.13	\$510,000	
2015	\$1,371,707	\$5,698,614,688	24.07	\$520,200	
2016	\$1,454,508	\$5,926,559,275	24.54	\$530,604	
2017	\$1,542,307	\$6,163,621,646	25.02	\$541,216	
2018	\$2,032,107	\$6,410,166,512	31.70	\$552,040	\$9
2019	\$2,193,907	\$6,666,573,172	32.91	\$563,081	\$16
2020	\$2,350,008	\$6,933,236,099	33.89	\$574,343	\$22
2021	\$2,512,288	\$7,210,565,543	34.84	\$585,830	\$28
2022	\$2,663,266	\$7,498,988,165	35.52	\$597,546	\$33
2023	\$2,825,735	\$7,798,947,692	36.23	\$609,497	\$38
2024	\$2,991,712	\$8,110,905,599	36.89	\$621,687	\$43
2025	\$3,175,596	\$8,435,341,823	37.65	\$634,121	\$48
2026	\$3,361,750	\$8,772,755,496	38.32	\$646,803	\$54
2027	\$3,568,000	\$9,123,665,716	39.11	\$659,739	\$60
2028	\$3,779,000	\$9,488,612,345	39.83	\$672,934	\$66
2029	\$4,006,750	\$9,868,156,838	40.60	\$686,393	\$73
2030	\$4,245,000	\$10,262,883,112	41.36	\$700,121	\$80
2031	\$4,500,000	\$10,673,398,436	42.16	\$714,123	\$87
2032	\$4,774,438	\$11,100,334,374	43.01	\$728,406	\$95
2033	\$5,059,438	\$11,544,347,749	43.83	\$742,974	\$103
2034	\$5,364,438	\$12,006,121,659	44.68	\$757,833	\$111
2035	\$5,684,438	\$12,486,366,525	45.53	\$772,990	\$120
2036	\$6,025,263	\$12,985,821,186	46.40	\$788,450	\$129
2037	\$6,389,091	\$13,505,254,034	47.31	\$804,219	\$139
2038	\$6,740,921	\$14,045,464,195	47.99	\$820,303	\$148
2039	\$7,109,554	\$14,607,282,763	48.67	\$836,709	\$156
2040	\$7,499,438	\$15,191,574,073	49.37	\$853,443	\$165
2041	\$7,913,770	\$15,799,237,036	50.09	\$870,512	\$175
2042	\$8,351,424	\$16,431,206,518	50.83	\$887,922	\$185
2043	\$8,810,346	\$17,088,454,778	51.56	\$905,681	\$195
2044	\$9,293,426	\$17,771,992,970	52.29	\$923,794	\$206
2045	\$9,804,744	\$18,482,872,688	53.05	\$942,270	\$217
2046	\$10,344,991	\$19,222,187,596	53.82	\$961,116	\$229
2047	\$10,859,285	\$19,991,075,100	54.32	\$980,338	\$238
2048	\$11,404,438	\$20,790,718,104	54.85	\$999,945	\$249
2049	\$11,973,688	\$21,622,346,828	55.38	\$1,019,944	\$259
2050	\$12,574,938	\$22,487,240,701	55.92	\$1,040,343	\$270
Source: Official Statement for Cypress Elementary School District (dated April 16, 2011. Federal interest subsidy for Series B-2 QSCB bonds has been subtracted from the debt service.					\$4,047

Appendix C – Additional Tax Calculation for Westminster Elementary School District

Westminster Elementary School District Excess Tax Analysis					
Year	2008 Election Total Debt Service	Assessed Values @ 4% Annual Growth	2008 Election Tax Rate per \$100k of AV @ 4% AV Growth	AV of Home	Taxes in Excess of \$30 per \$100K of AV
2013		\$7,584,638,808			
2014	\$2,155,704	\$7,888,024,360	\$27.33	\$500,000	
2015	\$2,142,213	\$8,203,545,335	\$26.11	\$510,000	
2016	\$2,353,613	\$8,531,687,148	\$27.59	\$520,200	
2017	\$2,593,613	\$8,872,954,634	\$29.23	\$530,604	
2018	\$2,805,463	\$9,227,872,819	\$30.40	\$541,216	\$2
2019	\$3,000,463	\$9,596,987,732	\$31.26	\$552,040	\$7
2020	\$3,180,463	\$9,980,867,241	\$31.87	\$563,081	\$11
2021	\$3,340,463	\$10,380,101,931	\$32.18	\$574,343	\$13
2022	\$3,540,463	\$10,795,306,008	\$32.80	\$585,830	\$16
2023	\$3,825,463	\$11,227,118,249	\$34.07	\$597,546	\$24
2024	\$4,095,463	\$11,676,202,979	\$35.08	\$609,497	\$31
2025	\$4,340,463	\$12,143,251,098	\$35.74	\$621,687	\$36
2026	\$4,558,100	\$12,628,981,142	\$36.09	\$634,121	\$39
2027	\$4,835,525	\$13,134,140,387	\$36.82	\$646,803	\$44
2028	\$5,222,400	\$13,659,506,003	\$38.23	\$659,739	\$54
2029	\$5,589,000	\$14,205,886,243	\$39.34	\$672,934	\$63
2030	\$5,924,000	\$14,774,121,693	\$40.10	\$686,393	\$69
2031	\$6,222,250	\$15,365,086,560	\$40.50	\$700,121	\$73
2032	\$6,594,875	\$15,979,690,023	\$41.27	\$714,123	\$80
2033	\$7,120,038	\$16,618,877,624	\$42.84	\$728,406	\$94
2034	\$7,548,138	\$17,283,632,729	\$43.67	\$742,974	\$102
2035	\$7,849,150	\$17,974,978,038	\$43.67	\$757,833	\$104
2036	\$8,318,913	\$18,693,977,159	\$44.50	\$772,990	\$112
2037	\$8,987,125	\$19,441,736,246	\$46.23	\$788,450	\$128
2038	\$9,530,375	\$20,219,405,696	\$47.13	\$804,219	\$138
2039	\$9,909,686	\$21,028,181,923	\$47.13	\$820,303	\$140
2040	\$10,504,475	\$21,869,309,200	\$48.03	\$836,709	\$151
2041	\$11,032,335	\$22,744,081,568	\$48.51	\$853,443	\$158
2042	\$11,474,615	\$23,653,844,831	\$48.51	\$870,512	\$161
2043	\$11,816,899	\$24,599,998,624	\$48.04	\$887,922	\$160
2044	\$12,056,156	\$25,583,998,569	\$47.12	\$905,681	\$155
2045	\$12,177,338	\$26,607,358,512	\$45.77	\$923,794	\$146
2046	\$12,235,055	\$27,671,652,853	\$44.22	\$942,270	\$134
2047	\$12,358,928	\$28,778,518,967	\$42.94	\$961,116	\$124
2048	\$12,545,010	\$29,929,659,725	\$41.91	\$980,338	\$117
2049	\$12,797,466	\$31,126,846,114	\$41.11	\$999,945	\$111
2050	\$12,988,403	\$32,371,919,959	\$40.12	\$1,019,944	\$103
2051	\$13,120,909	\$33,666,796,757	\$38.97	\$1,040,343	\$93
2052	\$13,187,328	\$35,013,468,628	\$37.66	\$1,061,149	\$81
2053	\$13,175,000	\$36,414,007,373	\$36.18	\$1,082,372	\$67
Source: Official Statement for Westminster Elementary School District General Obligation Bonds, 2008 Election, Series 2013B, dated December 5, 2013.					\$3,142

**ORANGE COUNTY SCHOOL DISTRICTS:
DIRE FINANCIAL FUTURES**



GRAND JURY 2013-2014

Table of Contents

SUMMARY 2

REASON FOR THE STUDY 3

Sample Media Articles on School Districts (2008-2013)..... 3

BACKGROUND AND FACTS 4

The California Public Education System 4

History of Orange County School Districts 7

Fig. 1: Orange County School Districts Attendance Boundaries..... 8

METHOD OF STUDY 9

ANALYSIS 10

Orange County School Districts..... 10

Table 1: Orange County Unified School Districts (Numbers rounded)..... 10

Table 2: Non-Unified School Districts by Region, Schools, Enrollments (Rounded) 11

The Process for School District Unification 12

The Potential Benefits to School District Unification 12

Increase in Revenue..... 12

Cost Savings and Reduced Spending..... 13

Table 3 - Programs with a Potential Cost Savings from Unification..... 14

Educational Benefits to Unification 14

Short Term Solutions Versus Long Term Debt 15

Potential Negative Response to a Unification Proposal..... 15

OCDE and the CCSDO 16

Conclusion..... 17

FINDINGS 17

RECOMMENDATIONS..... 18

REQUIRED RESPONSES..... 18

Appendix A: Number of California School Districts by Type and by Selected Years 21

Appendix B: California Master Plan for Education (2002) Selected Recommendations 22

Appendix C: Recent History of Orange County School District Unifications 23

Appendix D: Chapter 6 – Legal Criteria Governing Reorganization Proposals..... 24

Appendix E: Annotated Bibliography 25

SUMMARY

Orange County public school districts, as with other districts in California, have faced several years of severe budget cuts from the state. Districts have responded by cutting personnel and classes because teacher salary and benefits is the largest portion of a district's budget. Traditional methods to generate alternative income have *not* produced the necessary results to restore essential programs. Consequently, students are placed in crowded classrooms and valuable educational opportunities have been lost.

Districts have also been forced to eliminate enrichment programs designed to keep students on pace with students from other states. Remedial programs, which help students with special needs, have been reduced or eliminated. Some districts resorted to closing schools, selling school property and even reducing the number of days in a school year. Districts that are attempting to survive by issuing school bonds are criticized due to the high cost of repayment by future taxpayers. Consequently, school districts are in a dire financial struggle.

State education officials have reported that the number of school districts on a statewide "budget watch list" has increased dramatically. Districts on the watch list indicate that they may not be able to, or don't expect to, meet all of their financial obligations over the next two years. There were *seven* out of twelve elementary districts in Orange County on a recent watch list.

The 2013-2014 Orange County Grand Jury identifies in this report, one way for 15 Orange County elementary and high school districts to ease their budget problems. The Grand Jury found that certain districts could significantly benefit from *unification*. Several districts in Orange County unified in the 1960's and as recently as 1989. Additional funding from the state has been granted in the past to encourage unification. Educators reported to the Grand Jury that significant cost savings would result from unification and that there is a notable "academic benefit." Successful unifications have recently taken place in the cities of Santa Barbara, Santa Paula and Hawthorne (Wiseburn Unified.)

There are only three non-unified high school districts in Orange County. These districts each contain four smaller elementary districts within their attendance area. The 2013-2014 Orange County Grand Jury found that unification should be considered by these districts to free up funds spent on administration that can then be used to enhance classroom teaching. Ultimately, this can only take place by a vote of the citizens in the affected districts. *The Orange County Department of Education has the responsibility and resources to conduct a comprehensive study as to ways to decrease the costs of school administration in Orange County. This study should determine the cost savings, the potential increase in revenue and the improvement in the efficiency of school districts operations.*

REASON FOR THE STUDY

I know an important thing to anyone considering a move with children is the quality of the schools in the neighborhood they choose. For Californians, the budget cuts coming up this next year is common news, but people from out of state likely do not know about the financial problems facing California schools this upcoming year. I think it is better for us to warn people interested in Orange County and California what the conditions are so they don't get surprised. It is only fair because people should not be surprised when they find that perfect house with the perfect school and then find out the next year the class sizes are increasing to 35 students in kindergarten. It is better to let everyone know beforehand.

City-Data.com/forum

The quote above reflects a flurry of internet discussions concerning schools. The 2013-2014 Orange County Grand Jury learned that home buyers, especially those with children, have expressed a recent concern about the quality of local schools. A community with favorable schools attracts desirable residents who ultimately benefit the community. However, the last several years saw severe California budget cuts to the funding of Orange County public schools. School districts responded by eliminating programs, increasing classroom enrollments, reducing teachers/staff and delaying periodic maintenance. Districts have scrambled for supplemental funding through bonds, grants and fundraisers. County schools are the topic of news articles that, as in the quote above, may dissuade home buyers from moving to Orange County. There is ample evidence that school district budgets are of concern to the public. The following headlines were culled from local newspapers and online websites.

Sample Media Articles on School Districts (2008-2013)

13 O.C. School Districts in 'Financial Jeopardy'
Despite Prop 30, OC Schools Face Cuts
Are the Arts Dead in California Public Schools?
OC Schools Try to Pare Millions of Dollars From Budgets
OC School Districts May Fall \$158 Million Short
District to Give 114 Teacher Layoff Notices
Protesters March Against School Budget Cuts
2,856 OC School Jobs Targeted as Layoff Deadline Looms
School Board to Vote on \$1M-\$1.6M in Cuts
Begin Budget Cuts From the Top
OC Budget: Schools Approve Lean Spending Plans
Local Schools Brace for More Cuts
OC Schools May Slash \$268 Million
School Board May Have to Cut \$1.6 Million in Programs

OC Schools Target 1,714 Job Cuts
Schools Finalize Teacher Layoffs and Terminations
Are You Getting Your Teacher Back?
School Cuts Not Aligned with California's Core Needs
1,500 OC School Workers Remain on Job-Loss Lists
Massive Teacher Layoff Loom Across OC
School Bonds Terms More Like Payday Loans
School District Approves Increased Developer Fees
School Bonds Just in Time to be Legal

Interviews with school administrators verify that Orange County schools (along with schools in other parts of California) have taken both drastic and subtle steps to balance reduced budgets. Major actions include: (a) the reduction of faculty and other staff, (b) deferred maintenance of real estate and equipment, and (c) reduction, and in some cases, elimination of entire programs. Students who attended Orange County schools decades ago had an enriched educational experience that is *not* often available in districts today.

This study examines ways in which non-unified school districts in Orange County can potentially increase income, reduce costs and improve educational programs. Administration consolidation may help ameliorate potential district program cuts in the future.

BACKGROUND AND FACTS

The California Public Education System

Public school districts became officially organized with the establishment of the California Constitution in 1849. By 1935, and after nearly a century of population growth, there were over 3,500 separate school districts (not schools, *districts*) in the state. At about that same time, there was a movement to consolidate small districts into larger kindergarten through grade twelve districts. Consequently, new laws encouraged elementary and high school districts to combine into a single “unified” system with one board of education. Another common reorganization occurs when two or more like districts (i.e. elementary districts) join to form a single district through the process of “annexation.”

The California Department of Education (CDE) established the Bureau of School District Organization in 1935 to encourage separate districts to unify. As a result, from 1935 to 1945, the total number of school districts in California decreased from 3,500 to 2,508. From 1945 to 1964, the total number of districts was further reduced to 1,325. Unified school districts correspondingly *increased* in number from 46 to 164 over the same period, according to the CDE. Appendix A displays the complete trend from 1932 to 2010.

Among recommendations by the CDE was a proposal that unified school districts be *rewarded* with a higher level of financial support. Incentives for unification included state assistance for

capital outlay and transportation. In 1959, the Legislature provided both an incentive and a deadline in the form of a new law. The incentive stated that unless reorganization was achieved locally, the California Department of Education would step in and initiate the action. The new statute required that on or before September 15, 1964, each county must have submitted to the State Board of Education a master plan of school district organization for its county to consist of a system for unified districts. In 1964, legislation passed which offered new incentives for school districts that reorganized and new disincentives for districts that chose not to reorganize.

The California Legislature clearly understands the advantages of a unified school district as the ultimate form of district configuration in the state. To encourage local voters to form unified districts, AB 145 (1964) stipulated that the funding level for qualified unified school districts be *increased* by \$15 per the Average Daily Attendance (ADA) enrollment of students in the district. In addition to increasing support for unified school districts, for each elementary school district that voted *in favor* of unification, even if the whole proposition failed, the funding level of that district would be increased by \$15 per ADA. The law required that unification had to be within high school district boundaries and every elementary school district had to have a “yes” vote. If one district voted “no,” the *unification* failed; but those voting “yes” would receive a bonus.

In 1994, Senate Bill (SB) 1537 was enacted, making it possible for a high school district to unify *without* affecting all of the feeder elementary school districts. The effect of the legislation is that elementary school districts can actually exist within the boundaries of a unified school district. Voters in those districts that wish to unify are not impeded if the residents of one or more feeder school districts opt not to be included in the process.

In 1999, the Legislature passed Senate Concurrent Resolution 29, which called for the creation of a new Master Plan for Education (MPE.) This Master Plan, finalized in 2002, contains recommendations that the State take steps to bring *all* school districts into unified structures. Also recommended was that the legislature develop fiscal and governance incentives to promote local communities to organize their schools into a unified structure. Although the desire of the legislature is to have all California districts unify, recent budget limitations have tempered the incentives. Appendix B presents a brief description of five recommendations from the MPE.

Under state law, California leaves the decision over whether to consolidate school districts up to local communities. Local stakeholders are required to *initiate* the consolidation process and ultimately a majority of the local electorate is required to approve the unification. Proponents of consolidation proclaim that disjointed school districts lack “economies of scale” and, as a result, inherently face higher costs per pupil. Economies of scale is a business principle that touts the benefits of consolidating small organizations into a larger single unit. Buying in bulk is usually less expensive under this principle. Also, non-unified districts are unable to offer a wide range of curricular opportunities that are possible with consolidation. Therefore, combining districts into larger, consolidated districts would lead to savings, more overall efficiency and a better academic experience for students. A state educational report emphasized that having fewer

school districts would make *state management* and *oversight* of school districts easier and less costly to the state budget.

While the State has provided some fiscal incentives for districts to consolidate and the State Board of Education (SBE) typically weighs in on consolidation applications, the state delegates most district configuration decisions to the local level. State law calls for each county to establish a County Committee on School District Organization (CCSDO), made up of county school board members or their designees, to *facilitate* and *coordinate* any attempts to consolidate school districts. Local stakeholders may also *initiate* the process of consolidating school districts either through citizen petition, agreement amongst affected school boards or a plan from the CCSDO.

In contrast to California's locally based approach to district configuration, some other states have recently implemented more aggressive state level policies to consolidate. One of the most sweeping examples is Maine, which passed legislation in 2007 requiring that *all* school districts enroll at least 2,500 students or face fiscal penalties (with an adjusted minimum of 1,000 students for geographically isolated districts.) In the subsequent three years, the number of Maine school districts has dropped by one-third, from 290 to 179. Several other states, such as Arkansas and Vermont, have recently passed legislation to encourage school district consolidation.

The County Committee on School District Organization (CCSDO) is a committee created in each county. Members of the CCSDO *are selected and elected* by school boards within the county. The County Committee studies and makes recommendations in the areas of (a) the organization and reorganization of school districts; (b) changes in school district boundaries; and (c) the number of trustees and the manner by which they are elected. These activities are coordinated by the Orange County Department of Education.

It is important to note that the County Superintendent of Schools, or designee, is not a member of the County Committee, and therefore, has no authority over the decisions of the Committee and remains neutral on issues under consideration.

Districts may be reorganized by transfers of territory, unifications, unionizations or annexations (Unification is the formation of a new K-12 district from elementary and high school districts; Unionization is the formation of a new district from districts of the same level – elementary, high school, or unified; Annexation occurs as one district is merged into another district that continues to operate). (Education Code §35700-35785)

Action to *consider* reorganization, the transfer of territory, the altering of trustee areas or the size of school district boards may be *initiated* by a:

- a) petition signed by 25% of electorate,
- b) petition from a landowner, or a
- c) joint request of two school district governing boards.

The Education Code also allows action for consideration to be initiated by:

- a) a petition from a city council, county board of supervisors or local agency formation commission, or
- b) the county committee on school district organization.

In California, the action by the County Committee is the most frequent process used for unification.

History of Orange County School Districts

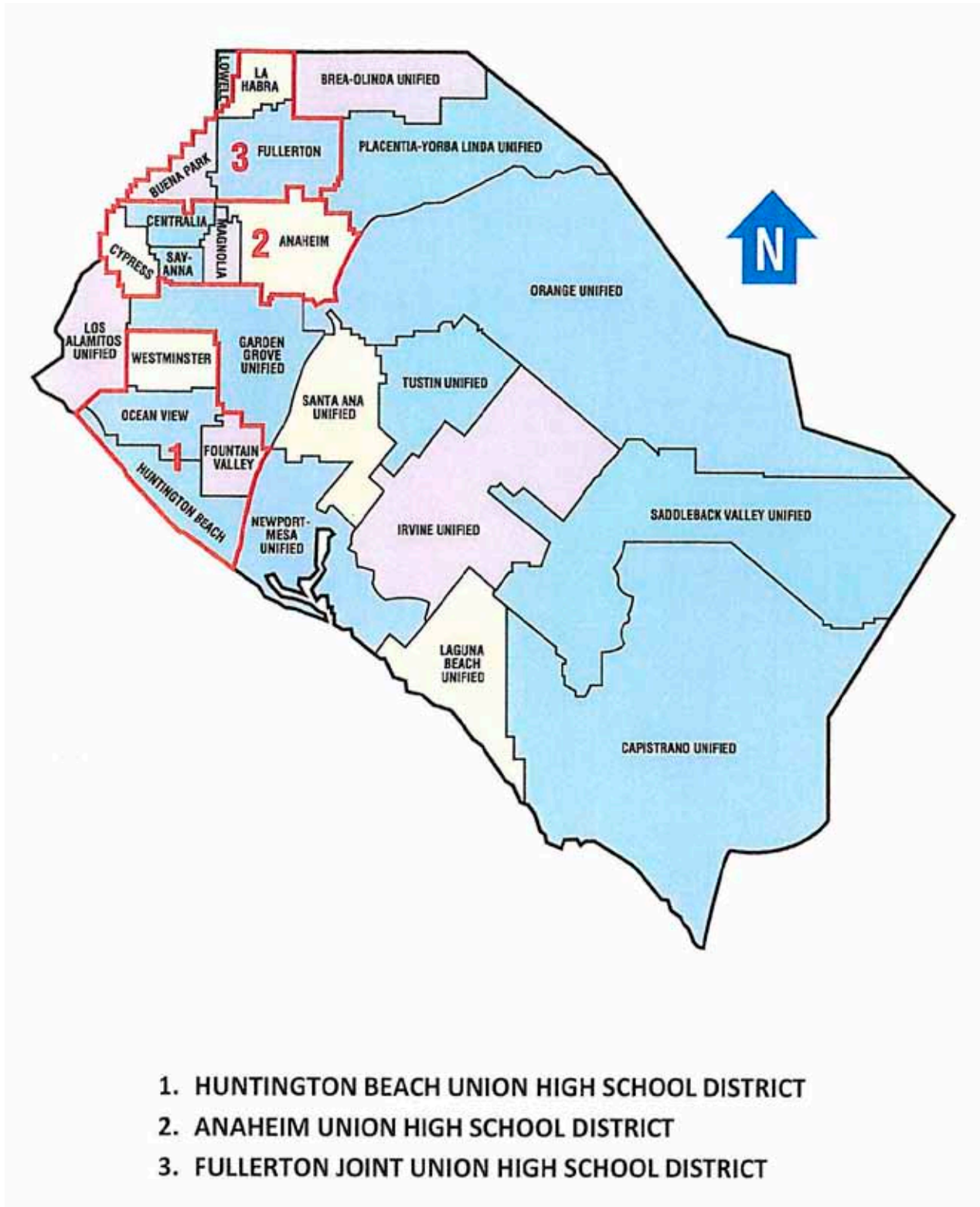
According to the Orange County Department of Education (OCDE), Orange County has over 500,000 students in public, private or county schools. There are 593 public schools from kindergarten through grade twelve (K-12) that are organized into 27 separate districts. These districts are separate entities with an elected school board of five to seven members and a superintendent selected by the board. Board members serve part time and meet once or twice a month. They usually receive a stipend and possibly health benefits. On a general basis, the cost to educate a student for one school year of approximately 175 days is about \$8,000.

Districts are configured by the grade levels of the schools. Districts that have schools from grades K through six or eight are considered elementary districts. High school districts contain grades seven or eight through twelve. Districts that are “unified” provide education to students from kindergarten through grade twelve.

All of the districts in the central and southern portion of Orange County are unified. Students in the northwest portions of the county attend elementary districts that are located *within* the boundaries of a high school (7-12 or 9-12) district. Students in elementary districts transition to a high school district as they matriculate from lower grades to the secondary level. (Fig. 1) Approximately 60,000 students in Orange County attend private schools or are in some form of “County Program” that educates students in alternative education programs.

There have been 21 successful school district unification elections in Orange County since 1961. (Appendix C)

Fig. 1: Orange County School Districts Attendance Boundaries



METHOD OF STUDY

The 2013-2014 Orange County Grand Jury directed this study to include: the history, process and potential advantages for elementary school districts to consolidate within the boundaries of existing high school districts. The Grand Jury confirmed that currently there are 12 existing unified school districts located essentially in the south eastern portion of the county. In the northwest portion of the county, are 12 segmented *elementary school districts* that each fall within one of three *high school districts*.

The method of study included the following process. The Grand Jury:

Reviewed

1. Various County Grand Jury reports on unification
2. California Department of Education studies on school districts
3. Media reports and news articles on the topic
4. Websites, blogs, internet sites
5. School district budgets, enrollments and attendance areas

Interviewed

1. Superintendents of recently unified school districts outside of Orange County
2. School administrators with experience in multiple districts
3. Representatives from the Orange County Department of Education
4. Faculty representatives
5. Professional educators

Studied

1. Official Responses to selected Grand Jury reports
2. State of California official reports and documents
3. State of California legal opinions, appropriate laws and regulations

ANALYSIS

Orange County School Districts

There are 12 unified districts in Orange County with Laguna Beach Unified (2,900 students) as the smallest and Santa Ana Unified (54,000 students) as the largest. (Table 1) More than 280,000 students attend schools in unified districts and would not be the subject of district reorganization. Students and parents in these districts have one board of education and one centralized district administration. In separate interviews with various administrators, there was unanimous agreement that unified districts have a cost saving advantage. The administrators were also quick to identify the educational advantages for curriculum, instructional methodology and scope/sequence guidelines.

Table 1: Orange County Unified School Districts (Numbers rounded)

Unified School Districts	Enrollment
Brea-Olinda	5,900
Capistrano	5,100
Garden Grove	47,900
Irvine	26,100
Laguna Beach	2,900
Los Alamitos	9,600
Newport-Mesa	21,400
Orange	30,000
Placentia-Yorba Linda	26,000
Saddleback Valley	32,000
Santa Ana	54,500
Tustin	22,900
Total Enrollment (ADA)	284,300

The non-unified (elementary and high school) districts *are* the subject of this Grand Jury study. Elementary districts range in size from the Savanna district (2,400 students) to the Anaheim City district with 19,000 students. The smallest high school district is Fullerton with 14,600 students and Anaheim is the largest with 32,000 students. Each of the three high school districts contains four elementary districts. (Table 2)

Table 2: Non-Unified School Districts by Region, Schools, Enrollments (Rounded)

Non-Unified Districts North	Schools	Enrollment
Fullerton Joint HSD	8	14,600
Fullerton SD	20	13,600
Magnolia SD	9	6,400
Buena Park SD	7	5,300
La Habra SD	9	5,200
Total	53	45,100

Non-Unified Districts West	Schools	Enrollment
Anaheim HSD	21	32,300
Anaheim City SD	24	19,000
Centralia SD	8	4,400
Cypress SD	6	4,000
Savanna SD	4	2,400
Total	63	62,100

Non-Unified Districts South	Schools	Enrollment
Huntington Beach HSD	9	15,800
Westminster SD	17	10,000
Ocean View SD	17	9,500
Huntington Beach City SD	9	7,200
Fountain Valley SD	10	6,100
Total	62	48,600

There is a surprising variation in the number of schools within a district under the direction of a board of education, superintendent and district office personnel. In Orange County, there are eight elementary school districts with ten or fewer schools. Savanna Elementary School District has only four schools! Garden Grove Unified School District has the most with 70 school sites. It is important to note that both Savanna and Garden Grove *each* operate with just one superintendent and five members of a board of trustees, although Garden Grove has almost 20 times more students.

The Process for School District Unification

School district unification can only result by a vote of the citizens in a legally constructed ballot measure. To that end, voters are entitled to a clear understanding of the benefits and consequences. A proposed unification must first pass all state and federal regulations to ensure that the new district will meet well established standards. As previously mentioned, districts within and outside of Orange County have successfully unified, and the procedure is well established and understood as described in Appendix D. There are private companies that assist districts and specialize in unification analysis, planning and proposals.

The Grand Jury has identified three major benefits and one issue of opposition to unification. The benefits are: a) increased revenue from the state to the district, b) cost savings and reduced spending, and c) improved over-all educational programs. The opposition to unification has traditionally focused on a single issue - the need for “local control.” Local control is the theory that a small organization is more responsive to public interests. However, the Grand Jury found this concept to be vague and without specific data to factually support opposition to unification.

The Potential Benefits to School District Unification

Increase in Revenue

Historically, the California Legislature has provided additional state revenue to districts as an incentive to unify. In 2011, Santa Barbara began the process to unify elementary districts with the high school district. Several sources indicated that the formation of the new Santa Barbara Unified District resulted in \$6 million dollars of additional state revenue! This additional income was used to improve or restore programs.

The California State legislature completely revamped the school funding formula starting with the 2013-14 school year. Starting in 2013, the funding formula for schools has been modified in a way to grant money to districts by individual grade level, rather than by district configuration. The new formula replaces the previous K–12 finance system with a new Local Control Funding Formula (LCFF). According to local administrators, districts are unclear as to how the new formula will exactly affect income from the state.

The State projects that the time-frame for full conversion to the LCFF is eight years. Portions of the formula will be gradually implemented. The Grand Jury heard information that, realistically, some districts will receive a bit more and some will receive a bit less. However, the new LCFF is not designed to reverse years of declining income from the state. Districts will also receive additional revenue for under-privileged students. Again, there is no clear consensus how this will compare to a district’s past budget projections.

The California Master Plan for Education-2002 (CMPE) clearly states the legislative intent in unifying California school districts. Much is written about the need for “very small” school districts to unify or consolidate. These districts are often rural and located in sparsely populated areas within the state. All of the Orange County districts, that are ideal for unification, have the

advantage of being wholly located within the contiguous boundaries of a high school district. Unification would not disrupt the traditional path for students to matriculate from grade to grade. Specifically, the CMPE calls for the legislature to develop fiscal and governance incentives to encourage local communities to unify and to eliminate all fiscal and other disincentives to unification. The legislature has historically encouraged districts to unify and may well establish financial incentives again in the future.

Cost Savings and Reduced Spending

The Grand Jury's interviews with professional educators drew the same conclusions. Districts in Orange County that chose to unify into a single district have benefited from cost savings. Often there is a call to run schools "more like a business." This model is used by airline companies that merge, farmers who form co-ops and individual attorneys who establish partnerships. School districts that unify obtain certain economies of scale advantages too. For example, four or five school districts could combine a bulk order for everything from paper to textbooks. This allows for a better price per unit from distributors. Other examples of reduced cost includes: the purchase of office equipment, vehicles or maintenance supplies.

Another argument for economy of scale is the savings from unnecessary duplication of services. School districts that unify benefit from consolidating departments. Operations run more smoothly with a single human resource department, maintenance division or compliance office. Professional educators identified these as a duplication of services within existing small districts.

There is also a benefit to consolidation by developing "specialization" in which administrators are highly proficient in *one* skill. Smaller districts often require administrators to be responsible for several highly technical areas. Administrators at four different districts might be responsible for the budget, operational services, curricular development and state/federal compliance. A unified district could conceivably have the same four administrators each responsible for only *one* specialized department.

Without doubt, there will be a savings from the reduction of duplicate personnel. This reduction occurs at the highest administrative level of personnel who are also the most highly paid staff in the district. Namely, there would *not* be a need for as many highly paid administrators or multiple members of the school boards. Interviews and evidence from other unifications support the conclusion that the number of teachers, classroom aides and clerical/maintenance would remain at about the same pre-unification level. (Table 3)

Table 3 - Programs with a Potential Cost Savings from Unification

Administrative Services/Personnel
Banking Services
Before and After School Programs
Business Advisory and Support
Cafeteria/Food Service
Categorical Program Applications
Certificated Substitute Pools
Computerized Financial Systems
Credential and Assignment Monitoring
Emergency Response Coordination/Training
Insurance Claims and Premiums
Internet and Connectivity
Legal Services
Maintenance (Buildings/Vehicles)
Media/Library Services
MediCal Administration/Claiming
Medical/Nursing/Psychological Services
Retirement Reporting
Short-Term Debt
Transportation

Educational Benefits to Unification

The Grand Jury interviewed experienced educators inside and outside of Orange County to weigh the educational advantages and disadvantages of teaching within a unified district. The California Department of Education sets a framework for education; however, individual districts have authority to act within these broad guidelines. Therefore, students on the same grade level but in different districts may have a vastly different curriculum or textbook.

Without exception, the educators explained that a unified district can provide more “continuity” in the curriculum by creating a sound “scope and sequence” plan. The curricular *scope* is defined as what is to be taught in a particular subject (e.g. fractions in fifth grade math, molecules in chemistry and world literature in English 1A, etc.) The curricular *sequence* is defined as the order in which lessons are presented to students. The sequence for a history class is well understood to be chronological but the order for teaching biology may not be as evident. *Unified school districts have a clearly defined scope and sequence.*

Educators also identified the benefit of unification in staff development. There is a significant value, for example, to having every sixth grade teacher in the district meet to discuss curriculum and instructional issues. The importance of having “everyone on the same page” was expressed

to the Grand Jury several times. In addition, articulation meetings between teachers of different grade levels are easier to accomplish in a unified district. For example, consider the situation in which an eighth grade teacher is in elementary district A and a ninth grade teacher is in high school district B. Opportunities for them to share scope and sequence issues may never occur. Other advantages concerning “instructional strategies” (*how to teach* a particular lesson), student performance, testing and innovation are more easily communicated in a unified district. Interviews indicated that unification could reduce the practice of having “Combo Classes.” Combo classes place students of two different grade levels (i.e. five and six) together in the same classroom with the same teacher. This is undesirable for a number of obvious reasons.

Short Term Solutions Versus Long Term Debt

Increasingly, districts are seeking to borrow money through school bonds. Bonds are an option for a district that wants to “push expenses” onto future taxpayers. Using bond money to maintain or repair existing school property for the benefit of current students is indebting future taxpayers with current expenses. At the time of this study, at least two non-unified school districts in Orange County were considering a bond election. The Grand Jury found that a district that unifies would benefit from reduced expenses and increased revenue that may serve to reduce the need to seek a costly school bond. A report from the State Treasurer’s Office estimated that one Orange County school district bond payment amount will be 15 times the amount of the original principal. *To put this in perspective, 15 times is equivalent to paying back over eleven million dollars for a \$750,000 mortgage on a house.*

Potential Negative Response to a Unification Proposal

There is a belief that unification may require an extensive California Environmental Quality Act (CEQA) study that can be especially costly. District unifications, however, do not typically have significant environmental impacts. In fact, there may be substantial environmental *benefits* to district reorganization.

There are largely unfounded fears that district consolidation would lead to school closures or loss of teacher/principal positions. Reports from districts that have recently unified did not find teacher or principal reduction to be a major issue. The Grand Jury found that the greatest obstacle is an obvious conflict of interest in tasking school board members with approving consolidation plans. Evidence strongly suggests that a conflict results in expecting local school board members to approve a merger. Consolidation ultimately will result in one governing board rather than several, and thereby board members would be voting themselves out of office. It would be a self-serving argument for school board members to justify needing a total of 25 school trustees (in five districts) if only seven would be needed in a unified district.

District office administrators are also fearful of losing jobs. Some administration attrition *will* occur because there will be an elimination of duplication of district office services. This issue can be partially offset by planning for a multiyear transition into unification.

Past experiences suggest that dissenters to unification usually express the need for “local control.” However, local control may actually be improved with unification. The electorate in the district, especially parents, has an easier time voicing opinions to seven board members in a unified district than trying to appeal to board members in one high school district and one of four elementary districts. The local control issue is a vague and abstract concept that is not supported by data. Saving money and improving the quality of districts are more easily measured and quantified after districts consolidate.

The Grand Jury found no interest in California for school districts to *disunite*. Occasionally, there is a short lived movement to break apart Los Angeles Unified School District. However, the plan is only to form several smaller “unified” districts and no one has suggested separating LAUSD into elementary and high school districts. LAUSD is the second largest school district in the United States. By comparison, LAUSD has more students (640,000) and has more urban square miles than all of Orange County. It is meaningless to compare the existing unification in Los Angeles Unified Schools to a proposed unification in Orange County.

OCDE and the CCSDO

The Grand Jury determined that the OCDE and County Committee on School District Organization (CCSDO) have a responsibility to develop a plan for unification in those districts that are not currently in this configuration. The Grand Jury understands the conflict of interest for school boards and superintendents to inform the public of the potential financial benefits to unification. For administrators and trustees, unification would likely do away with their positions and status. Nevertheless, students and parents should be aware of this option. Taxpayers without children, who may believe that they don’t have a stake in unification, should also be aware of the benefits. The business community has a vested interest in quality schools and should also be informed.

The most recent unification in Orange County occurred in 1988. At that time, almost 70% of the voters of Placentia Unified approved the merger with Yorba Linda Elementary. More than 55% of the Yorba Linda community supported the ballot measure.

On November 5, 2013, the voters in the Wiseburn Elementary District in Los Angeles County went to the polls. By an amazing vote of 92.63%, the community decided to unify. Of special significance, was the unique decision to build a high school within the district to turn an elementary district into a K-12 district. This unification was supported by the Los Angeles County Reorganizing Committee.

The state legislature through the Master Plan for Education (MPE) clearly directs the County Committee of each County office of education to take steps to bring all school districts into unified K-12 structures. The legislature has already accepted responsibility to develop fiscal and governance incentives that promote organizing local schools into unified districts. Finally, according to the MPE, each county committee on school organization should review the findings

of a study and should have a period of three years to develop and recommend local plans and conduct local elections that would implement the findings of the study for all school districts within its jurisdiction.

The Orange County Department of Education website describes the County Committee on School District Organization:

Districts may be reorganized by transfers of territory, unifications, unionizations, or annexations (Unification is the formation of a new K-12 district from elementary or high school districts; unionization is the formation of a new district from districts of the same level – elementary, high school, or unified; Annexation is when one district is merged into another district that continues to operate). (Education Code §35700-35785.)

Action to consider reorganization, the transfer of territory, the altering of trustee areas, or the size of school district boards may be initiated by a citizens petition, a joint request of two school district governing boards; a petition from a city council, county board of supervisors, or local agency formation commission; or petition from a landowner, *or by the county committee on school district organization*. (Emphasis added)

Conclusion

The Grand Jury concludes that the Orange County Department of Education, with its responsibility and resources should study and develop a feasibility proposal for Orange County school districts to consolidate. The study should examine the cost savings mechanisms for the districts as well as improving efficiency in operations. Unification should be considered within the existing boundaries of the high school districts. Pursuant to Education Code 35542(b), any district may request to be excluded from unification if that is the vote of that district's electorate.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the cost of school district administration in Orange County, the 2013-2014 Orange County Grand Jury has arrived at five principal findings, as follows:

F.1. School districts in Orange County and throughout the state have endured at least five years of severe budget cuts from the state.

F.2. School districts have exhausted traditional methods for reduced spending and are now driven to seek more expensive borrowing repayments for taxpayers.

F.3. There are 12 elementary, three high school and 12 unified districts in Orange County.

F.4. District unification produces the potential for increased revenue benefits, cost savings and educational advantages for the community. Seven of the 12 elementary districts in Orange County were recently listed on the State Watch List as having an uncertain financial future. Elementary districts have also sought bond measures that add to future liabilities.

F.5. The Superintendent of Schools/Orange County Department of Education has the responsibility and resources to conduct a comprehensive study as to ways to decrease the costs of school administration in Orange County. The study should determine the cost savings, the potential increase in revenue and the improvement in the efficiency of school districts operations.

RECOMMENDATIONS

Based on its investigation of the cost of school district administration in Orange County, the 2013-2014 Orange County Grand Jury makes the following two recommendations.

The Grand Jury recommends that The Superintendent of Schools/Orange County Department of Education should:

R.1. Conduct a comprehensive study as to ways to decrease the costs of school administration in Orange County including whether the unification of non-unified high school districts (Anaheim USD, Fullerton JUHSD, and Huntington Beach UHSD) with respective elementary school districts would result in cost savings as well as an increase in revenue, and an improvement in the efficiency of the administration of these respective schools. (F.4., F.5.)

R.2. Consult and confer with the County Committee on School District Organization about the feasibility of preparing a study proposal on the unification of the non-unified high schools in the County with their respective elementary school districts. (F.4., F.5.)

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Response Requested:

Response to Findings F.1., F.2. and F.5. is required from the Superintendent of Schools/Orange County Department of Education.

Response Requested:

Response to Recommendations R.1. and R.2. is required from the Superintendent of Schools/Orange County Department of Education.

Appendix A: Number of California School Districts by Type and by Selected Years

<u>Year</u>	<u>Unified</u>	<u>Elementary</u>	<u>High</u>	<u>Total</u>
1932				3,579
1935-36	0	2,735	295	3,030
1940-41	40	2,512	265	2,817
1945-46	46	2,248	260	2,554
1950-51	67	1,779	245	2,091
1955-56	92	1,533	233	1,858
1960-61	119	1,316	221	1,636
1963-64	155	1,179	201	1,535
1964-65	164	1,129	196	1,489
1965-66	191	998	168	1,357
1966-67	228	829	132	1,189
1967-68	235	752	120	1,107
1970-71	240	712	118	1,070
1971-72	242	709	117	1,068
1973-74	251	689	114	1,054
1974-75	253	680	115	1,048
1979-80	263	664	115	1,042
1985-86	271	645	112	1,028
1986-87	278	635	112	1,025
1987-88	279	633	112	1,024
1988-89	283	623	111	1,017
1989-90	287	613	110	1,010
1990-91	288	612	110	1,010
1991-92	291	609	109	1,009
1992-93	296	601	109	1,006
1993-94	302	593	104	1,002
1994-95	305	590	106	1,001
1995-96	309	586	104	999
1996-97	310	585	104	999
1997-98	315	580	99	994
1998-99	323	572	93	988
1999-00	323	571	93	987
2004-05	329	562	88	979
2009-10	334	546	83	963

Appendix B: California Master Plan for Education (2002) Selected Recommendations

Recommendation 29

The State should take steps to bring all school districts into unified PreK-12 structures.

Recommendation 29.1

The Legislature should develop fiscal and governance incentives to promote local communities organizing their local schools into unified districts, and should eliminate all fiscal and other disincentives to unification.

Recommendation 30

Local districts should, where appropriate, consolidate, disaggregate, or form networks to share operational aspects, to ensure that the educational needs of their students are effectively met and that their operational efficiency is maximized.

Recommendation 30.1

The Legislature should undertake a comprehensive study to determine the optimal size ranges for school districts with respect to both educational delivery and the conduct of business operations. The study should additionally identify a range of funding considerations that are based on size and structural options and that could be appropriately leveraged to attain optimal conditions.

Recommendation 30.2

Each county committee on school organization should review the findings of the study and should have a period of three years to develop and recommend local plans and conduct local elections that would implement the findings of the study for all school districts within its jurisdiction.

**Appendix C: Recent History of Orange County School District Unifications
(Unified District, Year of Unification and Consolidated Districts)**

Costa Mesa Elementary and Santa Ana Unified (1961)

Greenville Elementary (split between two districts)

Santa Ana Unified School District (1961)

Santa Ana Elementary

Capistrano Unified School District (1965)

Capistrano Beach Elementary
San Clemente Elementary
San Juan Capistrano Elementary
Capistrano Union

Garden Grove Unified (1965)

Alamitos Elementary
Garden Grove Elementary
Garden Grove Union

Brea-Olinda Unified School District (1966)

Brea Elementary
Olinda Elementary
Brea-Olinda Union

Newport-Mesa Unified School District (1966)

Costa Mesa Union Elementary
Newport Beach Elementary
Newport Harbor Union

Irvine Unified and Tustin Unified (1973)

San Joaquin Elementary (split in two)

Tustin Unified School District (1973)

Tustin Elementary
Tustin Union

Saddleback Valley Unified School District (1973)

Trabuco Elementary

Los Alamitos Unified School District (1980)

Seal Beach Elementary

Placentia Unified School District (1989)

Yorba Linda Elementary

Placentia-Yorba Linda Unified (1991) (name change)

**Appendix D: Chapter 6 – Legal Criteria Governing Reorganization Proposals
California Department of Education, July 2010 (Summary)**

The State Board of Education may approve proposals for the reorganization of districts. This preapproval guidance is not binding on local educational agencies or other entities. In considering proposals for district reorganization, county committees and the State Board of Education must determine whether the nine conditions in Education Code Section 35753(a) are substantially met. Those conditions are:

1. Number of Pupils. The reorganized districts will be adequate in terms of number of pupils enrolled.
2. Substantial Community Identity. The districts are each organized on the basis of a substantial community identity.
3. Division of Property. The proposal will result in an equitable division of property and facilities of the original district or districts.
4. Discrimination or Segregation. The reorganization of the districts will preserve each affected district's ability to educate students in an integrated environment and will not promote racial or ethnic discrimination or segregation.
5. Cost to State. Any increase in costs to the state as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
6. Educational Programs of Existing and Proposed Districts. The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the districts affected by the proposed reorganization.
7. School Housing Costs. Any increase in school facilities costs as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
8. Property Values. The proposed reorganization is primarily designed for purposes other than to significantly increase property values.
9. Fiscal Management or Fiscal Status. The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the proposed district or any existing district affected by the proposed reorganization.

Appendix E: Annotated Bibliography

<http://www.ocde.us>

The Orange County Department of Education website has a wealth of information on state educational programs and guidelines. There are also links to each of the Orange County school districts.

<http://www.cde.ca.gov/>

The California Department of Education has information of value to school district and describes legal and legislative issues. Parents and researcher would find this site of value.

http://www.ucop.edu/acadinit/mastplan/master_plan2002.pdf

“The California Master Plan for Education – 2002” is a document that describes the California Legislature’s intent for the future of California schools. The legislature is the driving force (and main revenue source) for all California schools. The site is a pdf file.

http://portal.countyofventura.org/portal/page/portal/Grand_Jury/Reports/TAB4579372/8SchoolDistrictt

The Ventura County Grand Jury website maintains a record of past reports. The 2008 - 2009 report recommended the unification of 20 districts in the Santa Paula, California area.

<http://www.vcoe.org/adserv/SchoolDistrictOrganization/SantaPaulaUnification.aspx->

A copy of the Venture County Office of Education, Committee on School District Organization Report of 2013 can be found here. The report makes the recommendation that an election be held to unify 20 school districts in and around Santa Paula, California. The 2013 unification election was successful and now there is Santa Paula Unified School District.

<http://www.vcoe.org/Portals/VcssoPortals/adserv/documents/Final%20Feasibility%20Report%20as%20of%206-8-10.pdf>

This site provides a copy of the feasibility report prepared for the Ventura County Committee by Caldwell Flores Winters, Inc. This company examined the factors for the unification Santa Paula Union High School District and its feeder elementary school districts.

<http://www.publicpay.ca.gov>

This is a relatively new site designed to provide pay and benefits for all K-12 public employees and public officials. Ideally, residents should be able to determine the salary of their local school superintendent and other officials. At the time of this writing, school officials have been slow to provide the information.

<http://www.iusd.org/>

The Irvine Unified site serves as an example of information available from an Orange County unified district website. The site provides valuable continuity for parents as students progress through all grade levels.

<http://www.sbunified.org/>

The Santa Barbara Unified School District website provides a variety of information about the district. One of the links contains news archives that go back to 1998.

<http://wiseburn.k12.ca.us/new/default.html>

The Wiseburn district in western Los Angeles County is the most recent district in California to unify. There is a link to unification updates as the district proceeds through the process.

<http://www.ocregister.com/>

The Orange County Register is the best source for current or historical articles on Orange County schools, districts and education.

ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED



GRAND JURY 2013-2014

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Table of Contents

SUMMARY	4
REASON FOR THE STUDY	6
BACKGROUND AND FACTS	8
Some Key Terms Defined	10
Overviews of CalPERS and OCERS	11
Pension Reform in California (PEPRA).....	13
Unfunded liabilities of CalPERS and OCERS are both large and volatile.....	13
METHOD OF STUDY	17
ANALYSIS	17
CalPERS Data on Unfunded Pension Liabilities of OC Cities	17
Per Capita Assessment.....	19
Assessment of Unfunded Liabilities as a Percent of General Fund Revenues.....	20
Calculating Unfunded Liabilities using Market Value instead of Actuarial Value of Assets	21
Grand Jury Interviews.....	23
<i>Interviews with CalPERS.....</i>	<i>24</i>
<i>Interview with OCERS.....</i>	<i>25</i>
<i>Interviews with City Human Resource Managers</i>	<i>27</i>
<i>Interviews with City Finance Managers.....</i>	<i>28</i>
Assessment of Budget Information Available Online	30
<i>General budget information available online</i>	<i>31</i>
<i>Pension specific budget information available online</i>	<i>32</i>
<i>The impact of OC cities’ outsourcing for public safety on transparency of budget information – a tale of two cities</i>	<i>32</i>
Conclusions	35
FINDINGS	35
RECOMMENDATIONS.....	36
REQUIRED RESPONSES.....	38
APPENDICES	41

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Appendix A – Acronyms..... 42

Appendix B – Glossary 43

Appendix C – A Brief Primer on Pensions 45

Pensions and their purpose 45

Two major types of pension plans 46

How pension benefits are specified 47

How pension benefits (actuarial liabilities) for retired members are computed 47

How pension (actuarial liabilities) for active members are computed 47

Actuarial Accrued Liability 47

Actuarial Value of Assets..... 47

What it means to say a pension has unfunded liabilities..... 47

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

SUMMARY

Orange County (OC) cities rely almost entirely on two pension systems for their Public Safety (fire and police) and “Miscellaneous” employees (basically everyone except fire or police), both for their retirees and for current employees who will retire in the years ahead. Those two pension systems are 1) the California Public Employees Retirement System (CalPERS) and 2) the Orange County Employee Retirement System (OCERS) for cities which outsource their police services to the Orange County Sheriff’s Department (OCSD) and/or their fire services to the Orange County Fire Authority (OCFA).

Current assets of both systems fall far short of what is needed to pay current and future retirees. CalPERS at the state level had assets of \$236.8 billion, liabilities of \$340.4 billion, unfunded liabilities of \$103.6 billion and a funding ratio of 70% as of June 30, 2012¹. OCERS had assets of \$9.5 billion, liabilities of \$15.1 billion, unfunded liabilities of \$5.7 billion and a funding ratio of 63% as of December 31, 2012².

The 2013-2014 Grand Jury investigated the ability of OC cities to recover from these unfunded liabilities. Reviews of *public* financial data from the CalPERS/OCERS pension systems and city budgets, and more importantly reviews of city *internal* budget and planning data with city finance managers showed that there were reasons to accept that OC cities are making plans to pay down (amortize) these unfunded liabilities and will be able to do so.

There are important actions being taken by cities which provide some assurance that OC cities’ optimism that they can recover from their unfunded pension obligations has some basis in reality. Most important of these is that CalPERS and OCERS are committed to amortize their unfunded pension liabilities over the next 20-30 years to zero via *Annual Required Contributions* (ARCs) from the agencies they support. So long as OC cities meet their ARCs, the unfunded liabilities should approach zero. OC cities so far have been able to meet CalPERS’ ARCs.

OC cities’ relationships with OCERS are more complex, but cities have also been able so far to pay for their outsourced fire/police services. Both the OCSD and the OCFA have their own unfunded pension obligations with OCERS. However, so long as the amortization of OCSD/OCFA unfunded liabilities is reflected in the costs of their services to the cities they support, and so long as the cities can pay these costs, these unfunded OCERS liabilities will be amortized as well.

In addition *some* cities have been successful in negotiating with their employee bargaining units for their employees to carry a larger portion of the burden of pension costs and in some cases for

¹ Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2013, page 132, <http://www.calpers.ca.gov/eip-docs/about/pubs/cafr-2013.pdf>

² OCERS by the Numbers, 2012, page 26, <http://www.ocers.org/pdf/publications/brochures/bythenumbers.pdf>

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

reduced benefits. This reduces the future overall costs of pensions and frees up funds that these cities can apply to amortizing their unfunded liabilities. Some cities are also looking at accelerating their amortization of unfunded pension liabilities.

Another long term factor in reducing unfunded pension liabilities is the Public Employees' Pension Reform Act (PEPRA), which went into effect January 1, 2013. However, since the reforms only affect employees hired after January, 2013, it will be many years before these reforms will have an impact on unfunded liabilities.

Unfunded pension liabilities can be extremely volatile because they are driven by two unpredictable elements:

1. Occasional extreme fluctuations in the market value of assets
2. Changes to key actuarial assumptions, and especially changes to assumed future rates of return on investments

Hence, budgeting to reduce unfunded pension liabilities presents particular challenges for cities:

1. Pension catch up contributions typically comprise a significant percentage of projected city General Fund expenditures
2. Projected annual contributions to catch up on unfunded liabilities are ramped up over two to five years by CalPERS and OCERS. The impact of amortizing unfunded liabilities is not completely revealed by looking only one year into the future, which is typically as far as city budgets are projected
3. Unlike most planned city expenditures, there is essentially no way to reduce or defer *required* pension contributions in future years
4. Projected unfunded pension liabilities are at risk of large changes year to year because Annual Required Contributions are so dependent on the fluctuating market value of assets and on key actuarial assumptions used in calculating the liabilities

Unfortunately, after examining a large sample of OC cities' budgets published online, the Grand Jury found those budgets to be inadequate to establish any confidence that these cities are addressing their unfunded pension liabilities. There are several reasons for this:

1. Cities typically do not show explicit line items for amortizing their unfunded pension liabilities
2. Cities typically only show budget projections one year into the future
3. Cities that outsource fire and/or police services to Orange County Sheriff's Department and/or Orange County Fire Authority typically provide minimal detail on planned future expenditures for these services even as OCSD/OCFA deal with their own unfunded pension liabilities with OCERS

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

It is extremely important to note the Grand Jury's assessment that a city's published budget data is inadequate to establish confidence that a city will be able to address its unfunded pension liabilities is not the same thing as an assessment that the city will be unable to address its unfunded liabilities.

The 2013-2014 Grand Jury is very concerned that although cities have somewhat improved the transparency of their budgets (partly in response to prior Grand Jury recommendations), *members of the public of Orange County cities will still find it difficult or impossible to understand the current and changing impacts of unfunded pension liabilities on their city budget. Of special concern to the Grand Jury is the lack of any traceability of OCERS OCSD/OCFA unfunded pension liabilities to the budgets of cities which outsource to these agencies.*

Given the potential impact of unfunded pension liabilities on Orange County cities and the current lack of information visible to the public, the Grand Jury finds that it is critically urgent that Orange County cities increase the transparency of this information. The Grand Jury believes that a better informed public will more effectively engage with their political leadership to address budget problems including the impact of large and volatile unfunded pension liabilities. There is, of course, the added benefit that being required to show budget planning further into the future and at a greater depth will require greater thoughtfulness on the part of cities in preparing such budgets. The 2013-2014 Grand Jury also believes that a discussion of the critical assumptions which form the basis in projecting out-year budgets and the associated risks inherent in these assumptions is needed as part of any city's budget.

REASON FOR THE STUDY

Orange County cities are obligated to provide on-going pension benefits to retired employees (and often to those employees' survivors) and to current employees who will retire sometime in the future. These cities use two major pension systems to provide these pensions: the California Public Employees' Retirement System (CalPERS) and the Orange County Employee Retirement System (OCERS). Significant portions of these pension systems are unfunded.

Pensions for public employees are taking larger and larger percentages of OC City budgets both for contributions to fund future pensions for current employees and to make up for insufficiently funded pension obligations for retired employees. Cities are also dealing with their need to have current employees contribute more toward their retirement. This report examines the size of OC cities' unfunded pension liabilities for both their general/administrative/ technical personnel and for their public safety personnel. It also examines metrics to help understand the relative financial impacts of unfunded liabilities on OC cities.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Media stories have raised major concerns that unfunded pension obligations are not only growing, but are growing exponentially at all levels of government. Unfunded pension liabilities with the CalPERS system have led two California cities to contemplate bankruptcy as a means of dealing with the problem, although such drastic steps have been avoided so far.

The 2013-2014 Grand Jury is aware that there is a political element to any discussion of unfunded pension liabilities. Unions may view the problem as being exaggerated as a means to weaken the power of public employee unions and strip hard-won benefits and influence future negotiations. Others are concerned with the affordability of pensions that many people describe as “generous”. The Public Employee Pension Reform Act (PEPRA) took effect in 2013 and is designed to end practices and policies that permitted very high pension payments to some retirees. No doubt some unfunded pension liabilities can be attributed to these practices, and it is true that most current employees are not subject to these reforms because they apply only to employees hired after January 1, 2013. However, the main contributors to current unfunded liabilities are the result of the Great Recession and changing actuarial assumptions.

The focus of this report is forward looking. In whatever fashion OC cities got to their present situation, the unfunded liabilities are real and must be dealt with. The objectives of this report are to:

1. provide factual information about the extent of unfunded city pension obligations
2. provide sufficient background information on pensions such that members of the public can follow and engage in informed discussion on unfunded pension obligations and their impact on a city
3. assess the availability and utility of pension information in city budgets

The public commitment to addressing the issues in a timely manner and accepting some pain now and not pushing the issues off to the future must be in place. If unfunded pension liabilities are not addressed, cities could reach a crisis where outcomes are painful enough that they affect the quality of life in Orange County. Money spent by OC cities to deal with unfunded pension obligations necessarily comes at the expense of other services cities provide to their residents. Catch up contributions to amortize these unfunded liabilities can be a significant expenditure in a city’s budget, and the growth and unpredictability of these unfunded liabilities make it difficult to budget for future years. Orange County cities made painful cuts in services to their residents in response to the 2008 Great Recession and would like to restore these services as the economy recovers. However, restoration of services will be delayed or even further reduced in many cities until unfunded liabilities are dealt with.

As a necessary part of the report’s discussion of pension funding, some basic explanations of key pension related terms are provided. The Grand Jury hopes this background will be an additional

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

benefit of the report in helping the OC electorate to understand and make informed decisions in response to pension funding issues when they are discussed.

Although Orange County is relatively wealthy compared to many other California counties, unfunded pensions are still an issue for the county, its cities, and other county governmental entities. Although unfunded pension liabilities are a problem for every County governmental entity, due to the limited Grand Jury resources, this report focuses on pension issues for the 34 cities in Orange County. Another motivation for this choice is that discussions of unfunded pension liabilities in the media have typically not gone to the level of detail of individual cities.

A prior 2011-2012 Grand Jury report³ identified the need for greater transparency in public employee compensation, especially in the area of employee pension costs. That report was well written and had very valid recommendations. Subsequent to that report city budgets now contain far more pension information for individual classes of employees, indeed sometimes down to individual positions. However, the pension costs are not summarized in most city budgets such that the cumulative costs of current employee pension obligations are visible. It is not possible to see the forest for the trees. In addition, the focus of the 2011-2012 Grand Jury report was on transparency of city pension-related compensation *for current employees* in city budgets. The need for transparency on the *cumulative* effect of pension obligations for both current and retired employee and on the impact of *unfunded pension liabilities* was not addressed.

This report does not examine other pension systems of importance to Orange County, which definitely have their own unfunded pension liabilities. In particular Special Districts, Teacher Retirement Systems, and Community College Districts are not studied. This report also does not address the other elephant in the room, which is a post-retirement obligation for medical care and similar non-pension benefits, an issue which deserves attention similar to that needed for pension funding.

BACKGROUND AND FACTS

Table 1 lists the 34 Orange County cities alphabetically, their population, and the pension systems they use. Note that some OC cities which use CalPERS for their Miscellaneous (non-safety) employees' pensions also have "outsourced" public safety (police and/or fire protection) to County agencies. Some cities contract with the Orange County Sheriff's Department (OCSD) for police services, some with the Orange County Fire Authority (OCFA) for fire protection and medical response services, and some cities contract with both. Cities that outsource for public safety services also inherit pension obligations (and any associated funding issues) from the County agencies to which they have outsourced. Ten OC cities rely on CalPERS for pensions

³ "TRANSPARENCY BREAKING UP COMPENSATION FOR – BUT WHY HIDE PENSION COSTS", 2011-2012 Orange County Grand Jury Report, <http://www.ocgrandjury.org/pdfs/transparencymakingupcompensationfog.pdf>

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

for all their public safety as well as their non-public safety employees, eleven for one but not both of their public safety services, and thirteen outsource both fire and police services.

Table 1. Orange County Cities, Population, and Pension Systems

City	Popula- tion	Non-Safety Employee Retirement System	Safety Employee - Police Protection	Safety Employee - Fire Protection
Aliso Viejo	47,823	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Anaheim	336,365	CalPERS	In house – CalPERS	In house – CalPERS
Brea	39,282	CalPERS	In house – CalPERS	In house – CalPERS
Buena Park	80,530	CalPERS	In house – CalPERS	Outsourced – OCFA
Costa Mesa	109,960	CalPERS	In house – CalPERS	In house – CalPERS
Cypress	47,802	CalPERS	In house – CalPERS	Outsourced – OCFA
Dana Point	33,351	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Fountain Valley	55,313	CalPERS	In house – CalPERS	In house – CalPERS
Fullerton	135,161	CalPERS	In house – CalPERS	In house – CalPERS
Garden Grove	170,883	CalPERS	In house – CalPERS	In house – CalPERS
Huntington Beach	189,992	CalPERS	In house – CalPERS	In house – CalPERS
Irvine	212,375	CalPERS	In house – CalPERS	Outsourced – OCFA
La Habra	60,239	CalPERS	In house – CalPERS	LA County FD
La Palma	15,568	CalPERS	In house – CalPERS	Outsourced – OCFA
Laguna Beach	22,723	CalPERS	In house – CalPERS	In house - CalPERS
Laguna Hills	30,344	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Laguna Niguel	62,979	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Laguna Woods	16,192	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Lake Forest	77,264	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Los Alamitos	11,449	CalPERS	In house – CalPERS	Outsourced – OCFA
Mission Viejo	93,483	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Newport Beach	85,287	CalPERS	In house – CalPERS	In house - CalPERS
Orange	136,416	CalPERS	In house – CalPERS	In house - CalPERS
Placentia	50,533	CalPERS	In house – CalPERS	Outsourced – OCFA
Rancho Santa Margarita	47,853	CalPERS	Outsourced - OCSD	Outsourced – OCFA
San Clemente	63,522	Great West	Outsourced - OCSD	Outsourced – OCFA
San Juan Capistrano	34,593	OCERS	Outsourced - OCSD	Outsourced – OCFA
Santa Ana	329,427	CalPERS	In house – CalPERS	Outsourced – OCFA
Seal Beach	24,168	CalPERS	In house – CalPERS	Outsourced – OCFA
Stanton	38,186	CalPERS	Outsourced - OCSD	Outsourced – OCFA
Tustin	75,540	CalPERS	In house – CalPERS	Outsourced – OCFA
Villa Park	5,812	none	Outsourced - OCSD	Outsourced – OCFA
Westminster	89,701	CalPERS	In house – CalPERS	Outsourced – OCFA
Yorba Linda	64,234	CalPERS	Outsourced - OCSD	Outsourced – OCFA

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Some notes on Table 1 follow:

1. Population data is from 2010 Census (except for Mission Viejo and Santa Ana where the data is from 2011)
2. Population data will be used later in the report as a way of scaling the size of unfunded liabilities on a per capita basis. (Using consistent census data, even if a bit old, does allow for a better apples-to-apples comparison among cities.)
3. La Habra in North OC outsources its fire protection to the adjacent Los Angeles County Fire Department
4. San Clemente uses Great West Retirement Systems for its non-safety employees, although it is considering transferring to CalPERS for these employees. It currently uses CalPERS for its five lifeguards
5. Villa Park no longer uses CalPERS for its non-safety employees, but unfunded liabilities still exist since the city previously did use CalPERS for pensions for these employees
6. Some CalPERS data later in the report is provided for “Safety” without specifying whether Safety includes Police or Fire or both. In other cases CalPERS provides data separately for Police and Fire
7. Many cities that currently outsource for fire and/or police services previously used in-house employees for these services and still use CalPERS for those retired employees and for the pension obligations incurred before active employees transferred to OCFA/OCSD

Some Key Terms Defined

Pension systems receive contributions from current employees and from their employers and accumulate and invest these assets to generate the stream of pension payments (the system’s *liabilities*) for their members.

The difference between the assets they hold and the assets they should have on hand to meet their current pension payout obligations and to invest for future pension payments are their *unfunded liabilities*.

The ratio of total assets to total liabilities is the “*Funded Ratio*” for each pension system.

Pension systems specify *Annual Required Contributions* from employers that are comprised of current employee pension contributions, corresponding employer contributions, and catch up contributions from employers to amortize their unfunded obligations.

Appendix B provides an extensive glossary of pension related terms. Appendix C provides a general background discussion of pensions.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Overviews of CalPERS and OCERS

Both CalPERS and OCERS provide top level descriptions in their Annual Financial Reports that give excellent summaries of their systems, their scope, and some key financial indicators. Extracts from these publications are provided below.

California Public Employees' Retirement System (CalPERS) Overview from its Comprehensive Annual Financial Report (CAFR) 2013⁴

“Established by legislation in 1931, the System became operational in 1932 for the purpose of providing a secure retirement to State employees. A defined benefit retirement plan, CalPERS provides benefits based on a member’s years of service, age, and highest compensation.

The California Public Employees’ Retirement System (CalPERS) is now the nation’s largest public pension fund with total net position in the Public Employees’ Retirement Fund (PERF) of \$262.0 billion as of June 30, 2013. CalPERS membership consists of 1,104,237 active and inactive members and 574,759 retirees, beneficiaries, and survivors. The PERF paid \$16.6 billion in retirement benefits to 566,975 annuitants during the Fiscal Year 2012-2013, compared with \$15.4 billion paid to 543,722 annuitants during the Fiscal Year 2011-2012. Benefit payments increased primarily due to an increase in the number of retirees and the average benefit amount, including cost-of-living-adjustments (COLA).

As of June 30, 2012, the date of the most recent actuarial valuation, the PERF was funded at 83.1 percent, based on the actuarial value of assets. A better measure of benefit security is the funded status on the market value of assets basis. On that basis, as a result of the 0.14 percent investment return in 2011-2012, the funded status declined from 73.6 percent at June 30, 2011 to 69.6 percent at June 30, 2012. CalPERS is making good progress recovering from the financial crisis of 2008-2009 and Great Recession. As of June 30, 2013, the PERF was approximately 74 percent funded.

The past fiscal year produced a landmark pension reform law in California called the Public Employees’ Pension Reform Act (PEPRA), which went into effect on January 1, 2013. The reforms apply to nearly all California public employee pension systems, including CalPERS, and generally to public employees hired on January 1, 2013, or later, but not to public employees hired before the effective date.”

⁴ Comprehensive Annual Financial Report, Fiscal Year Ended June 13, 2013, CalPERS document located at <http://www.calpers.ca.gov/eip-docs/about/pubs/2013-executive-summary.pdf>

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Orange County Employee Retirement System (OCERS) Overview from its Comprehensive Annual Financial Report (CAFR) 2012⁵

“OCERS is a public retirement system that provides service retirement, disability, death and survivor benefits, administered in accordance with the County Employees Retirement Law of 1937 (Government Code Section 31450, et seq.), to its members.

Member pension benefit payments increased by \$46.3 million or 9.6% in 2012. The number of retired members and beneficiaries receiving a benefit payment increased 5% from 13,289 payees at the end of 2011 to 13,947 as of December 2012. The average annual benefit paid to retired members and beneficiaries during 2012 was \$38,020 an increase of 4.4% over the average annual benefit payment of \$36,422 in 2011.

Contributions received from employers and employees totaled \$629.0 million in 2012, an increase of 2.3% compared to 2011 contributions received of \$614.8 million. The net year-to-date rate of return on investments on a fair value basis was approximately 12.26% in 2012, up from 0.74% return earned in 2011.

OCERS maintains a funding goal to establish contributions that fully fund the System’s liabilities, and that, as a percentage of payroll, remain as level as possible for each generation of active members.

Based upon the most recent actuarial valuation as of December 31, 2012, prepared by the System’s independent actuary, OCERS funding status for the pension plan, as measured by the ratio of the actuarial value of assets (which smooths market gains and losses over five years) to the actuarial value of liabilities, decreased from 67.03% at December 31, 2011 to 62.52% at December 31, 2012 due primarily to the impact of decreasing the investment assumed rate of return from 7.75% to 7.25%. The December 31, 2012, OCERS funding status of 62.52% reflected a UAAL [Unfunded Actuarial Accrued Liability] of \$5.7 billion. OCERS funding status when measured using market value of assets was 63.17% at the end of 2012 compared to 62.60% at the end of 2011.

OCERS had been using a 7.75 % assumed rate of return in its annual actuarial valuations since 2004. In 2011, the Board [of Retirement] received a recommendation from the System’s actuary to reduce the assumed rate of return to either 7.5% or 7.25%. After a thorough review and lengthy discussions, the Board decided to maintain the existing assumption and revisit the matter in 2012 after they considered the revision to the investment asset allocation policy. Even with the subsequent improved projections for the revised asset allocation then evident, the System’s actuary again recommended the System’s rate of return be reduced to either 7.50% or 7.25%. The Board adopted 7.25%

⁵ Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2012, OCERS document

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

as the System's assumed rate of return to be effective with the 2012 actuarial valuation. The ensuing cost impact to the employer's contribution rate as a result of this assumption change will be phased-in over two years."

Pension Reform in California (PEPRA)

Recent reforms in California's public employee retirement systems have tried to address pension cost drivers. These reforms have created two classes of employees: 1) employees who were members of a California public employee pension system prior to January 1, 2013 ("Legacy"), and 2) employees hired after January 1, 2013, who at the time of hiring were not members of a California public employee pension system ("New"). Briefly excerpted below are highlights of the pension reform legislation published by The California State Association of Counties⁶:

"Two bills (AB 340 and AB 197) enacted the California Public Employees' Pension Reform Act (PEPRA). AB 340 made several changes to the pension benefits that may be offered to employees hired on or after January 1, 2013, including setting a new maximum benefit, a lower-cost pension formula for safety and non-safety employees with requirements to work longer in order to reach full retirement age and a cap on the amount used to calculate a pension. Among other things, AB 340 also enacted pension spiking reform for new and existing employees, required three-year averaging of final compensation for new employees, and provided counties with new authority to negotiate cost-sharing agreements with current employees."

These reforms will mitigate the pension problem in the long term. However, since these reforms generally only apply to New employees, there remains a large problem to be dealt with in the next 10-30 years, which is pension payments for employees already retired or covered as Legacy employees under the prior and far more generous pre-PEPRA rules. Given the slow rate of hiring by cities and the grandfathering of Legacy employees, it will be a long time before these reforms have any significant impact on pension liabilities.

Unfunded liabilities of CalPERS and OCERS are both large and volatile

Table 2 shows a history of the unfunded Public Employees' Retirement Fund (PERF) liabilities for CalPERS, both as dollar amounts and in terms of funding ratio of assets divided by liabilities.⁷ Unfunded liabilities varied dramatically between 2003 and 2012 from \$36.6 billion in unfunded liabilities in 2003 down to (\$2.9) billion (parentheses indicate a negative number, which in turn implies an overfunded state) in 2007 and back up to \$103.6 billion in 2012. The Great Recession from December 2007 to June 2009 led to the CalPERS funding ratio dropping dramatically from 101% in June of 2007 to 61% in June of 2009.

⁶ California State Association of Counties, "2013 Public Employees Pension Reform Act Resources", <http://www.csac.counties.org/2013-public-employees-pension-reform-act-resources>

⁷ Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2013, page 132, <http://www.calpers.ca.gov/eip-docs/about/pubs/cafr-2013.pdf>

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Table 2. Unfunded Accrued Liabilities Historical Data for CalPERS

Actuarial Valuation Date	Actuarial Accrued Liability (AAL)	Market Value of Assets	UAAL	Funded Ratio - Market Value of Assets Basis
6/30/2003	\$180,922	\$144,330	\$36,592	79.77%
6/30/2004	\$194,609	\$167,110	\$27,499	85.87%
6/30/2005	\$210,301	\$189,103	\$21,198	89.92%
6/30/2006	\$228,131	\$211,188	\$16,943	92.57%
6/30/2007	\$248,224	\$251,162	-\$2,938	101.18%
6/30/2008	\$268,324	\$238,041	\$30,283	88.71%
6/30/2009	\$294,042	\$178,860	\$115,182	60.83%
6/30/2010	\$308,343	\$201,632	\$106,711	65.39%
6/30/2011	\$328,567	\$241,740	\$86,827	73.57%
6/30/2012	\$340,429	\$236,800	\$103,629	69.56%
Dollars are in Millions				

Figure 1 and Table 3 below are from an OCERS paper “The Evolution of OCERS Unfunded Actuarial Accrued Liability”.⁸ These data show the dramatic growth of unfunded pension liabilities in the OCERS system not dissimilar to CalPERS’ experience. However, the data also provide a good example of why focusing on the raw dollars does not paint a complete picture and that funding ratios are needed to paint a complete picture. Figure 1 shows the OCERS pension system’s accrued liabilities going from a small overfunded status in 2000 to an unfunded status approaching \$5.7 billion by 2012.

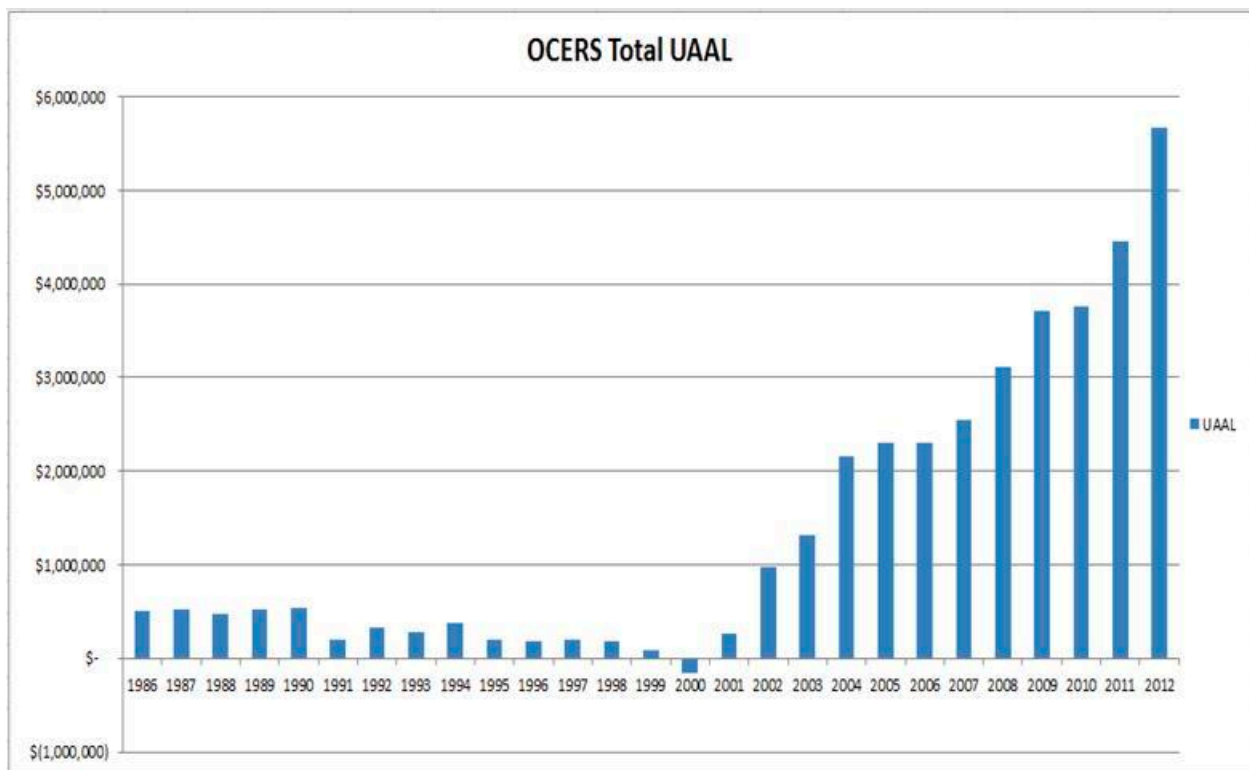
What is missing from Figure 1 is the fact that the OCERS assets were also growing fairly dramatically during this period, although not fast enough to keep up with liabilities growth. Table 3 shows the same dramatic growth in OCERS unfunded liabilities as shown in Figure 1, but also shows the growth in value of OCERS assets paralleling the growth in liabilities. Unfortunately, asset growth did not keep up well enough with liabilities growth to avoid a significant decline in funding ratio. OCERS went from a funding ratio of 104% in 2000 to 63% in 2012. However, it should be noted that the funding ratio was relatively stable between 2004 and 2010 while at the same time the unfunded liability went from \$2.2 billion to \$3.8 billion. Media coverage that only deals in terms of unfunded liabilities without looking at funding ratios is misleading.

⁸ The Evolution of OCERS Unfunded Actuarial Accrued Liability, dated December 31, 2012, http://www.ocers.org/pdf/finance/actuarial/evolution_of_ocers_uaal.pdf

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Changes in the value of assets are not the only source of volatility in unfunded liabilities. For example, the seemingly small OCERS change in December, 2012, from an assumed rate of return on investments of 7.5% down to 7.25% caused the County of Orange’s projected county retirement costs in 2015-2016 to grow by \$50 million from \$377 to \$427 million.⁹

Figure 1. Unfunded Accrued Liabilities Historical Data for OCERS



[The Y axis in OCER’s paper should have indicated dollars are in thousands.]

⁹ County of Orange 2012 Strategic Financial Plan, December 18, 2012.
http://cams.ocgov.com/Web_Publisher_Sam/Agenda12_18_2012_files/images/56-12182012.PDF

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Table 3. Historical OCERS Assets, Unfunded Liabilities, and Funding Ratios

Actuarial Valuation Date December 31	Valuation Value of Plan Assets	Total Unfunded Actuarial Accrued Liability (UAAL)	Funded Ratio
1985	\$613,863	\$462,121	57.05%
1986	\$713,506	\$507,409	58.44%
1987	\$821,884	\$522,098	61.16%
1988	\$985,030	\$468,828	67.75%
1989	\$1,136,210	\$515,778	68.78%
1990	\$1,297,575	\$543,340	70.49%
1991	\$1,576,131	\$196,763	88.84%
1992	\$1,807,319	\$332,763	84.45%
1993	\$2,024,447	\$280,572	87.83%
1994	\$2,177,673	\$372,386	85.40%
1995	\$2,434,406	\$199,478	92.43%
1996	\$2,675,632	\$176,262	93.82%
1997	\$3,128,132	\$204,835	93.85%
1998	\$3,504,708	\$177,978	95.17%
1999	\$3,931,744	\$85,535	97.87%
2000	\$4,497,362	(\$162,337)	103.74%
2001	\$4,586,844	\$257,055	94.69%
2002	\$4,695,675	\$978,079	82.76%
2003	\$4,790,099	\$1,309,334	78.53%
2004	\$5,245,821	\$2,158,151	70.85%
2005	\$5,786,617	\$2,303,010	71.53%
2006	\$6,466,085	\$2,298,960	73.77%
2007	\$7,288,900	\$2,549,786	74.08%
2008	\$7,748,380	\$3,112,335	71.34%
2009	\$8,154,687	\$3,703,891	68.77%
2010	\$8,672,592	\$3,753,281	69.79%
2011	\$9,064,355	\$4,458,623	67.03%
2012	\$9,469,208	\$5,675,680	62.52%

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

METHOD OF STUDY

The Grand Jury took the actions listed below to accomplish this study:

1. Interviews were conducted with HR managers from three selected cities concerning their pension systems.
2. Interviews were conducted with finance managers from three selected cities concerning their pension systems.
3. Interview(s) were conducted with CalPERS experts on how they compute the value of their assets, project their future liabilities, and identify and deal with unfunded pension liabilities. Key actuarial assumption changes recently made and other changes that may occur in the near future and their impact on unfunded liabilities were also discussed as well as the impact of pension reform and further pension reforms being contemplated.
4. Interviews were conducted with OCERS senior managers on how they handle unfunded pension liabilities.
5. Analyses were made of CalPERS-provided data on unfunded liabilities for each city's Public Safety (Fire and Police) and Miscellaneous (i.e., their management and administrative staff or more simply stated - their non-Public Safety staff) employees. The analysis looked at the absolute dollar values of the unfunded liabilities as well as measuring the liabilities on a per capita basis and relative to the size of the General Funds of each city.
6. Criteria for minimum expectations for budget content and quality were identified and an assessment of OC city budget data published online against these criteria was conducted.

ANALYSIS

CalPERS Data on Unfunded Pension Liabilities of OC Cities

CalPERS provided the 2013-2014 Grand Jury with the funding status of each Miscellaneous/Safety pension plan which CalPERS provides for OC cities as shown earlier in Table 1. Table 4 shows data as of June 30, 2012, for those 34 OC cities.

The city of Anaheim, which uses CalPERS for all its employees including fire and police, has an unfunded liability totaling \$612 million. The city of Santa Ana has an unfunded liability totaling \$461 million, and this total does not include any unfunded pension liabilities carried by the OCFA to whom Santa Ana outsources its fire protection.

The highest funding ratios (around 80%) are for "Second Tier" plans which pay a lower percentage of final salary and set a much higher minimum age of retirement. The rest of the plans vary significantly among OC cities, having funding ratios from a high of 77.5% to a low of

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

59%. The aggregate unfunded CalPERS pension liabilities of the 34 OC cities shown in Table 2 using Market Value of Assets (the current baseline approach) is over \$3.3 billion dollars.

It is important to note that Table 4 does not show the total exposure to unfunded pension liabilities for those cities which outsource fire and/or police services to OCFA and OCSD, respectively and should be read accordingly. (Table 1 showed which cities outsourced these services.)

Table 4. Unfunded Pension Liabilities by City and Plan Using Market Value of Assets

CITY	PLAN	Accrued Liability	Market Value of Assets	UAL	Funded Ratio
ALISO VIEJO	MISCELLANEOUS	\$2,570,113	\$1,983,533	\$586,580	77.2%
Anaheim	MISCELLANEOUS	\$1,045,037,179	\$712,496,875	\$332,540,304	68.2%
Anaheim	SAFETY POLICE	\$565,213,783	\$395,053,409	\$170,160,374	69.9%
Anaheim	SAFETY FIRE	\$345,724,884	\$236,154,719	\$109,570,165	68.3%
Brea	SAFETY	\$191,751,750	\$127,377,145	\$64,374,605	66.4%
Brea	MISCELLANEOUS	\$102,226,046	\$72,815,975	\$29,410,071	71.2%
BUENA PARK	SAFETY	\$185,001,886	\$136,426,394	\$48,575,492	73.7%
BUENA PARK	MISCELLANEOUS	\$109,953,460	\$77,968,001	\$31,985,459	70.9%
Costa Mesa	MISCELLANEOUS	\$225,186,488	\$141,225,952	\$83,960,536	62.7%
Costa Mesa	SAFETY POLICE	\$212,645,063	\$129,017,818	\$83,627,245	60.7%
COSTA MESA	SAFETY FIRE	\$161,328,098	\$100,677,450	\$60,650,648	62.4%
CYPRESS	SAFETY	\$65,259,215	\$47,574,444	\$17,684,771	72.9%
Cypress	MISCELLANEOUS	\$58,995,020	\$44,534,686	\$14,460,334	75.5%
DANA POINT	MISCELLANEOUS	\$14,606,788	\$11,273,064	\$3,333,724	77.2%
FOUNTAIN VALLEY	SAFETY 1ST TIER	\$144,802,443	\$99,113,405	\$45,689,038	68.4%
FOUNTAIN VALLEY	MISCELLANEOUS 1ST TIER	\$78,548,900	\$51,520,993	\$27,027,907	65.6%
FOUNTAIN VALLEY	SAFETY POLICE 2ND TIER	\$100,138	\$75,901	\$24,237	75.8%
FOUNTAIN VALLEY	MISCELLANEOUS 2ND TIER	\$31,032	\$24,768	\$6,264	79.8%
FOUNTAIN VALLEY	SAFETY FIRE 2ND TIER	\$422	\$315	\$107	74.6%
Fullerton	SAFETY	\$372,812,731	\$247,403,994	\$125,408,737	66.4%
Fullerton	MISCELLANEOUS	\$227,961,576	\$170,608,016	\$57,353,560	74.8%
Garden Grove	SAFETY	\$387,791,595	\$251,498,319	\$136,293,276	64.9%
Garden Grove	MISCELLANEOUS	\$231,098,351	\$155,545,807	\$75,552,544	67.3%
Huntington Beach	SAFETY	\$552,535,708	\$350,648,228	\$201,887,480	63.5%
Huntington Beach	MISCELLANEOUS	\$431,175,037	\$298,603,254	\$132,571,783	69.3%
Irvine	MISCELLANEOUS	\$262,485,223	\$168,840,560	\$93,644,663	64.3%
Irvine	SAFETY	\$162,425,349	\$114,537,221	\$47,888,128	70.5%
LA HABRA	SAFETY	\$124,453,943	\$87,149,408	\$37,304,535	70.0%
La Habra	MISCELLANEOUS	\$79,216,276	\$59,609,354	\$19,606,922	75.2%
LA HABRA	SAFETY POLICE 2ND TIER	\$753	\$563	\$190	74.8%
LA PALMA	SAFETY	\$33,248,911	\$24,518,826	\$8,730,085	73.7%
LA PALMA	MISCELLANEOUS	\$22,117,712	\$16,031,551	\$6,086,161	72.5%
LA PALMA	SAFETY 2ND TIER	\$7,511	\$5,895	\$1,616	78.5%
LA PALMA	MISCELLANEOUS 2ND TIER	\$576	\$460	\$116	79.9%

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

CITY	PLAN	Accrued Liability	Market Value of Assets	UAL	Funded Ratio
Laguna Beach	MISCELLANEOUS	\$80,291,956	\$55,443,941	\$24,848,015	69.1%
LAGUNA BEACH	SAFETY POLICE	\$57,585,435	\$42,465,368	\$15,120,067	73.7%
LAGUNA BEACH	SAFETY FIRE	\$45,735,935	\$33,727,163	\$12,008,772	73.7%
LAGUNA BEACH	SAFETY LIFEGUARD	\$4,662,336	\$3,533,903	\$1,128,433	75.8%
LAGUNA BEACH	SAFETY FIRE 2ND TIER	\$21,221	\$16,085	\$5,136	75.8%
LAGUNA BEACH	SAFETY POLICE 2ND TIER	\$119	\$90	\$29	75.6%
LAGUNA HILLS	MISCELLANEOUS	\$11,150,476	\$8,428,814	\$2,721,662	75.6%
LAGUNA NIGUEL	MISCELLANEOUS	\$21,979,272	\$16,962,917	\$5,016,355	77.2%
LAGUNA NIGUEL	MISCELLANEOUS 2ND TIER	\$576	\$460	\$116	79.9%
LAGUNA WOODS	MISCELLANEOUS	\$1,799,940	\$1,389,138	\$410,802	77.2%
LAKE FOREST	MISCELLANEOUS	\$16,886,211	\$13,032,252	\$3,853,959	77.2%
LOS ALAMITOS	SAFETY	\$24,809,272	\$18,091,332	\$6,717,940	72.9%
LOS ALAMITOS	MISCELLANEOUS	\$23,970,858	\$17,582,564	\$6,388,294	73.3%
Mission Viejo	MISCELLANEOUS	\$55,336,400	\$37,971,519	\$17,364,881	68.6%
Newport Beach	SAFETY	\$424,868,507	\$252,131,503	\$172,737,004	59.3%
Newport Beach	MISCELLANEOUS	\$302,006,850	\$200,149,332	\$101,857,518	66.3%
Orange	SAFETY	\$395,287,607	\$265,861,717	\$129,425,890	67.3%
Orange	MISCELLANEOUS	\$271,876,517	\$187,707,479	\$84,169,038	69.0%
PLACENTIA	SAFETY	\$69,929,197	\$47,548,284	\$22,380,913	68.0%
PLACENTIA	MISCELLANEOUS	\$44,543,255	\$34,400,240	\$10,143,015	77.2%
PLACENTIA	MISCELLANEOUS 2ND TIER	\$70	\$56	\$14	80.0%
RANCHO SM	MISCELLANEOUS 1ST TIER	\$3,578,445	\$2,373,225	\$1,205,220	66.3%
RANCHO SM	MISCELLANEOUS 2ND TIER	\$66	\$53	\$13	80.3%
SAN CLEMENTE	SAFETY LIFEGUARD	\$4,771,964	\$3,412,298	\$1,359,666	71.5%
Santa Ana	SAFETY	\$886,484,216	\$639,122,005	\$247,362,211	72.1%
Santa Ana	MISCELLANEOUS	\$670,676,090	\$456,703,295	\$213,972,795	68.1%
SEAL BEACH	SAFETY	\$55,626,490	\$41,020,779	\$14,605,711	73.7%
SEAL BEACH	MISCELLANEOUS	\$37,784,994	\$29,273,349	\$8,511,645	77.5%
STANTON	MISCELLANEOUS	\$16,135,869	\$11,943,044	\$4,192,825	74.0%
TUSTIN	SAFETY	\$96,725,338	\$67,268,742	\$29,456,596	69.5%
Tustin	MISCELLANEOUS	\$79,578,148	\$60,726,631	\$18,851,517	76.3%
TUSTIN	SAFETY POLICE 2ND TIER	\$634	\$474	\$160	74.8%
VILLA PARK	MISCELLANEOUS	\$3,584,194	\$2,504,067	\$1,080,127	69.9%
WESTMINSTER	SAFETY	\$190,808,021	\$140,326,367	\$50,481,654	73.5%
Westminster	MISCELLANEOUS	\$103,786,629	\$70,524,912	\$33,261,717	68.0%
Yorba Linda	MISCELLANEOUS	\$52,656,198	\$35,770,166	\$16,886,032	67.9%

Per Capita Assessment

Since the cities in Table 4 vary greatly in size, the Grand Jury calculated these unfunded liabilities for a selected set of cities on a per capita basis to provide a normalized measure of the impact of these liabilities. Table 5 below provides this assessment for the 10 OC cities that rely on CalPERS for all their Miscellaneous and Safety employees. These 10 cities are the only ones for which an apples-to-apples comparison is possible because unfunded pension liabilities for those cities which outsource fire and/or police services to OCFA and OCSD are not available.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

No city on the list stands apart as having an overwhelming liability when measured using this metric. However, the table does show that unfunded liabilities on a per capita basis do vary by a factor of well over two among these cities. Notably, the city with the highest per capita liability in the list is one of the wealthiest as well.

Table 5. Unfunded Actuarial Liabilities (UAL) by City Computed on a Per Capita Basis

City	Total Misc plus Public Safety UAL	City Population	Per Capita UAL for Misc plus Public Safety
Anaheim	\$612,270,843	343,248	\$1,783.76
Brea	\$93,784,676	40,330	\$2,325.43
Costa Mesa	\$228,238,429	111,918	\$2,039.34
FOUNTAIN VALLEY	\$72,747,553	56,464	\$1,288.39
Fullerton	\$182,762,297	138,534	\$1,319.26
Garden Grove	\$211,845,820	174,389	\$1,214.79
Huntington Beach	\$334,459,263	194,708	\$1,717.75
Laguna Beach	\$53,110,452	23,176	\$2,291.61
Newport Beach	\$274,594,522	87,068	\$3,153.79
Orange	\$213,594,928	139,419	\$1,532.04

Assessment of Unfunded Liabilities as a Percent of General Fund Revenues

Another (and potentially better) way of comparing the burden of unfunded pension liabilities is by looking at the ratio of the unfunded pension liabilities of a city to one year’s General Fund revenues for that city. Arguably, the differences in wealth of these cities would be reflected in the differences in their General Fund revenues tied to property and sales taxes and would provide a better measure of the burden of these liabilities on the city’s resources. The Grand Jury calculated these ratios in Table 6 for the same 10 cities shown in Table 5. Again the cities when assessed using this metric vary by over a factor of well over two, and again there is not any city in the list that stands apart as having an overwhelming liability when measured using this metric.

Also interesting is that different cities fare better depending on the metric used - per capita versus percent of General Fund. A significant drawback to the General Fund Percentage metric is the difficulty to achieve any reliable apples-to-apples comparison since city revenues are structured differently. In addition, some cities have their own water and power utilities which have their own associated revenues, and all cities have different sources of grant and bond revenues.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Table 6 – Unfunded Pension Liabilities as a Percentage of Annual General Fund Revenues

CITY	Total Misc plus Public Safety UAL	Total General Fund Assumed Revenues from Current Adopted Budget	Budget Year of Adopted Budget	Unfunded Pension Liability as a Percent of General Fund Revenues
Anaheim	\$612,270,843	\$491,847,000	2013	124.5%
Brea	\$93,784,676	\$49,431,294	2013-2014	189.7%
Costa Mesa	\$228,238,429	\$103,250,486	2013-2015	221.1%
FOUNTAIN VALLEY	\$72,747,553	\$37,032,042	2013-2014	196.4%
Fullerton	\$182,762,297	\$154,333,191	2013-2014	118.4%
Garden Grove	\$211,845,820	\$92,351,000	2013-2014	229.4%
Huntington Beach	\$334,459,263	\$298,239,325	2013-2014	112.1%
Laguna Beach	\$53,110,452	\$48,425,000	2013-2014	109.7%
Newport Beach	\$274,594,522	\$255,333,875	2013-2014	107.5%
Orange	\$213,594,928	\$90,139,158	2013-2014	237.0%

It is critical to note that attempts at measuring the impact of unfunded pension liabilities such as provided in Tables 5 and 6 would not be needed if the cities provided adequate budget data! It would be a simple matter of checking whether a city's predicted revenues for current and future years are sufficient to meet total planned expenditures in those years including the pension related expenditures. In order to have a balanced budget, increased pension expenditures will have to be matched with increased revenues and/or cuts to other major budget items.

Calculating Unfunded Liabilities using Market Value instead of Actuarial Value of Assets

On April 17, 2013, the CalPERS Board of Administration approved a recommendation to change its amortization and smoothing policies. Prior to this change, CalPERS employed a smoothing policy which spread investment returns over a 15-year period; after the change investment returns were smoothed over a 5-year period. As a result, the dramatic impact of the 2007-2009 Great Recession on investment returns, which fell in the middle of this 5 year period, was much more heavily weighted than when 15 years of returns were used.

Table 7 below shows data for the plans listed in Table 1 as of June 30, 2012, but now showing unfunded liabilities computed using Actuarial Value of Assets instead of Market Value of Assets. These data were provided at Grand Jury request in order to assess the impact of the CalPERS decision in 2012 to use Market Value instead of Actuarial Value of Assets in computing unfunded liabilities. Recall that the aggregate unfunded liabilities using Market Value of Assets from Table 4 was \$3.3 billion. The aggregate unfunded CalPERS pension

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

liabilities from Table 7 of the 34 OC cities calculated using Actuarial Value of Assets (the prior baseline approach) is \$1.9 billion dollars.

The 2013 decision by CalPERS to use Market Value instead of Actuarial Value resulted in an increase in the calculation of unfunded liabilities of OC cities of \$1.4 billion!

Table 7. Unfunded Liabilities using Actuarial Value of Assets

CITY	PLAN	Accrued Liability	Actuarial Value of Assets	UAL (AVA)	Funded Ratio
ALISO VIEJO	MISCELLANEOUS PLAN	\$2,570,113	\$2,343,664	\$226,449	91.2%
Anaheim	MISCELLANEOUS PLAN	\$1,045,037,179	\$854,296,252	\$190,740,927	81.7%
Anaheim	SAFETY POLICE PLAN	\$565,213,783	\$473,232,689	\$91,981,094	83.7%
Anaheim	SAFETY FIRE PLAN	\$345,724,884	\$283,210,761	\$62,514,123	81.9%
Brea	SAFETY PLAN	\$191,751,750	\$152,827,533	\$38,924,217	79.7%
Brea	MISCELLANEOUS PLAN	\$102,226,046	\$87,360,704	\$14,865,342	85.5%
BUENA PARK	SAFETY PLAN	\$185,001,886	\$162,856,590	\$22,145,296	88.0%
BUENA PARK	MISCELLANEOUS PLAN	\$109,953,460	\$93,518,527	\$16,434,933	85.1%
Costa Mesa	MISCELLANEOUS PLAN	\$225,186,488	\$169,039,653	\$56,146,835	75.1%
Costa Mesa	SAFETY POLICE PLAN	\$212,645,063	\$153,878,616	\$58,766,447	72.4%
COSTA MESA	SAFETY FIRE PLAN	\$161,328,098	\$120,181,921	\$41,146,177	74.5%
CYPRESS	SAFETY PLAN	\$65,259,215	\$56,791,149	\$8,468,066	87.0%
Cypress	MISCELLANEOUS PLAN	\$58,995,020	\$53,426,741	\$5,568,279	90.6%
DANA POINT	MISCELLANEOUS PLAN	\$14,606,788	\$13,319,805	\$1,286,983	91.2%
FOUNTAIN VALLEY	SAFETY FIRST TIER PLAN	\$144,802,443	\$118,314,870	\$26,487,573	81.7%
FOUNTAIN VALLEY	MISCELLANEOUS FIRST TIER PLAN	\$78,548,900	\$61,269,357	\$17,279,543	78.0%
FOUNTAIN VALLEY	SAFETY POLICE SECOND TIER PLAN	\$100,138	\$90,352	\$9,786	90.2%
FOUNTAIN VALLEY	MISCELLANEOUS SECOND TIER PLAN	\$31,032	\$29,439	\$1,593	94.9%
FOUNTAIN VALLEY	SAFETY FIRE SECOND TIER PLAN	\$422	\$378	\$44	89.6%
Fullerton	SAFETY PLAN	\$372,812,731	\$296,723,845	\$76,088,886	79.6%
Fullerton	MISCELLANEOUS PLAN	\$227,961,576	\$204,542,656	\$23,418,920	89.7%
Garden Grove	SAFETY PLAN	\$387,791,595	\$301,757,326	\$86,034,269	77.8%
Garden Grove	MISCELLANEOUS PLAN	\$231,098,351	\$186,575,813	\$44,522,538	80.7%
Huntington Beach	SAFETY PLAN	\$552,535,708	\$420,518,819	\$132,016,889	76.1%
Huntington Beach	MISCELLANEOUS PLAN	\$431,175,037	\$357,911,394	\$73,263,643	83.0%
Irvine	MISCELLANEOUS PLAN	\$262,485,223	\$198,147,071	\$64,338,152	75.5%
Irvine	SAFETY PLAN	\$162,425,349	\$134,847,398	\$27,577,951	83.0%
LA HABRA	SAFETY PLAN	\$124,453,943	\$104,033,061	\$20,420,882	83.6%
La Habra	MISCELLANEOUS PLAN	\$79,216,276	\$71,487,604	\$7,728,672	90.2%
LA HABRA	SAFETY POLICE SECOND TIER PLAN	\$753	\$675	\$78	89.6%
LA PALMA	SAFETY PLAN	\$33,248,911	\$29,268,914	\$3,979,997	88.0%
LA PALMA	MISCELLANEOUS PLAN	\$22,117,712	\$18,886,895	\$3,230,817	85.4%
LA PALMA	SAFETY SECOND TIER PLAN	\$7,511	\$7,025	\$486	93.5%
LA PALMA	MISCELLANEOUS SECOND TIER PLAN	\$576	\$546	\$30	94.8%
Laguna Beach	MISCELLANEOUS PLAN	\$80,291,956	\$66,214,802	\$14,077,154	82.5%
LAGUNA BEACH	SAFETY POLICE PLAN	\$57,585,435	\$50,692,281	\$6,893,154	88.0%
LAGUNA BEACH	SAFETY FIRE PLAN	\$45,735,935	\$40,261,203	\$5,474,732	88.0%
LAGUNA BEACH	SAFETY LIFEGUARD PLAN	\$4,662,336	\$4,206,731	\$455,605	90.2%
LAGUNA BEACH	SAFETY FIRE SECOND TIER PLAN	\$21,221	\$19,147	\$2,074	90.2%
LAGUNA BEACH	SAFETY POLICE SECOND TIER PLAN	\$119	\$107	\$12	89.9%

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

CITY	PLAN	Accrued Liability	Actuarial Value of Assets	UAL (AVA)	Funded Ratio
LAGUNA HILLS	MISCELLANEOUS PLAN	\$11,150,476	\$10,018,286	\$1,132,190	89.8%
LAGUNA NIGUEL	MISCELLANEOUS PLAN	\$21,979,272	\$20,042,710	\$1,936,562	91.2%
LAGUNA NIGUEL	MISCELLANEOUS SECOND TIER PLAN	\$576	\$546	\$30	94.8%
LAGUNA WOODS	MISCELLANEOUS PLAN	\$1,799,940	\$1,641,350	\$158,590	91.2%
LAKE FOREST	MISCELLANEOUS PLAN	\$16,886,211	\$15,398,391	\$1,487,820	91.2%
LOS ALAMITOS	SAFETY PLAN	\$24,809,272	\$21,596,207	\$3,213,065	87.0%
LOS ALAMITOS	MISCELLANEOUS PLAN	\$23,970,858	\$20,714,154	\$3,256,704	86.4%
Mission Viejo	MISCELLANEOUS PLAN	\$55,336,400	\$44,251,357	\$11,085,043	80.0%
Newport Beach	SAFETY PLAN	\$424,868,507	\$302,365,698	\$122,502,809	71.2%
Newport Beach	MISCELLANEOUS PLAN	\$302,006,850	\$238,869,992	\$63,136,858	79.1%
Orange	SAFETY PLAN	\$395,287,607	\$318,640,102	\$76,647,505	80.6%
Orange	MISCELLANEOUS PLAN	\$271,876,517	\$225,061,652	\$46,814,865	82.8%
PLACENTIA	SAFETY PLAN	\$69,929,197	\$56,759,921	\$13,169,276	81.2%
PLACENTIA	MISCELLANEOUS PLAN	\$44,543,255	\$40,645,959	\$3,897,296	91.3%
PLACENTIA	MISCELLANEOUS SECOND TIER PLAN	\$70	\$66	\$4	94.3%
RANCHO SM	MISCELLANEOUS FIRST TIER PLAN	\$3,578,445	\$2,822,266	\$756,179	78.9%
RANCHO SM	MISCELLANEOUS SECOND TIER PLAN	\$66	\$63	\$3	95.5%
SAN CLEMENTE	SAFETY LIFEGUARD PLAN	\$4,771,964	\$4,061,973	\$709,991	85.1%
Santa Ana	SAFETY PLAN	\$886,484,216	\$766,597,172	\$119,887,044	86.5%
Santa Ana	MISCELLANEOUS PLAN	\$670,676,090	\$547,675,894	\$123,000,196	81.7%
SEAL BEACH	MISCELLANEOUS PLAN	\$37,784,994	\$34,588,228	\$3,196,766	91.5%
SEAL BEACH	SAFETY PLAN	\$55,626,490	\$48,967,828	\$6,658,662	88.0%
STANTON	MISCELLANEOUS PLAN	\$16,135,869	\$14,111,427	\$2,024,442	87.5%
TUSTIN	SAFETY PLAN	\$96,725,338	\$80,300,869	\$16,424,469	83.0%
Tustin	MISCELLANEOUS PLAN	\$79,578,148	\$72,395,531	\$7,182,617	91.0%
TUSTIN	SAFETY POLICE SECOND TIER PLAN	\$634	\$568	\$66	89.6%
VILLA PARK	MISCELLANEOUS PLAN	\$3,584,194	\$2,958,706	\$625,488	82.5%
WESTMINSTER	SAFETY PLAN	\$190,808,021	\$167,512,113	\$23,295,908	87.8%
Westminster	MISCELLANEOUS PLAN	\$103,786,629	\$84,550,883	\$19,235,746	81.5%
Yorba Linda	MISCELLANEOUS PLAN	\$52,656,198	\$42,905,265	\$9,750,933	81.5%

Grand Jury Interviews

As discussed under Method of Study, the Grand Jury conducted interviews with experts representing the three key players in the pension processes for cities: city human resources managers, city finance managers, and senior staff from CalPERS and OCERS, the primary pension systems used by OC cities. Before summarizing those individual discussions, it will be useful to share some candid comments without being more specific as to where these comments came from.

The one word used to describe public employee pensions was “generous”. Given Grand Jury members’ knowledge of Social Security and private employer pensions, it finds that adjective appropriate. However, whether the pensions were generous before pension reform or are generous even after pension reform, the focus of this Grand Jury is on the ability of cities to deal

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

with unfunded *obligations* tied to these pensions and on how *transparent* city budgets are with respect to the impact of these liabilities.

One other topic discussed was the recent practice of cities offsetting newly required increased employee contributions to their pensions by raising employees' salaries by a corresponding percentage. A city, instead of directly paying part of what is nominally the employee's share of pension contributions to the pension system instead pays it to the employee, who in turn pays it to the pension system as part of his/her contribution. To take a real example, the city of Garden Grove decided to offset an increase of 3% in public safety employee pension contributions with a 3% increase in salary.¹⁰ In some ways this looks like a very tempting zero-sum game; the new rules are followed, and the city's budget and employee's take home pay are essentially unaffected. The catch is that the employee will now have a base salary at retirement 3% higher than the pension system had been assuming in predicting its pension payout to that employee. This increased pension payment will be made for the remainder of that employee's life, i.e., *a new unfunded pension liability has been created.*

Interviews with CalPERS

Experts from CalPERS were very helpful in discussing with the Grand Jury the actuarial assumptions they use in projecting pension liabilities. Of particular interest was the recent decision by CalPERS to use Market Value of Assets instead of Actuarial Value of Assets. The choice is obviously a philosophical one since Actuarial Value had been the standard approach for many years. On April 17, 2013, the CalPERS Board of Administration approved a recommendation to change its amortization and smoothing policies. Prior to this change, CalPERS employed an amortization and smoothing policy which spread investment returns over a 15-year period; after the change investment returns were smoothed over a 5-year period. The consequence of this change in asset valuation method was discussed in the Analysis section of this report.

Other possible changes to critical actuarial assumptions were also discussed. CalPERS plans to move from the mortality tables they currently use to tables used by the Social Security system, which reflect the longer life expectancies enjoyed by US residents. Also being considered is a further move to mortality tables which reflect the life expectancies of the residents of California who live almost two years longer than the average US resident. Good news for Californians is

¹⁰“Police to get Raises to Offset Higher Pension Payments”, Voice of Orange County article dated September 24, 2013, http://www.voiceofoc.org/oc_central/garden_grove/article_e96a94d4-24de-11e3-b184-0019bb2963f4.html

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

not good news for pension liabilities since California pension systems can expect to be paying pensions to their retirees for two to four years longer than they had been planning.

Interview with OCERS

Senior Managers from OCERS discussed their perspective on unfunded pension liabilities for Orange County cities which outsource fire and/or police to OCFA and OCSD. OCERS experienced the same increase in unfunded pension liabilities for all pensions managed by OCERS as did CalPERS due to the impact of the Great Recession which began in 2007 on the value of their assets. In 2012, OCERS changed their assumed rate of return on assets from 7.75% to 7.25%, which had a large impact on their computation of unfunded liabilities. They also moved to amortizing unfunded liabilities over 20 years instead of 30 years. Both these changes significantly increased the catch up contributions they require from their members. On a positive note, OCERS is starting to see a recovery in the current prices of their equity and real estate holdings, which is beginning to be reflected in the actuarial (smoothed) values of their assets.

Like CalPERS, OCERS also worries about events that could cause their unfunded liabilities to grow – the greatest possible impact would come from a decision to further reduce the actuarial assumption of the rate of investment return on their assets. Another concern is whether even the 7.25% rate of return can be maintained over the next several years. Many markets have recovered to pre-Great Recession valuations after a six year bull market, which may be losing steam. Despite the uncertainties, OCERS managers are confident that their system is robust enough to work through short term ups and downs and that they will continue to improve their funding status.

OCERS managers also pointed out that tracing the flow of OCERS unfunded pension liabilities to cities is much harder than tracing the equivalent flow from CalPERS to Orange County cities. CalPERS has a direct fiduciary relationship with individual cities and communicates the pension contributions required from each city via its Annual Valuation Reports. CalPERS provides Valuation Reports for pension plans for each city, one for Miscellaneous employees, one for Police, and one for Fire. Sometimes the Police and Fire plans are combined into a single Safety plan and sometimes plans are split into “Tier 1” and “Tier 2”, but it is always clear which plan applies to which city. (This structure is easily seen in Table 2.) *OCERS does not have a direct fiduciary relationship with any OC city for public safety employees.* The two agencies relevant to this report that OCERS has such a relationship with are the Orange County Fire Authority and County of Orange. The flow of unfunded pension liabilities from OCERS to the Orange County Fire Authority and to the County of Orange and then from the Orange County to the Orange County Sheriff’s Department is reasonably straightforward. But the flow from those agencies to

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

individual cities which outsource public safety functions to them is far more convoluted and far less visible.

OCERS breaks down pension fund assets, liabilities, unfunded liabilities, and required annual contributions by “Rate Groups”. OCFA has its own unique rate groups with OCERS, one for general personnel and one for safety. OCERS does not have a direct relationship with the Orange County Sheriff’s Department; its fiduciary relationship is with the County of Orange. However OCERS pensions for Sheriff’s department employees can be isolated in the Annual Valuation Report for the County of Orange. A separate rate group for Sheriff’s Department personnel (Group 7) within the overall Annual Valuation is where data for fund assets, liabilities, unfunded liabilities, and required annual contributions for police personnel can be found.

OCERS has become more aware of the fact that their final pension “customers” are not only the County of Orange or even the OCSD and OCFA. In many cases individual OC cities that outsource fire and/or police services to OCFA and OCSD are their ultimate customers whose budgets are impacted as OCERS works to recover from unfunded liabilities. OCERS is working on developing better outreach to and communication with OC cities.

A further discussion on tracing unfunded pension liabilities to cities which outsource to OFCA

OCFA provides fire services to two classes of cities in Orange County, eight Structural Fire Fund (SFF) members and fifteen Cash Contract Cities (CCC) members. SSF cities have part of their property tax designated for fire protection, which is paid directly to the OCFA and is typically not shown on a city’s budget. CCC cities are directly billed quarterly for fire services, and these expenditures are typically shown as an expenditure on a city’s budget. Tracing the impact of OCFA’s unfunded pension liabilities owed to OCERS to individual OC city budgets via material online does not appear possible.

The OCFA makes general statements¹¹ about reducing its unfunded pension liabilities:

“The policy was last updated on May 22, 2008 to require the OCFA to annually review the feasibility of accelerating payment of the unfunded pension liability.”

“OCFA employer retirement rates for safety members were scheduled to decrease by about 2.3%, however, in order to help pay down OCFA’s Unfunded Actuarially Accrued Liability (UAAL) the budget includes a carryover of the higher safety member employer rates

¹¹ Orange County Fire Authority 2013.2014 Adopted Budget, http://www.ocfa.org/uploads/pdf/2013-14%20Adopted%20Budget_website1.pdf

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

from 2012/2013. This is a first small step to help address OCFA's intent to reduce long term liabilities."

However, since "Salaries and Employee Benefits" are lumped together as a single line item throughout the remainder of the budget, there is no way of really seeing actual dollar amounts for what this UAAL is nor for planned expenditures to reduce it, if any. No discussion of how pension costs are allocated to individual CCC cities is provided, and no discussion of how pension costs are incorporated into current and future quarterly billings for SFF cities is provided.

Interviews with City Human Resource Managers

Very early in the study interviews were held with the Human Resource (HR) Managers of three OC cities to get their perspective on how their city was dealing with pensions for their employees. The city HR managers were very open in answering Grand Jury questions, and all were consistent in describing their pension processes.

The Grand Jury was informed that benefits including pensions are part of labor negotiations conducted with unions representing different groups of employees. Memoranda of Understanding (MOUs) document the results of these negotiations. Specific terms of city pension plans vary depending on the negotiated labor agreements and are drawn from a menu of plans supported by CalPERS. Pension plans specify the minimum age of retirement and the pension benefit to be paid in terms of a percentage of the employee's highest year of salary times the number of years of service. The total percentage is capped, but for Legacy employees there is no cap on highest salary used in computing the pension benefit. Hence there is no cap on the annual pension benefit paid. However, post-PEPRA employees' pensions are currently capped at ~\$130K.

When a person is hired, that employee is assigned to a particular pension plan based on position and job title. Typically movement across pension plans is rare for current employees. A more typical situation is when an employee is hired from another city to do the same type of work, in which case pension benefits will be grandfathered.

The HR managers helped clarify the impact of pension reform in the near term (not much since nearly all their employees are grandfathered as Legacy employees under the more generous pension agreements. Only New employees hired since January 1, 2013, fall under the PEPRA reformed pension rules. With the continued slowdown in hiring, only a small percentage of current employees are New (typically much less than 10%). The managers were well aware of the issues associated with pensions, their impact on city finances, and the impact of pension

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

reform. In general they were confident that they had processes in place to avoid abuses of the pension rules by any attempt on the part of a retiring employee to include “non-PERSable” income as part of the base salary used to compute pension benefits. They (and city finance managers whom the Jury talked with separately) believe the PEPRAs pension reforms will substantially reduce future unfunded pension liabilities. However, they were quick to point out that it will be many years before any significant effect falls to the bottom line of their city’s pension liabilities.

Interviews with City Finance Managers

Interviews were held with the Finance Managers of the same three OC cities the Grand Jury had previously met with to interview the HR managers. These interviews sought their perspective on how their city was dealing with unfunded pension liabilities. The city finance managers were very open in answering Grand Jury questions and made helpful suggestions on some key areas on which to focus.

The Finance Managers the Grand Jury met with project revenues and expenditures one year out in their formal budgets. Current year budgets are posted online as they are first proposed to and then adopted by their city. None of the cities’ budgets shows separate line items at the summary level for pension expenditures, although pension/retirement benefit expenditures are provided in substantial detail at lower levels in their budgets. The Finance Managers acknowledged that it would be arduous to sum up all the detailed pension expenditures to arrive at the total pension related expenditures. Planning budgets are developed for several years further into the future and discussed internally, but not typically posted.

When CalPERS does its Annual Valuation Report for a city’s pension plan(s), CalPERS will discuss the report with the city and (very rarely) make adjustments based on those discussions. City Finance Managers use the Annual Required Contributions from the Annual Valuation Reports to develop the pension related expenditures for their budget.

Each city withholds employee pension contributions and sends them bi-weekly to CalPERS. The city’s employer pension contributions and any city catch up pension contributions are paid from the city General Fund to CalPERS.

When asked about the recent move by CalPERS from an Actuarial Value basis for estimating current value of assets to a Market Value basis, no value judgment was expressed, but the resulting jump in unfunded liabilities was noted by all. The finance managers viewed the remaining actuarial assumptions used by CalPERS as reasonable under current economic conditions, but are aware that the assumptions can be expected to change if circumstances change. They are particularly sensitive to any downward adjustment to projected rates of return

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

on investment of plan assets as such an adjustment could substantially increase the actuarial value of their unfunded liabilities and hence their catch up contributions.

Another concern discussed was the likely move by pension funds to use more realistic mortality assumptions based on Social Security tables, which will increase unfunded liabilities. In addition, Californians have the third highest life expectancy in the United States (only residents of Hawaii and Minnesota live longer, by 1.11 and 0.48 years, respectively) and have a life expectancy 1.7 years longer than the average expectancy for the United States total population. A further move to using mortality tables reflecting California's better than national average life expectancy, if implemented as expected, will further increase unfunded liabilities.

City Finance Managers were consistent with their HR managers in their evaluation of the impact of pension reform. Nearly all current employees are Legacy employees; "New" employees typically comprise a few percent and well less than 10% of their total employee population. Only employees hired after January 1, 2013 are New under the PEPRA definitions, and hiring of new employees has primarily occurred only in the cases of retirements of current employees. New hires to replace positions cut in response to the 2008 Great Recession have been on hold for the most part.

Except for one of the three cities which outsourced fire protection to OCFA, all three cities interviewed by the Grand Jury use CalPERS for their Miscellaneous employees and for their public safety employees. The city outsourcing fire protection is a Cash Contract City member of OCFA and is billed quarterly for fire services. The quarterly rate paid reflects an agreed to number of skilled personnel and physical assets such as fire stations, trucks, and ambulances. Pension costs including any catch up pension costs are included in the bottom line charge to the city and not separately accounted for.

The managers were well aware of the issues associated with dealing with unfunded pension liabilities and their impact on their city's finances. However, none of them saw the liabilities, even at their current size, as catastrophic and were making adjustments in planned city expenditures to deal with them. They acknowledge that the adjustments will not come without pain as valuable city services that were cut in response to revenue shortfalls caused by the Great Recession will not be reinstated as quickly as they had hoped. Significant amounts of the revenue increases they are seeing as the recovery develops will be going to catching up on unfunded pension liabilities. For example, one city's *internal* budget shows pension contributions ramping up from 8% to 12% of their General Fund and remaining there for several years and then ramping back down to 8% *based on CalPERS projected Annual Required Contributions*. The link between CalPERS projected annual contributions and the city's budget is critical to establishing some confidence that unfunded pension liabilities, while painful, are not

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

catastrophic. It must also be noted, of course, that as discussed earlier in this report, unfunded liabilities can be volatile, and budgets as they are updated annually must keep in synch with changes in annual required contributions from CalPERS.

Some of the finance managers were working to develop better ways to present future expenditures for pensions in their budgets and in their briefings to their City Councils. In one case the finance manager was already planning a proposed update to their budget structure to clearly identify and separate pension expenditures at the top level of the city budget, an approach which matched the model the Grand Jury had brought to the interview.

The ability of some of the finance managers to communicate the impact of unfunded pension liabilities to their City Councils and labor unions has led to some success in labor negotiations regarding pensions. Such agreements where employees have agreed to carry a larger portion of the burden of pension costs and in some cases agreed to reduced benefits have also made it possible for these cities to meet their overall pension funding obligations by offsetting increased amortization payments for unfunded liabilities with higher employee contributions.

This better understanding of unfunded pension liabilities has also led to the consideration of accelerated catch up payments to CalPERS to increase the amount of assets being managed and to obtain the projected returns on those assets.

Assessment of Budget Information Available Online

Since cities are expected to make their budget information available online, the Grand Jury examined a large sample of OC cities' online budget information. Significant effort was expended reviewing and assessing how well each city's posted budget disclosed how it was dealing with its unfunded pension liabilities. Although the original intent was to look at budgeting for pension liabilities, it quickly became apparent that the quality and usefulness of posted budget information in all areas varied greatly among the cities. *Fundamental deficiencies in budget information* posted by OC cities need to be addressed before looking in detail at pension information in those budgets.

Based on discussions with city Finance Managers and on its review of budget data posted by cities, the Grand Jury developed a conceptual "Ideal Budget Practices" model that will provide the necessary visibility to members of the public of how their cities are budgeting in general and budgeting for pension liabilities in particular. The paragraphs below describe the general criteria against which city budgets were assessed and then the criteria used to assess budgeting for pension expenditures.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Rather than scoring each city against each criterion, which would be very labor intensive and subject to possible error/oversight, the Jury has listed the key elements of the ideal model as separate recommendations to each city in this report. In some cases a city may already meet some of the recommendations, and some cities may agree to implement some of the recommendations and not others. However, as the recommendations are implemented, the members of the public of these cities will benefit from better budget information and from the discipline imposed on the cities in preparing *high quality and transparent budgets*.

General budget information available online

The Grand Jury assessed each city's web site for the general quality of budget information posted according to the following criteria:

1. Is annual budget information posted?
2. Are prior annual budgets posted, and if so, for how many years?
3. Does the current budget show prior year budgets, and if so, for how many years?
4. Does the current budget show future year budget projections, and if so, for how many years?
5. Are key assumptions about future revenues discussed?
6. Do budgets show prior, current, and projected future city General Fund reserves?
7. Is there any discussion of trends in city General Fund reserves?
8. Is there any discussion of a target for how much reserve the city deems desirable?
9. If the city reserves are below the desired level, is there a discussion of how the desired level of reserves will be accumulated?

Prior year budget data are important in order to discern trends in revenues and expenditures. Just having prior year budgets posted is helpful, but including at least one year's prior budget data in the city's current budget makes it far easier to make comparisons than to separately download multiple files and bounce back and forth among them to look for trends. Budget information should include at least two prior years, as projecting a "trend" based on only two data points (current and most recent prior year) is dubious at best.

Even more important than prior year budget information are projections of future year revenues and expenditures. *Future year budget projections are especially important for understanding the impact of unfunded pension liabilities.* Unfunded pension liabilities have five critical attributes:

1. Budgeted pension catch up contributions typically comprise a significant percentage of projected General Fund expenditures.
2. Projected annual contributions to catch up on unfunded liabilities are ramped up over two to five years by CalPERS and OCERS, so the impact of unfunded liabilities is not all revealed by looking only one year into the future.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

3. Unlike most planned city expenditures, there is essentially no way to reduce or defer *required* pension contributions in future years.
4. Projected unfunded pension liabilities are at risk of large changes year to year because they are so dependent on the key actuarial assumptions used in calculating them.
5. The recent switch to Market Value of Assets used in calculating unfunded liability will introduce more volatility in the estimate of these unfunded liabilities.

Pension specific budget information available online

After assessing the general utility of city budget data, the Grand Jury looked for budget data relevant to assessing that city's budgeting for pension expenses and in particular for addressing unfunded pension liabilities. Each city's budget was assessed against the following criteria:

1. Are pension related sources of revenue and expenditures visible as separate line items under revenues and expenditures at the summary level of the budget?
2. Are city expenditures for pension related expenses broken out into at least 3 sub-categories: pension contributions withheld from employee pay, employer pension contributions for current employees, and employer catch up contributions for unfunded liabilities as assessed by the pension system?
3. Does the budget clearly specify the source of the Annual Required [Pension] Contributions (ARC) assessed by the pension system (typically CalPERS) used in its budget by document title and date?
4. Is there a clear mapping of the total Annual Required [Pension] Contributions (ARC) assessed by the pension system (typically CalPERS) into one or more line items at the Summary level of the budget?
5. Annual Required [Pension] Contributions (ARC) are updated annually by the pension system. Does the budget discuss the risks associated with these predictions of future catch up contributions? The city needs to state whether they are using the projections provided or whether they have adjusted them down or up because the city believes the projections are respectively too pessimistic or too optimistic.

The impact of OC cities' outsourcing for public safety on transparency of budget information – a tale of two cities

When cities outsource public safety services to OCFA and OCSD, the transparency and quality of information provided can decrease dramatically. The paragraphs below look at the impact of outsourcing fire protection to OCFA and to OCSD on transparency in two cities' budgets.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Santa Ana

In April 2012, the city of Santa Ana joined OCFA as its 23rd member city. OCFA added Santa Ana’s 192 firefighters and 11 non-sworn personnel and 10 fire stations.¹² Santa Ana continued to maintain its own police department, as it had done since its founding. Santa Ana’s Adopted 2013-2015 Budget¹³ is an excellent example of what can happen to transparency of budget information when a city outsources a public safety service. The table below compares the information available in Santa Ana’s budget for its police and fire services.

Budget Information Metrics	Police	Fire
Pages of budget information	47	9
FY 2013-2014 Budget (Millions)	\$103.8	\$40.2
Percent of total General Fund	51%	20%
Budget line items	23	1
Total Personnel (FY 13-14)	580	UNKNOWN
Line items for personnel assignments to department/ office positions	144	46
Line items for personnel assignments to department/ office positions <i>Containing Meaningful Data</i>	144	0

The page counts of budget information for Santa Ana fire and police look proportional, but once the data are examined in any detail, the lack of comparable information is remarkable. The budget for in-house police services breaks down personnel expenditures by office/department and for each of these down to expenditures for salaries, retirement, health services, and even to training and membership/dues, etc. The job titles of authorized personnel budgeted to work in each office/department are also listed separately. For example, the budget shows 3 Police Sergeants budgeted for Police Investigations and 24 Police Sergeants to Field Operations, etc. In particular, expenditures for each office/department for “Salaries Retirement” are provided. (Unfortunately, a further sub-division of these retirement expenditures into employee, employer matching, and amortization of unfunded liabilities is lacking, which is a problem for all OC cities.) The information provided for outsourced fire services is reduced a single line of data (the one containing the \$40.2 million total cost in the Table above), and all 46 authorized positions are listed as “0”!

¹²Orange County Fire Authority 2013.2014 Adopted Budget, page 2, http://www.ocfa.org/_uploads/pdf/2013-14%20Adopted%20Budget_website1.pdf

¹³ City of Santa Ana FY 2013-2015 Adopted Budget, http://www.ci.santa-ana.ca.us/finance/budget/2013-2015/documents/2013-2015_adopted_budget.pdf

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Note that Santa Ana is a OCFA Cash Contract City (CCC), so at least the annual cost for fire protection does show up as a single line item on Santa Ana’s budget. As we will see below, not even this single dollar value for the cost of fire protection is available in Lake Forest’s budget.

Lake Forest

The city of Lake Forest outsources to OCFA for its fire protection and to OCSD for its police protection. A review of their Operating Budget for Fiscal Year 2013-2014¹⁴ shows a wide variation of the budget information provided by the city even when they outsource both safety services. Because Lake Forest outsources both fire and police services, Lake Forest’s budget for Public Works was looked at as an example of the extent and quality of budget information provided for work to be done with in house resources.

Lake Forest is a Structural Fire Fund (SFF) member of OCFA, and the cost of fire protection is deducted as a part of their property tax. As far as the cost of fire protection outsourced to OCFA to Lake Forest, the following is the entirety of the information provided in the their budget: “The Orange County Fire Authority funds its service in the City of Lake Forest using a formula derived from direct property tax income. The amount allocated is based on 11.11% of 1% of the total value of properties in Lake Forest.” No dollar value is provided. Out-year projections, risks to cost of service and/or cuts in service if property tax values do not support current levels of service, etc., are not discussed.

Budget Information Metrics	Public Works	Police	Fire
Pages of budget information	16	6	2
FY 2013-2014 Budget (Millions)	\$9.4	\$13.4	UNKNOWN
Percent of total General Fund	24%	34%	0%
Budget line items	56	36	NONE
Total Personnel (FY 13-14)	15	53.5	UNKNOWN
Line items for personnel assignments to department/ office positions	1	9	NONE
Line items for personnel assignments to department/ office positions <i>Containing Meaningful Data</i>	1	9	NONE

As can be seen, the city does provide comparable levels of detail for planned expenditures for their public works and police services even though the first is done in-house and the latter is outsourced. In this instance there is actually better information about staffing levels for the

¹⁴ City of Lake Forest, Operating Budget, Fiscal Year 2013-14, <http://www.lakeforestca.gov/civica/filebank/blobdload.asp?BlobID=8219>

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

outsourced work for police protection than for the in house work. It is worth noting that the fact that police services are outsourced to OCS D is not called out explicitly in the Lake Forest budget and even the fact that it is outsourced is only apparent because the expenditures are labeled as “Contract Personnel”.

Mechanisms for closing the loop from the unfunded OCERS pension liabilities for OCFA and OCS D through those agencies to the individual OC cities which outsource one or both of their public safety functions to them must be developed. Otherwise it will be difficult for the taxpayers of these cities to feel confident in their city’s budgeting for these services.

Conclusions

Orange County cities have large unfunded pension liabilities. They do appear to have sufficient resources to amortize these liabilities, but these liabilities are volatile and need to be clearly addressed in cities’ budgets in order to gain the confidence of their residents that this is actually the case. Such confidence can only be achieved by far greater transparency in their budgets.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. Although the findings are stated in terms of all Orange County cities, each city should respond to each finding as it applies to itself only. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Pension Funding Status of Cities in Orange County, the 2013-2014 Orange County Grand Jury has arrived at 12 principal findings, as follows:

F.1. OC cities have large unfunded pension liabilities both in terms of absolute dollar value and on a per capita basis and as a percentage of city General Fund revenues.

F.2. OC cities’ unfunded pension liabilities have been increasing on a year over year basis over the past several years as a result of the 2007-2009 Great Recession and as key actuarial assumptions have been changed by CalPERS and OCERS.

F.3. There are risks to OC cities of changes to key actuarial assumptions including revisions downward of expected returns on investment and the likely move by pension funds to using more realistic mortality assumptions, which would increase unfunded liabilities.

F.4. Locating city budget information on a city web site is not always straightforward and prior year budgets are sometimes not posted by a city.

F.5. City budgets posted online project revenues and expenditures for at most one or two years into the future and sometimes do not show prior year data.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

F.6. City budgets often lack footnotes explaining key assumptions, risks, and unusual changes in budgeted amounts or revenues and expenditures.

F.7. City budgets sometimes do not provide trend data on the accumulation/drawdown of reserves and lack details on the city's plan for the size of its reserves or their intended uses.

F.8. Cities can control most future expenditures by increasing or decreasing budgets for those expenditures as funds are available. However, increases to annual required contributions to their pension systems are imposed externally, change unpredictably, and when they occur, are ramped up over two to five years.

F.9. City budgets posted online do not explicitly show the link between planned city pension expenditures and pension system actuarial reports and those reports' annual required contributions. Risks associated with predictions of future annual required pension contributions based on risk assessment data provided by their pension systems and/or based on their own analysis are not discussed.

F.10. Pension costs for New (Post-PEPRA) employees will be substantially lower than for Legacy employees, but only a small percentage of current employees, typically only a few percent of total employees, are New. Substantially reduced pension costs for cities as a result of pension reform will not be realized for one or more decades.

F.11. CalPERS Annual Valuation Reports for Miscellaneous and Safety City employees are available to the public online for a very small number of cities.

F.12. OCERS provides pension plans for OCFA and OCSD employees, but there is no way to trace through publically available sources OCERS unfunded pension liabilities to the city budgets which outsource to OCFA and OCSD for fire and police services.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Based on its investigation of Pension Funding Status of Cities in Orange County, the 2013-2014 Orange County Grand Jury makes the following 8 recommendations:

R.1. Each city should post its current and at least three most recent prior year budgets on the city's web site, and these budgets should be easily located. Each city's web site should have a search engine and a single search on the word "budget" should immediately link to the current budget. **(F.1) (F.4)**

R.2. Each city's budget information should contain not only this year/next year budget projections, but should show at least five years of projected revenues and expenditures. Projections should be at the same level of detail and use the same line item structure as information for the current budget. **(F.1) (F.2) (F.3) (F.5) (F.8) (F.10)**

R.3. Each city's budget should show separate line items for predicted employee and predicted employer contributions for the city pension systems. **(F.8) (F.9)**

R.4. Each city's budget should provide trend data on the accumulation/drawdown of reserves and provide details on the city's policy for the size of its reserves and on the intended uses of such reserves. In particular any discussion of reserves should address possible use of reserves to accelerate amortization of unfunded pension liabilities. **(F.7)**

R.5. Each city using CalPERS for one or more of its pension plans should identify the names and dates of the CalPERS Annual Valuation Report(s) which call out Annual Required Contributions (ARCs) for these plans and should provide a separate expenditure line item for predicted city catch-up contributions for the city pension systems based on these ARCs. A discussion of the risks associated with these CalPERS projections should also be provided by the city. **(F.1) (F.2) (F.8) (F.9)**

R.6. Each city which outsources fire or police services to OCFA and/or OCSD should require them to provide projections of future costs of service out at least five years into the future and require that these projected costs explicitly show the relationship of projected pension costs including amortization of unfunded liabilities. This level of pension cost information should be provided in budgeted expenditures for outsourced services. A discussion of the risks associated with these projections should also be provided by the agencies and incorporated in the city's budgets. **(F.6) (F.12)**

R.7. Each city that has CalPERS as a provider for pensions should include a provision in their agreements with CalPERS that CalPERS will post their Annual Valuation Reports online. **(F.11)**

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Required/Requested Responses	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12
Cities Councils of:												
Aliso Viejo	X	X	X	X	X	X	X	X	X	X	X	X
Anaheim	X	X	X	X	X	X	X	X	X	X	X	X
Brea	X	X	X	X	X	X	X	X	X	X	X	X
Buena Park	X	X	X	X	X	X	X	X	X	X	X	X
Costa Mesa	X	X	X	X	X	X	X	X	X	X	X	X
Cypress	X	X	X	X	X	X	X	X	X	X	X	X
Dana Point	X	X	X	X	X	X	X	X	X	X	X	X
Fountain Valley	X	X	X	X	X	X	X	X	X	X	X	X
Fullerton	X	X	X	X	X	X	X	X	X	X	X	X
Garden Grove	X	X	X	X	X	X	X	X	X	X	X	X
Huntington Beach	X	X	X	X	X	X	X	X	X	X	X	X
Irvine	X	X	X	X	X	X	X	X	X	X	X	X
La Habra	X	X	X	X	X	X	X	X	X	X	X	X
La Palma	X	X	X	X	X	X	X	X	X	X	X	X
Laguna Beach	X	X	X	X	X	X	X	X	X	X	X	X
Laguna Hills	X	X	X	X	X	X	X	X	X	X	X	X
Laguna Niguel	X	X	X	X	X	X	X	X	X	X	X	X
Laguna Woods	X	X	X	X	X	X	X	X	X	X	X	X
Lake Forest	X	X	X	X	X	X	X	X	X	X	X	X
Los Alamitos	X	X	X	X	X	X	X	X	X	X	X	X
Mission Viejo	X	X	X	X	X	X	X	X	X	X	X	X
Newport Beach	X	X	X	X	X	X	X	X	X	X	X	X
Orange	X	X	X	X	X	X	X	X	X	X	X	X
Placentia	X	X	X	X	X	X	X	X	X	X	X	X
Rancho Santa Margarita	X	X	X	X	X	X	X	X	X	X	X	X
San Clemente	X	X	X	X	X	X	X	X	X	X	X	X
San Juan Capistrano	X	X	X	X	X	X	X	X	X	X	X	X
Santa Ana	X	X	X	X	X	X	X	X	X	X	X	X
Seal Beach	X	X	X	X	X	X	X	X	X	X	X	X
Stanton	X	X	X	X	X	X	X	X	X	X	X	X
Tustin	X	X	X	X	X	X	X	X	X	X	X	X
Villa Park	X	X	X	X	X	X	X	X	X	X	X	X
Westminster	X	X	X	X	X	X	X	X	X	X	X	X
Yorba Linda	X	X	X	X	X	X	X	X	X	X	X	X

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Required/Requested Responses	R1	R2	R3	R4	R5	R6	R7
Cities Councils of:							
Aliso Viejo	X	X	X	X	X	X	X
Anaheim	X	X	X	X	X		X
Brea	X	X	X	X	X		X
Buena Park	X	X	X	X	X	X	X
Costa Mesa	X	X	X	X	X		X
Cypress	X	X	X	X	X	X	X
Dana Point	X	X	X	X	X	X	X
Fountain Valley	X	X	X	X	X		X
Fullerton	X	X	X	X	X		X
Garden Grove	X	X	X	X	X		X
Huntington Beach	X	X	X	X	X		X
Irvine	X	X	X	X	X	X	X
La Habra	X	X	X	X	X	X	X
La Palma	X	X	X	X	X	X	X
Laguna Beach	X	X	X	X	X		X
Laguna Hills	X	X	X	X	X	X	X
Laguna Niguel	X	X	X	X	X	X	X
Laguna Woods	X	X	X	X	X	X	X
Lake Forest	X	X	X	X	X	X	X
Los Alamitos	X	X	X	X	X	X	X
Mission Viejo	X	X	X	X	X	X	X
Newport Beach	X	X	X	X	X		X
Orange	X	X	X	X	X		X
Placentia	X	X	X	X	X	X	X
Rancho Santa Margarita	X	X	X	X	X	X	X
San Clemente	X	X	X	X	X	X	X
San Juan Capistrano	X	X	X	X	X	X	X
Santa Ana	X	X	X	X	X	X	X
Seal Beach	X	X	X	X	X	X	X
Stanton	X	X	X	X	X	X	X
Tustin	X	X	X	X	X	X	X
Villa Park	X	X	X	X	X	X	X
Westminster	X	X	X	X	X	X	X
Yorba Linda	X	X	X	X	X	X	X

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

APPENDICES

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Appendix A – Acronyms

ARC – Annual Required Contribution

CAFR – [CalPERS] Consolidated Annual Financial Report

CalPERS - California Public Employees’ Retirement System

COLA – Cost of Living Adjustment

GDP - Gross Domestic Product (GDP)

OC - Orange County

OCERS - Orange County Employee Retirement System

OCFA- Orange County Fire Authority

OCSD – Orange County Sheriff/Coroner’s Department

PEPRA - Public Employees’ Pension Reform Act

PERF – Public Employees’ Retirement Fund

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Appendix B – Glossary

Accumulated Plan Benefits - Benefits attributable under the provisions of a pension plan to employees for services rendered to the benefit information date.

Actuarial Assumptions - Assumptions used in the actuarial valuation process as to the occurrence of future events affecting pension costs, such as mortality, withdrawal, disablement and retirement; changes in compensation and national pension benefits; rates of investments earnings and asset appreciation of depreciation; procedures used to determine the actuarial value of assets; characteristics of future entrants for open group actuarial cost methods and others relevant items.

Accrual Basis - The recording of the financial effects on a government of transactions and other events and circumstances that have cash consequences for the government in the periods in which those transactions, events and circumstances occur, rather than only in the periods in which cash is received or paid by the government.

Actuarial Accrued Liability - The portion, as determined by a particular cost method, of the total present value of benefits that is attributable to past service credit.

Actuarial Gain (Loss) - A measure of the difference between actuarial and expected experience based upon a set of actuarial assumptions. Examples include higher than expected salaries increases (loss) and a higher return on fund assets than anticipated (gain).

Actuarial Present Value - The discounted value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions.

Amortization - (1) The portion of the cost of a limited-life or intangible asset charged as an expense during a particular period. (2) The reduction of debt by regular payments of principal and interest sufficient to retire the debt by maturity.

Annuity - A fixed sum of money paid to someone each year, typically for the rest of their life.

Auditor's Report - In the context of a financial audit, a statement by the auditor describing the scope of the audit and the auditing standards applied in the examination, and setting forth the auditor's opinion on the fairness of presentation of the financial information in conformity with generally accepted accounting principles (GAAP) or some other comprehensive basis of accounting.

Comprehensive Annual Financial Report (CAFR) - The official annual report of a government. It includes the basic financial statements and their related notes prepared in

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provision, required supplementary information, extensive introductory material and a detailed statistical section.

Defined Benefit Pension - A company pension plan in which an employee's pension payments are calculated according to length of service and the salary they earned at the time of retirement.

Defined Contribution Pension - A defined contribution plan, unlike a defined benefit plan, does not promise a specific amount of benefits at retirement. In these plans, the employee or the employer (or both) contribute to the employee's individual retirement account.

Entry Age Actuarial Cost Method - A method under which the actuarial present value of the projected benefits of each individual included in an actuarial valuation is allocated on the level basis over the earnings or services of the individual between entry age and assumed exit age(s).

Normal Cost - The ongoing annual cost allocated to the system by a particular actuarial cost method for providing benefits (future cost). Normal cost payments are made during the working lifetime of the member.

Pension - a regular payment made during a person's retirement from an investment fund to which that person or their employer has contributed during their working life.

Pension Contribution - The amount paid into a pension plan by an employer (or employee), pursuant to the terms of the plan, state law, actuarial calculations or some other basis for determinations.

Pension Trust Fund - A fund used to account for public employee retirement benefits. Pension trust funds, like nonexpendable trust funds, use the accrual basis of accounting and have a capital maintenance focus.

PERS-able – payments to an employee which can be included as “salary” in calculation of pension benefits.

UAAL Amortization Payment - The portion of pension contributions, which is designed to pay off (amortize) the unfunded actuarial accrued liability in a systematic fashion. Equivalently, it is a series of periodic payments required to pay off a debt.

Unfunded Actuarial Accrued Liability (UAAL) - The excess of the actuarial accrued liability over the actuarial value of assets.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Appendix C – A Brief Primer on Pensions

A discussion on pensions is needed as background to this report for those members of the public who may be aware of and concerned about problems with unfunded pension liabilities, but are not familiar with the sometimes arcane terms used in discussing them. The primer below is a synthesis and simplification of material publically available from various sources including:

1. Comprehensive Annual Financial Reports from CalPERS and OCERS
2. Discussions with senior management and technical staff of CalPERS and OCERS
3. Discussions with senior financial managers from three Orange County cities
4. Wikipedia

Any violation of Einstein’s (possibly apocryphal) dictum, “Everything should be made as simple as possible, but no simpler,” is solely the responsibility of the Grand Jury and not of the various sources listed above.

The paragraphs below briefly examine:

1. Pensions and their purpose
2. Two major types of pension plans
3. How pension benefits are specified
4. How pension benefits (actuarial liabilities) for retired members are computed
5. How pension benefits (actuarial liabilities) for active members are computed
6. Actuarial Accrued Liability (AAL)
7. Actuarial Value of Assets
8. What it means to say a pension has unfunded liabilities

Pensions and their purpose

A pension is a contract for a fixed sum to be paid regularly to a person, typically following retirement from service. There are many different types of pensions, including defined benefit plans, defined contribution plans, as well as several others. A retirement plan is an arrangement to provide people with an income during retirement after they are no longer earning a steady income from employment. Often retirement plans require both the employer and employee to contribute money to a fund during their employment in order to receive defined benefits upon retirement. A recipient of a retirement pension is known as a pensioner or retiree. Retirement pensions are typically in the form of a guaranteed life annuity, thus insuring against the “risk of longevity” (i.e., outliving one’s savings).

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Two major types of pension plans

Retirement plans are classified as defined benefit or defined contribution according to how the benefits are determined and by their associated methods of funding. A defined benefit plan guarantees a certain payout at retirement, according to a fixed formula which usually depends on the member's salary and the number of years' of membership in the plan. A defined contribution plan will provide a payout at retirement that is dependent upon the amount of money contributed and the performance of the investment vehicles utilized.

Defined benefit plans

A defined benefit (DB) plan is a plan in which an employee's benefit on retirement is determined by a set formula, rather than depending on investment returns on that employee's savings. Traditionally, retirement plans have been administered by institutions which exist specifically for that purpose. A typical form of defined benefit plan is the final salary plan, under which the pension paid is equal to the number of years worked, multiplied by a percentage of the member's salary at retirement. Normally a minimum number of years worked and/or a minimum retirement age are specified.

The employer's cost of a defined benefit plan is not easily predicted since it depends so much on the plan's ability to achieve the predicted rate of return on investment of the plan's assets as they are accrued. Since the pension benefit to the employee is defined, any shortfall in investment returns or longer than actuarially predicted employee life span post retirement for example must be made up by the employer. The employer assumes all the risk in providing the defined benefit.

Defined contribution plans

In a defined contribution plan, contributions are paid into an individual account for each member. The contributions are invested, for example in the stock market, and the returns on the investment (which may be positive or negative) credited to the individual's account. On retirement, the member's account is used to provide retirement benefits, sometimes through the purchase of an annuity which then provides a regular income. Defined contribution plans have become widespread all over the world in recent years, and are now the dominant form of plan in the private sector in many countries.

In a defined contribution plan, investment risk and investment rewards are assumed by each individual/employee/retiree and not by the sponsor/employer, and these risks may be substantial. In addition, participants do not necessarily purchase annuities with their savings upon retirement, and bear the risk of outliving their assets.

Despite the fact that the participant in a defined contribution plan typically has control over investment decisions, the plan sponsor retains a significant degree of fiduciary responsibility over investment of plan assets, including the selection of investment options and administrative providers.

**ORANGE COUNTY CITY PENSION LIABILITIES
BUDGET TRANSPARENCY CRITICALLY NEEDED**

Both the CalPERS and OCERS plans used by OC cities are defined benefit plans.

How pension benefits are specified

Pension benefits are specified as a percentage of highest annual average compensation times the number of years of service at the age of retirement. For example, “3% at 50”, a benefit held by many city public safety employees, means that such an employee can retire at age 50 and receive 3% of his/her highest salary times the number of years of service. For example, a police officer hired at age 25 and retiring at age 50 with his/her highest annual salary at \$160,000 will receive an annual pension of \$120,000 (3% times 25 years times \$160,000).

How pension benefits (actuarial liabilities) for retired members are computed

The pension liability for a retired member is computed based on his/her current pension payment, current age, and predictions of cost of living increases, inflation, and mortality.

How pension (actuarial liabilities) for active members are computed

The pension liability of an active member is computed based on his/her current salary, age, and predictions of the age at which the member will retire, salary increases occurring until retirement, inflation, and mortality. Other factors taken into consideration are the probabilities the member will become disabled or will terminate his/her service earlier than anticipated.

Actuarial Accrued Liability

The present value of the sum of active and retired members’ pension benefits is the actuarial accrued liability

Actuarial Value of Assets

The value of pension plan investments and other property used by an actuary for the purpose of an actuarial valuation is the actuarial value of assets (sometimes referred to as valuation assets). Actuaries often select an asset valuation method that smoothes the effects of short-term volatility in the market value of assets.

What it means to say a pension has unfunded liabilities

The difference between the actuarial accrued liability and the actuarial value of assets accumulated to finance a public pension is its unfunded liability.

**DANA POINT HARBOR REVITALIZATION
15 YEARS OF PLANNING: WHAT HAS BEEN LEARNED?**



Table of Contents

SUMMARY	4
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
Overview of Dana Point Harbor	5
Harbor History	6
History from United States Documents, State and County Agencies.....	7
The Dana Point Harbor Timeline	9
Tideland Leases	10
Dana Point – County Tidelands Fund - 108.....	10
The Dana Point Harbor Revitalization Plan	10
<i>The Twelve Guiding Principles</i>	<i>11</i>
<i>Revitalization Plan Oversight.....</i>	<i>12</i>
DPH - Marina Management Companies.....	13
Bonds/Loans/Budget	13
METHOD OF STUDY	15
ANALYSIS	16
The Contract.....	16
Invoice/Vendor Monitoring.....	19
Sole Source.....	20
District Prerogative	21
Reasons for Delay	22
<i>Bureaucratic Procedures/Detractors</i>	<i>22</i>
<i>Boaters.....</i>	<i>23</i>
FINDINGS	24
RECOMMENDATIONS.....	25
REQUIRED RESPONSES.....	26
APPENDICES	28
APPENDIX A – A Visit to the Harbor	29
APPENDIX B – Governance.....	31

California Coastal Commission 31
California State Lands Commission 32
California Coastal Zone Act 1972..... 32
2006 Final Environmental Impact Report 591 32
APPENDIX C – Footnote References: Communiqué, Website & Interviews..... 34
APPENDIX D – Acronyms & Abbreviations 35

SUMMARY

Dana Point Harbor (DPH) is one of the most unique spots in Orange County, owned and operated by the County. DPH sits nestled between the beauty of Doheny State Park Beach and the rugged, historical Dana Point Headlands. The County is the trustee of this natural cove, which was legislatively granted as public-trust-lands status in 1961 located within the City of Dana Point.

The revitalization plan for DPH has been ongoing for fifteen years at an expense of millions of dollars, yet no construction has been started. There are contractual oversights in the initial agreements, the evaluations, the approvals, and subsequent amendments. There have been five amendments to the original project management agreement, which have extended time and expense to the County and taxpayers. The original agreement granted approval for the project management company to provide design development, permit acquisitions, and project management services, for the DPH revitalization plan at a cost of \$6,982,000, over a five-year term.

Delays have been attributed to the California Coastal Commission (CCC) for environmental revisions and responses to critics with special interests. Also, there exists a culture of *leave well enough alone* by some current and past County employees and officials that DPH should not be open to scrutiny or investigation. Perhaps this *'hands off'* perception can be attributed to *'District Prerogative,'* which affords cooperation among County Supervisors.

REASON FOR THE STUDY

The Dana Point Harbor revitalization has been in the planning stages for the past fifteen years with construction yet to be commenced. There have been two Harbor directors, one project management company and multiple contract extensions costing millions. In addition, concerned citizens have made allegations which upon investigation have proven valid. There has been no update of *The Twelve Guiding Principles*, initiated in 1997 to include the economic changes over the past forty years.

The multiple extensions to the original project management agreement over the past eleven years are a source of major concern. The budget for the revitalization project has increased from \$6,982,000 approved for an initial five-year term in 2003, to the new *maximum financial obligation* of \$13,183,310, through June, 25, 2018. The actual cost is yet to be determined. Additional funds to complete the project are anticipated to be sought through bonds and/or loans. At this time, there is no visible sign of construction. There is also no plan to re-bid the project management agreement that has been in place since 2003. It has been an arduous task for the Grand Jury to identify and verify invoiced expenditures for the revitalization project relating to the project management company. The initial agreement was awarded to the lowest scoring applicant on the written portion of the evaluation. There was an erroneous attempt to change the

project management agreement to ‘*sole source*’ when the initial contract issued a Request for Proposal (RFP). There remain unanswered questions.

1. How is it possible to have the same project management company when a shovel of dirt has not been turned in over eleven years?
2. Can the revitalization project really be stymied by an individual or special interest group?
3. Is the current approach the most prudent and cost efficient method for completing the reconstruction project?
4. Does ‘*District Prerogative*’ violate or suggest an abdication to duty by the Board of Supervisors as it relates to the DPH revitalization project?
5. What are the real reasons for the delay?
6. Is the greater good being served?

There also appeared to be reticence among some County employees as well as a general reluctance to share information about Dana Point Harbor. This mind-set spurred an interest with the Grand Jury. DPH is an asset to be shared by *all* County residents and transient boaters, hence its future hinges on the safeguards of transparency to minimize failures and ensure a successful return on taxpayer monies.

The Grand Jury’s report will bring to light some of the challenges involved with revitalizing the Harbor.

BACKGROUND AND FACTS

Overview of Dana Point Harbor

The Dana Point Harbor is owned by the County and operated by Orange County Dana Point Harbor, which is located within the City of Dana Point. The Harbor covers 276.8 gross acres.¹ The Harbor was created as a small boat harbor in 1968, and opened to the public in 1971.

¹ Orange County Archives: <http://ocarchives.com/>

Fig 1.



Harbor History

Named after Captain Richard Henry Dana Jr., 1815-1882, (a Harvard trained lawyer, seaman, and author of *Two Years Before the Mast*, who sailed into southern Orange County aboard the *Pilgrim* in 1835), Dana Point sits nestled between the beauty of Doheny State Park Beach and the rugged historical Headlands that jut out into the Pacific Ocean.

The *Pilgrim* was a cowhide trading vessel commercially bound throughout the ports of southern California. The friars from the San Juan Capistrano Mission sold local hides to merchants. The cowhides were pitched over the cliffs of Dana Point to small waiting boats below, which then transported the hides to the *Pilgrim* anchored in the harbor. Seaman Dana documented his voyage and later penned the area once known as Capistrano Bay or Bahia Capistrano, as "...the only romantic spot on the coast."²

During the 1940's, 50's and 60's, pioneering board and body surfers also thought the high bluffs and sheltered coves of the area were the most beautiful spot on the California coast. Dana Point was also home to a very special wave that broke at the Dana Point cove. Affectionately dubbed Killer Dana, the wave rose up offshore from deep water and broke close to the rock-lined beach.

² Reference; Dana Point Harbor: <http://ocparks.com/beaches/dana/>

Killer Dana eventually met its doom when Harbor construction cut off the means to its legendary power. Despite Killer Dana's untimely end, its spirit inspired the advent of innovative approaches at local surf shops in the redesign of surfboards from wood to new contemporary foam materials that were much lighter and nimbler for surfers to handle.

History from United States Documents, State and County Agencies

During the 1940's, the United States Congress recognized that safe harbors were needed along the California Coast. In 1961, The State of California granted via the Dana Point Tideland Trust, the area that would eventually become Dana Point Harbor to the County of Orange. The U.S. Army Corps of Engineers (ACOE) executed the design and construction of the Harbor.

In 1941, discussions began between the Federal Government and the State of California about a transfer of the future harbor area. During this period, State and Orange County officials discussed transfer of the future harbor property to the County. The Dana Point Harbor was authorized by Congress by way of the '*River and Harbor Act*,' approved March 2, 1945. Act of Congress, Public Law 14, Seventy-ninth Congress.³ The Secretary of War authorized and directed preliminary examinations and surveys to be made at several localities, including the coast of California, with a view to the establishment of harbors for light-craft vessels. The scope of this survey included consideration of:

- a) a protected small-craft harbor for use by recreational and sport fishing craft and for use as a harbor-of-refuge, and
- b) the effects of that harbor on the adjacent shoreline. The plan under consideration involved protective breakwaters and dredged entrance and interior channels. The purpose of this study was to determine whether construction of a small-craft harbor at Dana Point was physically and economically feasible.

In 1949, the County approved a feasibility study for the development of the Harbor. In 1957, the Dana Point Harbor Project was incorporated into the California Coastal Harbor Program. In 1958, the United States Congress funded a survey report by the ACOE to begin development.

The California State Legislature granted most of the site to the County as part of the Tidelands Grant in 1961. As approved by the Governor, May 10, 1961, the State Legislature granted the County of Orange all the rights, title and interest held by the State. Grant requirements included:

- a) the proper use of the funds,
- b) improvements by the County (without expense to the state), and
- c) that the Harbor always remains available for public use for all purposes of commerce and navigation.

³ <http://www.fws.gov/habitatconservation/Omnibus/R&HA1962.pdf>

The County was given 10 years from 1961 to 1971 to finish substantial improvements without expense to the State. If the State Lands Commission determined that the county had failed to improve the lands as required, all rights, title, and interest of the county would cease and the lands revert and vest back to the State.

The County Board of Supervisors, acting for the County on April 17, 1962, adopted the above resolution, having considered various reports. The first phase of the development was to be completed within five years and full development within fifteen years. As of July 19, 1962, the Dana Point cove could not be classified as a Harbor according to the Chief of Engineers, Dept. of the Army. The present vessel traffic was negligible and recreational boating was described as nonexistent, despite numerous boat enthusiasts who desired berthing boats at the Harbor *if* protected facilities and necessary amenities were made available.

The ACOE issued the final general design for the Harbor in 1965. Construction began with a cofferdam built to keep out breakwaters. Installation of the pilings and docks created the outer island and the cove side of the Embarcadero area. As construction was completed, water was released from the cofferdam and allowed back into the basins. The first boats visited the ‘*new*’ Harbor in 1969.

The General Development Plan, the General Landscape Plan and the Harbor Improvement Plan, which were designed to regulate the development of Dana Point Harbor, were approved by the Orange County Planning Commission on May, 18, 1969 and adopted by Ordinance Number 2331 by the Board of Supervisors on July 22, 1969. Portions of import and clarification within the Plan included the Architectural Theme.

“The object of the design of any and all structures at Dana Point is to enhance the environment of the harbor by providing a unified and distinct Dana Point character, while meeting the needs of the lessee and providing the needed services to the public. The structures erected at DPH should reflect an atmosphere of warmth, informality and hospitality that has been a part of this area since the days of Spanish Ranchos and Yankee Sailing Ships. Rough, rugged, neutral materials with the touch of hand craftsmanship shall be reflected in all designs. Modern materials such as aluminum, plastics and enameled steels should be used in subdued restrained manner. Stress of design should be placed upon the use of natural materials whose beauty will be enhanced with age, materials upon which the action of sun, rain, and salt spray will improve a structure’s appearance. Buildings within Dana Point Harbor shall blend naturally into the setting of ocean vistas, sailing ships and landscaping.”⁴

⁴ Orange County Archives: <http://ocarchives.com/>

Fig 2.



The Dana Point Harbor Timeline

- 1830: Captain Richard Henry Dana, Jr. sailed *The Pilgrim* into the cove, Capistrano Bay.
- 1850: California acquired un-granted tidelands upon admission to the United States.⁵
- 1940's, 50's and 60's: Board and body surfers' road the Killer Dana waves in Capistrano Bay.
- 1941: The U. S. Congress identified the cove as a "Safe Harbor."
- 1945: Dana Point Harbor was authorized by Congress by way of the "River and Harbor Act."
- 1949: The County approved a feasibility study for the development of Dana Point Harbor.
- 1957: Dana Point Harbor was incorporated into the California Coastal Harbor Program.
- 1958: The United States Congress funded a survey report by the U.S. Army Corps of Engineers.
- 1961: The State Legislature approved a feasibility study for development of the Harbor.
- 1961: The State Legislature granted most of the site to the County as part of the Tidelands Grant.
- 1962: The Harbor project received Congressional authorization under Public Law 87-874.
- 1965: ACOE issued the final design of the Harbor.
- 1969: The first boats visited the new Harbor.
- 1972: The California Coastal Commission was established by voter initiative (Prop 20).
- 1997: A Board of Supervisor's created the 23 member Task Force; DPH Revitalization Plan.
- 2003: A RFPs contract was awarded to the project management company effective until 2018.
- 2005: Board of Supervisors approved a stand-alone O.C. Dana Point Harbor Department.

⁵ <http://www.slc.ca.gov/>

Tideland Leases

At the time Dana Point Harbor was first constructed, the Harbor was divided into a number of sub-areas that were subject to long-term lease agreements with the developers of the facilities located within each leasehold boundary. Presently, the County of Orange, controls all areas of the Harbor with the exception of the shipyard, Ocean Institute, DP Yacht Club and Nordhavn.

The County leases other properties throughout the Harbor to independent merchants, recreational services, equipment vendors, and restaurateur's. As is the case with all Harbor lease agreements, facilities are provided on a rental basis that also includes a profit sharing component that is based on a percentage of sales receipts.

Dana Point – County Tidelands Fund - 108

The Tideland 108 Fund is financed by revenue derived from slip revenues through licensed agreements, retail leases and operating agreements of land improvements on or adjacent to state tidelands in the Harbor, granted in trust to the County. Under the operating agreements, the gross revenue generated from these parcels becomes assets of the Dana Point Tidelands Fund 108. The net result is increased revenue available to the tidelands fund for the long term renovations in progress as planned at the harbor. The Harbor is to be self-sustaining.

Upon its admission to the United States in 1850, the State Of California acquired ownership of all properties and previously un-granted tidelands. The State holds these lands for the benefit of all people of California. The State Lands Commission (SLC) has review responsibility for tidal and submerged lands legislatively granted in trust to local jurisdictions. All tidelands and submerged lands are subject to the Common Law Public Trust, which is the sovereign public right held by the State-delegated trustee for the benefit of all people.

Conveyance of the Harbor area by the SLC was subject to the following trusts and conditions; that the lands be used by the County and its successors only for the establishment, improvements and conduct of the harbor and for the promotion and accommodation for commerce and navigation, and for uses incidental. The lands would be improved by the County without expense to the State and would remain available for public use for all purposes of commerce and navigation. The County must adhere to the common law Public Trust Doctrine.

The Dana Point Harbor Revitalization Plan

The construction of the Harbor began in the late 1960's. The Army Corps of Engineers built the 212 acre marina as the 60's transitioned into the 70's. It was built as a small boat harbor and has kept its small-town charm.

Recognizing that the physical conditions in the Harbor required comprehensive intervention, a Task Force was created by an Orange County Board of Supervisor in 1997 to assist with the development of a comprehensive plan for the Harbor's future. The Dana Point Harbor Revitalization Plan was developed over the next several years and officially adopted by the County Board of Supervisors and the Dana Point City Council in 2006.

The primary goals of the project were to revitalize Dana Point Harbor so it could continue to operate as a popular destination for boaters, local residents and tourists while maintaining the unique character of the Harbor. The project goals included implementation of Coastal Act Policies in conformance with the approved Harbor Revitalization Plan and Land Use Plan (LUP).

The Twelve Guiding Principles

The ultimate goal for the Harbor was to create a vision which accommodates all interests and ensures the preservation of the character of this outstanding small-craft harbor.

The 12 Guiding Principles were approved unanimously by the Board of Supervisors per Minute Order 12/8/1998. The approved guide to the revitalization project is listed below.

1. Maintain the Harbor's current character and family atmosphere.
2. Renovate and maintain the Harbor's appearance.
3. Maintain a full-service harbor.
4. Prevent commercialization of the island.
5. Ensure the future of yacht clubs.
6. Provide better utilization of parking spaces.
7. Improve Harbor water quality.
8. Maintain an overall mix of land uses.
9. Provide more parking in the commercial area.
10. Preserve/enhance existing parkland, beach, and landscape buffers.
11. Address the balance between revenue-generating and non-revenue-generating land use.
(The project must generate sufficient revenue to fund construction, operation and maintenance of proposed improvements.)
12. Provide additional public restroom and shower facilities near the docks.

The task force recognized that the 30 year old Dana Point Harbor was one of the County's most popular recreational facilities. Many of the Harbor's older facilities were in need of renovation. To ensure the Harbor's long term vitality and success, the Board directed that a Dana Point Harbor Revitalization Plan be developed. The Task Force members represented the various stakeholders in the Harbor, including Harbor lessees, boaters, yacht clubs, general recreation users, Dana Point residents, businesses, and the Dana Point City Council.

The Harbor Revitalization Draft Concept Plan that resulted from the Task Force's efforts was based upon the consensus of the Task Force Members. The Task Force stressed a strong desire to retain Dana Point Harbor's unique character and ambiance, but recognized the need to repair or replace ageing structures, update design standards and address critical parking and traffic circulation problems. The Harbor Revitalization Draft Plan was intended to serve as a framework for more detailed planning, negotiation of new leases and consideration of new Harbor projects.

Public Facilities Resource Department (PFRD) of Orange County developed a goal and objective plan per the Board's directive. The Harbor Revitalization Draft Concept Plan was developed with the objective to retain, expand, and add uses within the Harbor that would optimally yield lease revenues. Its goal was to achieve self-sufficiency in operating costs for the County's Dana Point Tidelands Fund, presently referred to as Fund 108. Harbor revenue needed to cover both ongoing maintenance and operations, including the Orange County Sheriffs' Harbor Patrol Department and the repair and or replacement of necessary infrastructure. Harbor, Beaches and Parks Department augmented the fund as needed to accomplish timely repairs and replacements until the Harbor became a separate entity. The objectives were to: a) develop a *Harbor Revitalization Plan* that would provide for the upgrading and modest expansion of existing use while ensuring adequate Harbor-wide parking through a combination of new parking facilities and a coordinated parking management program; b) obtain and secure leases that would generate market rate rents, sufficient capital investments and services; c) facilitate implementation of Harbor revitalization projects in a coordinated manner in order to minimize inconvenience to Harbor users.

Revitalization Plan Oversight

In April 2005, the Orange County Board of Supervisors unanimously approved the formation of the OC Dana Point Harbor as a stand-alone department to provide direct oversight for the Dana Point Revitalization Project, and to oversee Harbor operations.

The Harbor Mission Statement is "To provide coastal access, environmental stewardship, and a diverse regional recreational facility so all users and visitors may experience the unique Dana Point Harbor resource in a safe and enjoyable way."

By the year 2020, it is anticipated by the County that Dana Point Harbor will have re-emerged as a thriving recreational, boating and retail activity center. There will be a new commercial core, complementing Dana Wharf, with the planned Festival Plaza serving as a gathering place for boaters, shoppers, tourists, and transient boaters. OC Dana Point Harbor's primary mission is to make this vision a reality so Dana Point Harbor can continue as a vital economic and recreational facility for the public's enjoyment.

Dana Point Harbor is staffed with a Harbor Director supported by a team of 15 County employees. The team is comprised of Administrative Managers and support staff; an Executive Secretary, Deputy Director, Operations Manager, Engineering Manager, Budget Officer, Real Property Officer, Capital Projects Manager, Supervising Maintenance Inspector/Specialist, a Procurement Contract Specialist and a Staff Assistant. Since the Harbor is a small agency, it operates differently than OC Public Works, John Wayne Airport, or other large County agencies that may manage major projects.

When the Department was created in 2005, decentralization was considered to be an acceptable structure put in place to manage the day-to-day operations of the Harbor as well as the revitalization project. It was anticipated that the support and expertise to be received from the project management company would be enhanced beyond what would be available from the County staff. A cost saving was anticipated in the long run as well. The new arrangement allowed for continued focus on maritime related duties within the Harbor and oversight of the revitalization project. This arrangement was to ensure providing that all deadlines, schedules, budgets, and obligations were met by the project manager and the rest of the revitalization team.

DPH - Marina Management Companies

Presently, under separate agreements, two marina companies operate within the Harbor; one in the East Basin and one in the West Basin. Each performs and offers identical services within their respective Basin.

These marina companies operate on County property. The East Basin manages approximately 1,400 slips with 8 boater service buildings and marina parking. West Basin manages approximately 980 slips with 6 boater service buildings and marina parking. Each is tasked with providing complete landside and water area property management services. Both report to and receive instruction from the DPH Management. In addition, the terms and conditions set forth in the individual operating agreements are bound by terms set out in the Tidelands Grant by the State of California to the County of Orange.⁶

Bonds/Loans/Budget

The revitalization plan was to achieve self-sufficiency within the harbor through lease revenues. The intention of the revenue obtained was to increase the Tideland Fund 108 established in 2005 when the Harbor separated from Harbor, Beaches and Parks. The Harbor revenue/budget was to cover ongoing infrastructure maintenance and operations including the Orange County Sheriff's Harbor Patrol Department.

When the Harbor was developed in 1971, the Master Leases issued were written to benefit the lessee and not the County. Forty-year ground leases were granted. The County anticipated that because of the very low rent, the lease owners would maintain and upgrade the property as required. Instead, the lease owners deferred maintenance in order to increase their revenue. Several officials acknowledged that the land lease agreements would never allow for the rehabilitation of the Harbor since the lease contracts were written to benefit the lessee and *not* the County.

A county internal audit in 2000-2005 recommended that the ground leases become operating leases. The switch to the operating leases provided that the rents from the property would go directly into the Tideland Fund 108, *and*, the revenues from the Harbor would circulate within

⁶ Chapter 321, Statutes of 1961, State of California:
http://www.slc.ca.gov/Granted_Lands/G09_Orange/G09-00_County_of_Orange/S1961_Ch321%20.pdf

the Harbor, thereby increasing the Tideland Fund 108. Construction milestones were built into all of the new contracts to bring leases and rents to market value with the clause entitled 'Independent Use,' which enables the County to evict a tenant in order to continue to maintain the Harbor as self-supporting.

Presently, there are multiple commercial vacancies within the Harbor which are thought to be due to the economic downturn. Lessees are being sought at current market value.

The Orange County Harbor Patrol (OCHP) is part of the Sheriff's Department and is funded through a separate contract with the County via the Tidelands Fund 108. The Harbor Patrol consists of two elements: Harbor Patrol and Boats slips which includes land and sea at Dana Point Harbor. The OCHP cost is approximately \$10.4 million annually for the coastline service. Thirty percent of that budget is funded by the general Tideland Fund, a portion of which comes from fund 108. There are two other funds, 405 and 106 that also contribute. The Harbor contributes \$4.1million to the Harbor Patrol for their services. The annual Harbor expense over the past 10 years averages \$9 million. The revitalization plan will not change the Sheriff's duties at the Harbor.

The Harbor's true fiscal budget for the fiscal year 2013-14 is \$24,760,000. The Harbor's reserve is \$5.8 million for 2013-14; total reserve balance is \$50,037,106. A total of \$19,685,937 was spent on the revitalization project from 2003 to present. Of that figure, \$9,427,703 has been paid to the project management company within that time span. The remaining costs are attributed to capital and operational expenses to maintain the Harbor which averages \$16.5 million per year since the inception of the revitalization project. The Grand Jury found all budgetary funding from 2003 to present appropriately allocated.

In 2005, the Harbor requested a low interest loan from the California Department of Waterways (CDBW) for \$45 million anticipated for renovation of the waterside docks and slips. DPH submitted a permit application to the California Coastal Commission (CCC) as required at the same time the loan was requested. The State approved \$24 million of this reimbursable loan. The funds for the approved \$24 million loan were not taken due to delays caused by the incomplete filing of the permit documents to the CCC. As well, the interest that would have accrued while waiting for permit approval from the CCC would not have been cost effective. The approved funds were held in a state reserve fund. It should be noted that the money must be spent prior to reimbursement from the CDWD. The funds may only be used for marina projects that must first be approved by CDBW. The Grand Jury was informed by Harbor staff, that re-application to the California Department of Waterways for funding, is a possibility once construction gets underway. *The Harbor requested the same project manager to oversee both the landside and waterside aspects of the revitalization project.* The Grand Jury disagrees with this anticipated arrangement due to longstanding contractual abnormality and unique construction requirements presented by the revitalization project.

METHOD OF STUDY

The 2013-2014 Orange County Grand Jury conducted a confidential interview with the project management company and additional study methods include the following process.

Reviewed and Studied:

1. Public documents from the Registrar of Voters
2. Documents from the County Clerk Recorder
3. Documents from the California Secretary of State
4. The California Coastal Zone Conservation Act of 1972-Proposition 20
5. The Tidelands Fund Act, 108
6. Dana Point Harbor Letter from the Secretary of the Army, March 2, 1945
7. Federal, State and County documents
8. The 2009 County of Orange Procurement Policy Study
9. The August 1998, Orange County Contract Policy Manual
10. The 2012 Orange County Contract Policy Manual
11. The 2013-2014 County of Orange Adopted Budget
12. The Dana Point Harbor Revitalization Plan
13. Audits prepared by the County Internal Audit Office
14. Dana Point Harbor Operating and Management Agreements
15. Samples of request for proposals (RFP) packages and A-E Contract Proposals
16. Multiple Minute Orders and Amendments prepared for Board of Supervisors meetings regarding the project management company contract for the revitalization project
17. Environmental Impact Report (EIR)
18. Final Environmental Impact Report (FEIR) 591

Conducted confidential interviews with former and current Orange County officials/employees and professional civil servants from the County's:

1. Assessor
2. Auditor-Controller
3. Board of Supervisors
4. Clerk Recorder
5. Executive Office
6. Human Resources Service
7. Internal Auditor
8. Performance Audit Director

9. Public Works
10. Registrar of Voters
11. Sherriff-Coroner
12. Dana Point Harbor

Conducted confidential interviews with Dana Point Harbor stakeholders:

1. Vendors and Merchants
2. Boaters and Slip Owners

Conducted confidential telephone interview with the following:

1. The California Coastal Commission (CCC)
2. The Secretary of State's Office
3. District 2 County Resident

The Grand Jury also attended multiple site tours within Dana Point Harbor.

ANALYSIS

The Contract

The original agreement/contract for the Harbor revitalization was awarded as a result of a Request For Proposals (RFP) solicitation process and established a time and material (T&M) agreement on March 25, 2003. The agreement was drafted and approved without the benefit of an *audit clause*. In 2006, through Board approval, the agreement was changed to a fixed monthly fee. This type of flat fee payment structure guaranteed regular payment to the project management company regardless of whether or not a task was completed. There was little incentive for the project management company to complete tasks in a timely manner since payment was guaranteed. The 'fixed fee' and the 'no audit clause' combined, resulted in a lack of monitoring tasks assigned to the project management company. The Grand Jury was given to understand that although the '*fixed fee*' structure was in compliance with County policy, this type of payment method for a major project *was unusual* and not the standard method of payment for a large development project.

The original 2003 agreement granted approval for the project management company to provide design development, permit acquisitions and project management services for the DPH revitalization plan at a cost of \$6,982,000 for five years.

Amendment 1 approved on July 19, 2005, increased the contract by \$600,000 and added fifteen months to the term of the contract. This was necessary for additional time to obtain permits for a project of this magnitude and complexity.

Amendment 2, approved June 27, 2006, increased the contract by \$900,000 due to scope creep⁷ to include the waterside portion of the revitalization plan. The total at that time was \$8,482,000.

Amendment 3, approved June 2, 2009, extended the contract in order to complete the California Coastal Commission (CCC) process for the landside portion of the project as well as the Environmental Impact Report (EIR) for the waterside portion of the project. The project management company during this time agreed to reduce their rates by 6%.

Amendment 4, approved July 1, 2011, extended the contract for an additional year to June 25, 2012, because the project management company agreed to a fee reduction of 10%.

Amendment 5 ratified on April 16, 2013, extended the contract an additional five years for an additional \$4,411,310. This amendment included continued project management services consisting of: preparation and acquisition of all regulatory permits and approvals, design, and engineering and CCC compliance services for the waterside portion. Payment to the project management company was changed under amendment 5 from a *'fixed fee'* to a time and materials basis. The current new *maximum financial obligation* of \$13,183,310 is through June, 25, 2018. The project management company is slated to receive \$1 million annually to manage the Revitalization project. The initial contract was originally approved for \$7 million and scheduled to expire in 2008. The actual cost of the revitalization project has yet to be determined. However, the agreement continues with no *audit clause*, which is essential for monitoring the assigned tasks of the project management company and for the benefit of the County and taxpayers. After five extensions and eleven years the initial agreement/contract has not been re-solicited.

Although the contract for the project management company has been in effect since 2003, the Grand Jury has been unable to unearth the original bids and oral responses of the applicants to the Request For Proposals (RFP). Management staff confirmed there has not been a review of the RFP for the original contract. It is unclear why management staff did not see the importance of having knowledge about what attributes or expertise the chosen firm brought to the project or what tasks were initially designated. It appeared there was a disinterest concerning the missing documents which was of concern to the Grand Jury. DPH expressed complete satisfaction with all work produced to date by the project management company. High marks were given to the project manager's ability to interact with the DPH staff and stakeholders and shared that the project management company functioned as part of the Harbor staff.

DPH management monitors the weekly and assigned tasks of the project management company. In an effort to determine a documented timeline for the revitalization project, a critical pathway

⁷ http://en.wikipedia.org/wiki/Scope_creep

and minutes of the weekly meetings were requested. The Grand Jury was advised that minutes of the weekly meetings are not recorded and/or documented. This being the case, no one can aptly ascertain what has transpired during any of the weekly meetings without any written documentation. Therefore, transparency is lost. The Grand Jury does not devalue a positive working relationship established between the project management firm and the County. Concern arises when transparency is lost regarding those interactions.

The Grand Jury was unable to verify prior references of the chosen applicant or review applicants' responses or determine the criteria used by the evaluators. The proposals included references on past performances; however, the evaluators did not evaluate the past performance submitted with the proposal. The selected company came in last on the written portion and first on the orals. Information shared with the Grand Jury confirmed that a Request For Proposals (RFP) was issued and 6-8 companies responded. Two companies, in addition to the company awarded the agreement, were due to be vetted. This did not occur. References of the company awarded the agreement were not verified prior to the signing of the contract in an effort to avoid appeals by those applicants not selected. These issues were of grave concern to the Grand Jury. However, references were supposed to eventually be verified for the chosen firm. The original (RFP) nor the responses to the original proposal could be located by DPH or within the County. The Grand Jury endeavored to evaluate the experience and competency of the chosen project management firm. No documents were located nor did any of the interviewees offer full disclosure of past experience.

The project management company awarded the contract was also unable to produce their original response to the RFP. Initial references for the project management company proffered in 2003 were unable to be verified by the Grand Jury. Assistance was sought from the Secretary of State for company verification. The State of California was unable to provide any information regarding the project management company's status as of 2003 when the initial agreement was signed.

Current references became available for the project management company in a letter dated June 18, 2012, from Orange County Community Resources. The project management company provided services for Orange County Parks' Repair and Restoration Program. During the firm's contract with Orange County Parks, it completed over 75 projects satisfactorily. It still remains curious how the evaluators awarded the initial contract, and by what factors elevated the lowest scoring applicant to the award winning position during the verbal presentation, known to some County employees as the '*Pepsodent Effect*.' The disappearance of the original responses of all applicants to the RFP remains an enigma. The Grand Jury was advised that generally, the County retention policy for contracts is 3 years on location. Then, the agency is able to move the documents to the warehouse for two years or up to ten years on complex contracts. However, if the contract is active, all documents relative to the active contract are required to be held on-site at the host agency. *The Grand Jury did not find this to be the case at Dana Point Harbor.*

Fig 3.



Invoice/Vendor Monitoring

The Grand Jury found the Harbor to be well run with attention to detail. Stakeholders, vendors, and leaseholders shared mutual respect for Harbor staff. There is a genuine effort by DPH to monitor the daily details of the Harbor's appearance and ambience. The Grand Jury observed less acumen by DPH management concerning the administrative monitoring of the financial outlay for the project management company. Historically, invoices submitted by the project management company have been non-specific. When the Grand Jury had the opportunity to view invoices for financial outlay, they lacked easily understandable and standard tracking methods for deliverables.

The Grand Jury also found that invoices submitted by the project management company to the Harbor management staff lacked specificity. Although monitoring of the invoices has improved with the oversight of the County Auditor, the Grand Jury found there remains a lack of information on the submitted invoices. It is difficult to determine the specified assigned task, what portion of the task has been completed, *and* the anticipated date of completion. The ability to follow the assigned task from beginning to end for financial reimbursement was not easily determined. Submitted invoices reviewed by the Grand Jury that were monitored and submitted by O.C. Public Works to Harbor management indicated very detailed notations as described by standard invoicing procedures and practices followed by the County. The submitted invoices indicated job type, date of anticipated completion, percentages of what was completed at the time of submittal and what yet remained, as well as an up-to-minute projected cost to complete at the time the invoice was submitted. Harbor management staff was queried why this procedure was not being followed for the monthly invoices submitted to the executive staff office with regard to the completed tasks for the project management company. Management's response was that task completion for the project management company was difficult to monitor. The project management company's progress was/is determined by the tasks completed by the architectural and engineering (A&E) firm.

Progress monitoring of assigned tasks for the project management company is determined through weekly meetings and phone interaction. Harbor management assured the Grand Jury that work is being done and that the project management company is an extension of the Harbor staff. In short, specificity of the details for monitoring weekly tasks or short term goals were lacking for the project management company. *Therefore, it is not easily substantiated what has or has not been done relative to weekly task assignments without accurate documentation being kept for ongoing progress review. Appropriate monitoring of assigned tasks remains an integral fiduciary responsibility for DPH management.*

Sole Source

There was an erroneous attempt by Harbor management staff to change the original contract to 'sole source,' also known as "no-bid-contract." This effectively allows for the project management company to be the only company with whom the County could legally interact. In addition, sole source infers the chosen vendor has expertise in a specialized area that is required for the completion of a particular task within the County that cannot be found through regular or normal outreach methods. Special forms must be completed in detail describing the task, the reason for the task, anticipated cost for the job, and verification of the chosen company's competence. The company is required to give evidence of their competency and how many professional years of expertise in the said work project being sought. The recommendation to award the selected entity must then be approved by the Board of Supervisors. The process differs from a RFP. A Request For Proposals cannot be altered to a sole source during the mid-term of the agreement.

Amendment 5, (mentioned earlier) that extended the contract an additional five years for \$4,411,310 with a financial obligation, of \$13,183,310 through June 25, 2018, was presented to the Board of Supervisors for approval as ‘*sole source.*’ This was in error. However, some viewed this error as an attempt to give the project management company free range at the expense of County taxpayers. *Sole source* would effectively allow for the project management company to be the only company with whom the County could legally interact and infers there is no other company with the required expertise available to complete the Revitalization project. There still remain questions of the firm’s contractual longevity. Five project extensions have accrued thus far with no re—bids over ten years. Knowledge of the type of contract signed and under which the current firm is working is the responsibility of the DPH staff and those ratifying the contract.

District Prerogative

One hundred twenty five years ago Orange County was an agrarian society with 14,000 residents, about 2800 residents per district, with three incorporated cities and no paved roads. From the County’s inception, the Board of Supervisors established the practice of ‘District Prerogative,’ a practice that allows individual Supervisors total discretion on matters involving only their district.

Today, it is virtually impossible for a District Supervisor to interact with most of their constituents within an assigned district. The five County districts currently conduct more than \$3 billion in business related actions through contracting and procurement undertakings. The county population is now approximately 3,010,232, which breaks down into about 602,000 residents per district;⁸ a far cry from the agrarian society of 125 years ago.

It was acknowledged to the Grand Jury that the practice of ‘*District Prerogative*’ exists and is a common practice. District Prerogative is the longstanding practice of following the dictates of the supervisor whose district has a major project. The reason a Board member engages in the practice is that it assures support of the other 4 Supervisors on subsequent issues/projects that may arise in their respective districts. Former and current City Council members and County Management alluded to DPH as the *poster child* of District Prerogative. This behavior can be viewed as misuse on projects that have County wide significance. The behavior may also be viewed as vote trading. By following the practice of ‘District Prerogative,’ some members of the Board might abdicate authority involving decisions relative to the Dana Point Harbor revitalization project, because an assumed greater understanding is deferred to whosoever is the presiding district supervisor.

Today there are approximately 3.1 million residents in Orange County and it is both impossible and impractical for a District Supervisor to interact with most of the constituents within an

⁸ United States Census Bureau, 2010: <http://www.census.gov/2010census/>

assigned district as compared to an agrarian society. *'District Prerogative'* has no place in Orange County governmental policy-making where critical decisions are made regarding the multi-million dollar Dana Point Harbor Revitalization Project. The continued use of *'District Prerogative'* creates huge transparency issues, and negates the validity and appropriateness in County governmental decision-making. All members of the Board should responsibly exercise their duty to the County at large. Several County and elected officials were critical of *'District Prerogative'* and shared that there are few issues that are brought before the Board of Supervisors that only affect one district and its residents. "The Coast belongs to the People of the State of California."⁹ The Grand Jury suggests that the practice of *'District Prerogative'* today by the Board of Supervisors does not serve the public when the Board automatically defers to the wishes of another district member. The Grand Jury advocates for the practice of *'District Prerogative'* to be discontinued because it hinders the progress of the revitalization project.

Reasons for Delay

Bureaucratic Procedures/Detractors

The 12 Guiding Principles set the criteria for the Harbor Revitalization making it difficult to rehabilitate the Harbor. Of primary importance is that the Harbor is to remain an affordable entity for *all* County residents. There is to be no commercialization of Dana Island. Therefore, measures that would or could increase revenue such as parking fees are stymied. The hotel cannot foresee becoming a five star hotel, because of the constraints of the CCC. The CCC determined that the hotel must remain a low cost visitor serving accommodations per the Tidal Zone Policy. This presents a challenge in planning and implementing the revitalization project owing to the fact there are very different and changing needs of the stakeholders.

The Grand Jury has no authority over the California Coastal Commission, (CCC). However, several attempts were made to include their expertise regarding the Harbor revitalization delay to no avail. Several conversations were had with CCC counsel who advised "the employees at California Coastal Commission are unwilling to speak with the Grand Jury due to "institutional discomfort."¹⁰ In addition, CCC staff must adhere to monthly timelines of compiling data for various meeting and hearings. All information submitted to the CCC for or against a project must be researched prior to a decision being made. A single individual concerned with a project may voice dissent thereby halting the process until the objectionable concern is validated or deemed inconsequential. The Grand Jury was unable to obtain direct phone numbers for individuals handling Dana Point Harbor document submittals from CCC counsel.

The Environmental Impact Report (EIR), several technical documents, and the Local Coastal Plan (LCP) amendment were submitted to the CCC. The CCC responded as follows:

⁹ <http://www.coastal.ca.gov/legal/proposition-20.pdf>

¹⁰ Interview: Counsel of California Coastal Commission

“Due to the quantity of information received and the limited amount of time allotted by the CCR §13553 for review of the submittal, Commission staff have not reviewed the EIR and technical documents in detail at this time. As Commission staff continues to review the submittal, additional questions may be raised regarding the EIR and technical documents as well as other elements of the submittal. Please anticipate additional questions and requests for information as our review progresses. An amendment to the City’s certified LUP and IP is ninety days from the date of submittal is deemed complete. However, if more time is needed for our staffs to work together, the Commission may extend the ninety day time period for up to an additional year.”¹¹

Development within the coastal zone may not commence until a Coastal Development Permit (CDP) has been issued by either the Commission of a local government that has a Commission-certified local coastal program or the CCC. After certification of the Local Coastal Plan (LCP), Coastal development permit authority is delegated to the appropriate local government. The CCC retains original permit jurisdiction over certain specified lands, such as tidelands and public trust lands. To that end, the initial 3 tiered parking structure was voted out by the CCC due to citizen complaints of view obstruction. Instead, it was changed to a 2 tiered parking structure with 500 additional parking spaces. At this writing, the CDP has been approved by the City of Dana Point Planning Commission and is awaiting closure of the appeal process. The CDP would then go to the CCC for approval.

Boaters

Some boaters are disgruntled that the landside of the renovation project is being expanded and the boat slips are being reduced. Per the CCC, there are more 25-foot boats than 50-foot boats moored at the Harbor, so the decision was made to err on the side of economical boating in favor of smaller boats. Accordingly, there is an anticipated boat slip loss of 155 to accommodate disabled persons having access to all docks per the Americans with Disability Act, (ADA). Of course, boaters would prefer zero boat slip loss; however, the anticipated boat slips reduction provides equality for all residents and taxpayers.

There are questions whether funds are available for the upgrade of the docks and proposed waterway infrastructure, which remains in its original state. Restroom facilities are too far from the boat slips. One boater expressed the revitalization project succinctly – ‘*inequality*’ – the notion that all stakeholders should lose and/or gain together for impartiality. The reality is that the waterside design is unable to be expanded because the surface area of the water cannot be changed.

Boat slip fees at Dana Point Harbor are higher than Oceanside, San Diego and Alameda, Los Angeles Marinas. However, those marinas and the amenities they offer are very different and do

¹¹ Communiqué from the California Coastal Commission to City of Dana Point; February 14, 2007

not compare to DPH. Neither marina enlists the services of the Sheriff's Harbor Patrol. Slip fees at DPH were standardized for all boats of the same size two years ago. A gradual increase in boat slip fees is anticipated to keep pace with the market rates for boat slips which in turn will increase the reserves for the revitalization project.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Dana Point Harbor Revitalization Project in Orange County, the 2013-2014 Orange County Grand Jury has arrived at 10 principal findings, as follows:

Penal Code Sections 933 and 933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

F.1. The original and current contract for the project management company has been extended five times since March 2003 without an audit clause.

F.2. The references for the final chosen three applicants responding to the original request for proposal, (RFP) were not verified.

F.3. When the evaluations were done of the three competitors, the selected company came in last on the weighted written portion, but first on the orals. The proposals included references on past performances however; the evaluators did not evaluate the past performance submitted with the proposal. The original references by the selected project management company could not be produced.

F.4. The original responses to the initial 'Request For Proposals' (RFP), have been unable to be found by Dana Point Harbor or the County Executive Office staff.

F.5. Amendment #5, April, 2013 to the original contract for the project management company was incorrectly labeled and submitted to the Board of Supervisor for ratification as a 'Sole Source' contract although this was subsequently corrected.

F.6. The Contract Policy Manual does not contain well written examples of 'sole source' justification.

F.7. Historical invoices submitted by the project management company lack specificity. Although monitoring of the invoices have improved with the oversight of the County Internal Auditor, the Grand Jury found that there remains a lack of information on the submitted invoices

to determine the specified task, the portion of the task completed, or the anticipated date of completion. The ability to follow the assigned task from beginning to completion with the financial allotment/award is not easily determined.

F.8. Standardized minutes of the weekly meetings held with Harbor Management, the project management company, various vendors, and lease holders associated within the Harbor, are not documented.

F.9. There are two managerial marine companies in the Harbor which duplicate services for boaters and operate under two separate County agreements; the East Marina and the West Marina.

F.10. Oversight for the Revitalization Project is lacking especially in the areas of:

- a) no audit clause in the original contract
- b) invoice non specificity (document does not track deliverables)
- c) sole source error to the original contract

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Dana Point Harbor Revitalization Project in Orange County, the 2013-2014 Orange County Grand Jury makes the following 9 recommendations:

R.1. The CEO should assign OCPWD to oversee the construction phases of the Dana Point Harbor revitalization project. **(F.1. through F.5. and F.10.)**

R.2. The CEO should reduce the current time and material agreement for the project management company in cost and scope via specificity of tasks and deliverables, particularly in the area of design and construction management. **(F.1., F7., F10.)**

R.3. The CEO should establish and direct that all construction competition guidelines for major construction agreements follow the current County Policy Contract Manual. **(F.2., F.3.)**

R.4. The Board of Supervisors and the CEO should carefully monitor all major agreements and the implementation of the terms on a continuing basis during the term of the contract. **(F.1.) (F.4., F.5., F.10.)**

R.5. The CEO should amend the County Policy Contract Manual to include a clear and concise guideline for 'sole source' justification. **(F.6.)**

R.6. The CEO should require Dana Point Harbor to follow the OCPWD standard procedure for monitoring invoice submittal. **(F.7.)**

R.7. The CEO and the Dana Point Harbor Director should record and keep on file complete standardized minutes of all meetings with the various contractors and agencies with whom they regularly meet. **(F.8.)**

R.8. The CEO and the Dana Point Harbor Director should do a cost analysis for the efficiency of operating two marina management companies under two separate operating agreements with the County that duplicate services for boaters. **(F.9.)**

R.9. The CEO should conduct a financial audit of the Dana Point Harbor. **(F.7., F.8., F.9., F.10.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses to Findings **F.1.** through **F.10.** are requested from the CEO.

Responses to Findings **F.8.** and **F.9.** are requested from the Dana Point Harbor Director

Responses to Recommendations **R.1.** through **R.9.** are requested from the CEO

Response to Recommendation **R.4.** is required from the Orange County Board of Supervisors

APPENDICES

APPENDIX A – A Visit to the Harbor

The Harbor offers specialty shopping, fishing and whale watching excursions, kayaking, Catalina transportation, and a variety of restaurants from coffee shops to fine waterfront dining. Across the bridge to Dana Island are more walking paths that lead to yacht clubs, a restaurant and a continuation of quiet waterside parkways. The Harbor provides slips and dry boat storage for over 2,500 boats along with many specialty shops. Particularly noteworthy is the unique promontory known as the “Headlands” which overlooks the Harbor.

Starting at the west end of Dana Point Harbor Drive is the Ocean Institute housed in a structure used for the education of county youth about marine science and maritime history. Next is Baby Beach, which offers tables and grassed park areas and a swim beach area. The DPH office is located adjacent to the entry of the Island Way Bridge. Further east is Dana Point Marina Inn, a 212 room hotel operated by Great Western Hotel Corporation. This hotel strives to achieve a three star status while adhering to the guidelines established by the CCC policy. Adjoining the hotel is a commercial zone consisting of free parking and eateries.

Fig 4. Aerial Legend of Dana Point Harbor



Beyond the commercial zone lies Dana Wharf sport fishing and whale watching. East of the wharf is a boat launch and a day-boater parking area. Looking east is Embarcadero Marina, a ten lane launch ramp and dry boat storage. The landside portion ends at Puerto Place, which abuts Doheny State Beach. Water side west of Dana Point Marina Inn is Island Way Bridge, which ends at Dana Drive. At the east end is the Sheriff's Harbor Patrol, which patrols the entire Harbor three miles into the Pacific Ocean. Going west on the strand along Dana Drive are yacht clubs, yacht and ship brokers, sailing clubs, and adjacent to the outer channel are picnic areas.

APPENDIX B – Governance

California Coastal Commission

The California Coastal Commission was established by voter initiative in 1972 (Proposition 20) and later made permanent by the Legislature through adoption of the California Coastal Act of 1976. The Commission is an independent, quasi-judicial state agency. The Coastal Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government. Under the California's federally-approved Coastal Management Program, the California Coastal Commission manages development along the California coast except for San Francisco Bay. California's coastal management program is carried out through a partnership between state and local governments. Implementation of Coastal Act policies is accomplished primarily through the preparation of local coastal programs (LCPs) that are required to be completed by each of the 15 counties and 61 cities located in whole or in part in the coastal zone. Completed LCPs must be submitted to the Commission for review and approval. An LCP includes a land use plan (LUP) which may be the relevant portion of the local general plan, including any maps necessary to administer it, and the zoning ordinances, zoning district maps, and other legal instruments necessary to implement the land use plan. Coastal Act policies are the standards by which the Commission evaluates the adequacy of LCPs. Amendments to certified LUPs and LCPs only become effective after approval by the Commission. To ensure that coastal resources are effectively protected in light of changing circumstances, such as new information and changing development pressures and impacts, the Commission is required to review each certified LCP at least once every five years.

Development within the coastal zone may not commence until a coastal development permit has been issued by either the Commission or a local government that has a Commission-certified local coastal program. After certification of an LCP, coastal development permit authority is delegated to the appropriate local government, but the Commission retains original permit jurisdiction over certain specified lands (such as tidelands and public trust lands). The Commission also has appellate authority over development approved by local governments in specified geographic areas as well as certain other developments. The mission of the Coastal Commission is to: Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for the environmentally sustainable and prudent use by current and future generations.

The Coastal Act includes specific policies (see Division 20 of the Public Resources Code) that address issues such as shoreline public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands,

commercial fisheries, industrial uses, water quality, offshore oil and gas development, transportation, development design, power plants, ports, and public works. The policies of the Coastal Act constitute the statutory standards applied to planning and regulatory decisions made by the Commission and by local governments, pursuant to the Coastal Act.

California State Lands Commission

The County of Orange falls within the jurisdiction of the State Lands Commission as a trustee of legislatively granted public trust lands. The County has a responsibility to submit an annual financial report to the California State Lands Commission, (CSLC). Pursuant to the Public Resources Code, (PRC) Section 6306, the County is required to file with the CSLC a detailed statement of all revenues and expenditures relating to its trust lands and trust assets, covering the fiscal year preceding submission of the statement.

For purposes of this division, found in the (PRC), “local trustee of granted public trust lands” means county or a harbor district that has been granted, conveyed or transferred by statute. This includes public trust lands, tidelands, submerged lands, or the beds of navigable waters, through a legislative grant. Every local trustee of granted public trust lands shall establish and maintain accounting procedures in accordance with generally accepted accounting principles, providing accurate records.

All revenues received from trust lands and trust assets administered or collected by a local trustee of granted public trust lands shall be expended only for those uses and purposes consistent with the public trust for commerce, navigation and fisheries and the applicable statutory grant.

California Coastal Zone Act 1972

The California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health and welfare and to protect public and private property, wildlife, marine fisheries and other ocean resources and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction: that it is the policy of the state to preserve, protect, and, where possible, restore the resources of the coastal zone for the enjoyment of the current and succeeding generations.

2006 Final Environmental Impact Report 591

The 2006 FEIR report consists of 38 pages of issues, conditions, processes, actions, public input and plans for the landside portion of DPH revitalization project. It adheres to the California Coastal Commission’s, (CCC) responsibility to protect and preserve the coastal tidelands and

waterways. Potential problems are identified and mitigation measures are required to gain approval of the CCC.

The 2011 subsequent Environmental Impact Report (SEIR) is for waterside improvements and includes: "...land use, geology and soils hydrology and water quality, traffic and circulation, air quality noise biological resources, aesthetics, recreation and hazards/hazardous materials." Some of the areas of controversy were air quality, noise impact during construction, site traffic, parking and boat storage.

Orange County Board of Supervisors adopted Resolution No. 88-316 approving incorporation of the City of Dana Point on March 8, 1988. In 1991 the Local Coastal Plan, (LCP) authority for the entire City, including the Harbor was transferred from the County to the City and the LCP became part of the City's General Plan and Zoning Ordinance. Although the Harbor is owned and operated by the County, it is subject to the City's LCP.

APPENDIX C – Footnote References: Communiqué, Website & Interviews

1. Orange County Archives: <http://ocarchives.com/>
2. Dana Point Harbor: <http://ocparks.com/beaches/dana/>
3. <http://www.fws.gov/habitatconservation/Omnibus/R&HA1962.pdf>
4. Orange County Archives: <http://ocarchives.com/>
5. <http://www.slc.ca.gov>
6. Chapter 321, Statutes of 1961, State of California:
http://www.slc.ca.gov/Granted_Lands/G09_Orange/G09-00_County_of_Orange/S1961_Ch321%20.pdf
7. Scope Creep: http://en.wikipedia.org/wiki/Scope_creep
8. United States Census Bureau, 2010: <http://www.census.gov/2010census/>
9. <http://www.coastal.ca.gov/legal/proposition-20.pdf>
10. Interview: Counsel of California Coastal Commission
11. Communiqué from the California Coastal Commission to City of Dana Point; February 14, 2007

And:

Fig 4. Aerial Legend of Dana Point Harbor: <http://ocdph.com/about/harbor>

APPENDIX D – Acronyms & Abbreviations

ASR – Agenda Staff Report

CCC – California Coastal Commission

CDP – Coastal Developmental Permit

CEQA – California Environmental Quality Act (1970) a public resources code.

CPM – Critical Path Method that defines project schedules, budget; gives project progress report.

EIR – Environmental Impact Report

FEIR – Final Environmental Impact Report

HBP – Harbor Border Patrol

IP – Local Coastal Plan and Implementation Plan

KS – Contracts in legal terms

LCP – Local Coastal Plan/Program

LCPA – Local Coastal Program Amendment

LUP – Land Use Plan

ORCA – Organization of Regional Coastal Activists; website: www.calorca.org.

PDSO – Planning and Development Services Department

PFRD – Public Facilities Resource Department

SEIR – Subsequent Environmental Impact Report

**COMMUNITY COLLEGE TRUSTEES:
RESPONSIBILITIES, COMPENSATION
AND TRANSPARENCY**



GRAND JURY 2013-2014

Table of Contents

SUMMARY	3
<p>Budget reductions to community colleges, over the last several years, have led to major cuts in classes, services, and essential programs. In one case, college students resorted to holding “Hot Dog Sales” to reopen previously closed summer session classes. In this period of severe budget cuts, the public, faculty and students have had a renewed interest in the spending priorities of the trustees. Unfortunately, there have been numerous problems regarding the spending priorities of elected college trustees in Orange County. How <i>are</i> precious tax dollars being spent?.....</p>	
3	3
REASON FOR THE STUDY	4
BACKGROUND AND FACTS	5
Community Colleges in California	5
Community College Districts in Orange County	6
Fig. 1: Map - Community College Districts in Orange County	7
Table 1: North, South and Coast College Trustees and Chancellors (as of May 1, 2014)..	8
The Trusteeship.....	9
The Trustee Office is Non-Partisan	10
Trustee Responsibilities, Governance and Guidelines.....	11
<i>The California Community Colleges Board of Governors (BOG).....</i>	<i>11</i>
<i>Community College League of California.....</i>	<i>11</i>
<i>Accreditation Commissions</i>	<i>12</i>
Trustee Stipend, Compensation and Benefits.....	12
Trustee Transparency and Ethics.....	13
<i>The Ralph M. Brown Act</i>	<i>13</i>
<i>California’s Political Reform Acts (CPRA).....</i>	<i>13</i>
<i>California’s Fair Political Practices Commission (FPPC)</i>	<i>14</i>
<i>Assembly Bill 1234 (AB 1234).....</i>	<i>14</i>
METHOD OF STUDY	15
ANALYSIS	17
Trustee Responsibilities	17
Trustee Compensation	18
<i>Table 2: Compensation Available to College Trustees</i>	<i>19</i>

Table 5: Coast CCD Trustee Travel Expenses 21

Trustee Transparency 22

FINDINGS 25

RECOMMENDATIONS..... 26

REQUIRED RESPONSES..... 27

APPENDIX A: Excerpts From the ACCJC Standards for Community College Trustees.. 30

APPENDIX B: Key Provisions of the Brown Act 31

APPENDIX C: Key Provisions of the Political Reform Act of 1974..... 32

APPENDIX D: OC College Trustees and Political Affiliation 33

APPENDIX E: Selected References 34

SUMMARY

Budget reductions to community colleges, over the last several years, have led to major cuts in classes, services, and essential programs. In one case, college students resorted to holding “Hot Dog Sales” to reopen previously closed summer session classes. In this period of severe budget cuts, the public, faculty and students have had a renewed interest in the spending priorities of the trustees. Unfortunately, there have been numerous problems regarding the spending priorities of elected college trustees in Orange County. How *are* precious tax dollars being spent?

The California Community College System is the largest organization of higher education in the world, serving more than 2.4 million students. There are 112 individual *colleges* in the state, divided into 72 college *districts*. Orange County is the home to *nine* colleges formed into *four* individual college districts. Each district is governed by a locally elected Board of Trustees (five or seven members) who appoints a CEO usually identified as a “Chancellor.” An individual college is administered by a “College President” who reports directly to (and is evaluated by) the chancellor. While the chancellor and presidents are responsible for the day-to-day operations of the district, the Board of Trustees has the ultimate responsibility for the success of the district. The board meets once or twice a month to set policy, set goals, approve expenditures and oversee the chancellor. Community college trustees are *entrusted* with making sure that the district operates effectively and fulfills the needs of the community.

The combined budgets of the four districts in Orange County contribute nearly one billion dollars annually into the local economy. Together, they are the fourth largest employer in the county with more than 8,500 employees and more than 300,000 students. This core of trustees possesses great power and authority. Yet, with all this power and authority, only a handful of people in Orange County are able to identify their own district trustees. With large budgets and little oversight, there is temptation for inappropriate spending priorities by some trustees.

The issue that overlays this report concerns accessibility and transparency of trustee budget decisions. What are trustee spending patterns and “self-determined” compensation benefits? Community colleges are public agencies supported by limited tax dollars and the community has a right to know how public officials fulfill their responsibilities. The 2013-2014 Orange County Grand Jury found that there are significant extremes in trustee spending priorities. Some trustees are well compensated and rewarded for, basically, a part time job. Trustee travel expenses have increased at the same time that faculty and students have faced cuts. Of greatest concern to the Grand Jury, is the difficulty in finding relevant information about trustee spending priorities. Trustee spending and benefits, which are legally public records, are difficult to access or are not available. This Grand Jury study identified a lack of transparency and excessive spending. The study further identifies ways for trustees to regain the public’s trust.

REASON FOR THE STUDY

It is a foremost “Too Big To Fail” enterprise with more than 3,000,000 stock holders - all of whom live in Orange County! It’s the fourth largest employer in the county with more than 8,500 employees and a combined budget approaching one billion dollars. It’s a business with a return on investment of 14% according to a 2012 Orange County Business Council (OCBC) study (Appendix E). There isn’t a county in the United States that wouldn’t be thrilled to be the home for any one of the Orange County community colleges districts. Who runs this business? Twenty six individuals on boards of trustees, many of whom are unknown to the public, but are entrusted with operating some of the most valuable assets in the county.

Orange County’s largest employer, Disneyland, may have 50,000 people attend the park in a single day. California State University, Fullerton has less than 40,000 students and the University of California, Irvine has approximately 30,000 students. By comparison, more than 300,000 students attend community colleges in Orange County. Additionally, over 41,000 students are taking career/technical college courses to prepare for the county’s workforce needs as nurses, firefighters, police officers and emergency medical technicians.

Community colleges are a positive economic force in Orange County. However, the 2013-2014 Orange County Grand Jury was troubled by varied news articles. Headlines seemed to focus on trustee spending and priorities that ironically accompanied major cutbacks to student programs. A sample of recent news article headlines included:

- Community Colleges Spend Millions on Duplicative Administrators
- Two in Three Community College Students in O.C. Don’t Finish
- Community College Boards: Part Time Jobs, Full-Time Perks
- Community College Trustee Finds Pension Loophole
- Three O.C. Colleges Warned About ‘Deficiencies’
- College District Trustees Blasted in Survey
- More Shenanigans at the College District Board
- College District Plans Key Hire as Faculty Protests
- Trustees Vote to Stop Violating the Brown Act
- College Officials Failed to Report Gifts
- College Board Nearly Doubles its Pay
- College Official Steals Student Aid

The Orange County Grand Jury is authorized to investigate community colleges to determine whether more efficient and economical methods may be employed in financial operations. In this study, the Grand Jury inspects and audits books, records and financial expenditures to ensure that public funds are properly spent.

This study focuses on the responsibilities, compensation and spending priorities of members of the Boards of Trustees for three Orange County Community College Districts. The Rancho

Santiago Community College District (RSCCD) in Santa Ana was not part of this report. The districts under review were:

1. North Orange County Community College District (NOCCCD) Office in Anaheim
2. South Orange County Community College District (SOCCCD) Office in Mission Viejo
3. Coast Community College District (CCCD) Office in Costa Mesa

The issues that overlay this study concern the *accessibility* and *transparency* of information about trustee compensation and spending. Community colleges are public agencies supported by limited tax dollars. The community has a right to know how trustees fulfill their responsibilities and how tax dollars are being spent.

BACKGROUND AND FACTS

The news took everyone by surprise. Compton Community College lost its accreditation in 2005 after trusted officials had redirected millions of dollars into their own pocketbooks. Thousands of students discovered that their education was side-tracked and the community lost its only college. Across California, as with the City of Bell scandal, communities asked, “Could this happen to *our* college district?” What led to this enormous breach of trust? Why didn’t the community have the necessary information to save their college?

Community Colleges in California

The California Community Colleges System (CCCS) is composed of 112 community colleges formed into 72 independent districts. It is the largest system of higher education in the world, serving more than 2.4 million students who are seeking educational, vocational and career goals. Orange County is the home to four college districts with a total of nine individual college campuses. Each district is governed by a locally elected Board of Trustees (BOT) that appoints a Chief Executive Officer (CEO) normally identified as a “Chancellor.” In multiple college districts, as in Orange County, an individual college is administered by a “College President” who reports directly to (and is evaluated by) the chancellor. While the chancellor and staff are responsible for the day to day operations of the district, the Board of Trustees has the ultimate responsibility for the district’s success. The board meets once or twice a month to set policy goals, approve expenditures and oversee the chancellor.

Community colleges are a step in a system of higher education that leads to a convenient transfer to four year colleges and universities within California and across the nation. Equally important are the career and vocational programs. The large numbers of full time students, part time students, employees and private contractors also impact a county’s economic growth.

Since the 1970’s, control over a district’s revenue has been determined by the State; districts do not set student tuition rates. Income levels to districts are established by the legislature using a

complex formula based essentially on Proposition 98. Prop 98 was enacted in 1988 and sets a minimum annual funding level for K-12 schools and community colleges.

Since 1988, students are allowed to attend any community college in the state, making district boundaries irrelevant. In fact, voters may end up taxing themselves for additional campus facilities that are enjoyed by students from another community. State data indicates that a quarter of all students attend college outside their home district and more than 100,000 students attend classes in multiple districts at the same time.

Recent budget cuts at the *four year colleges* have pushed many of their students out and into the limited classes at the community colleges. Similar budget cuts to community colleges over the last several years have reduced services, programs and (at the expense of the college mission) the dreaded reduction in the number of classes. Community colleges have been hit at the same time with the double whammy of *increased* enrollment but *reduced* revenue.

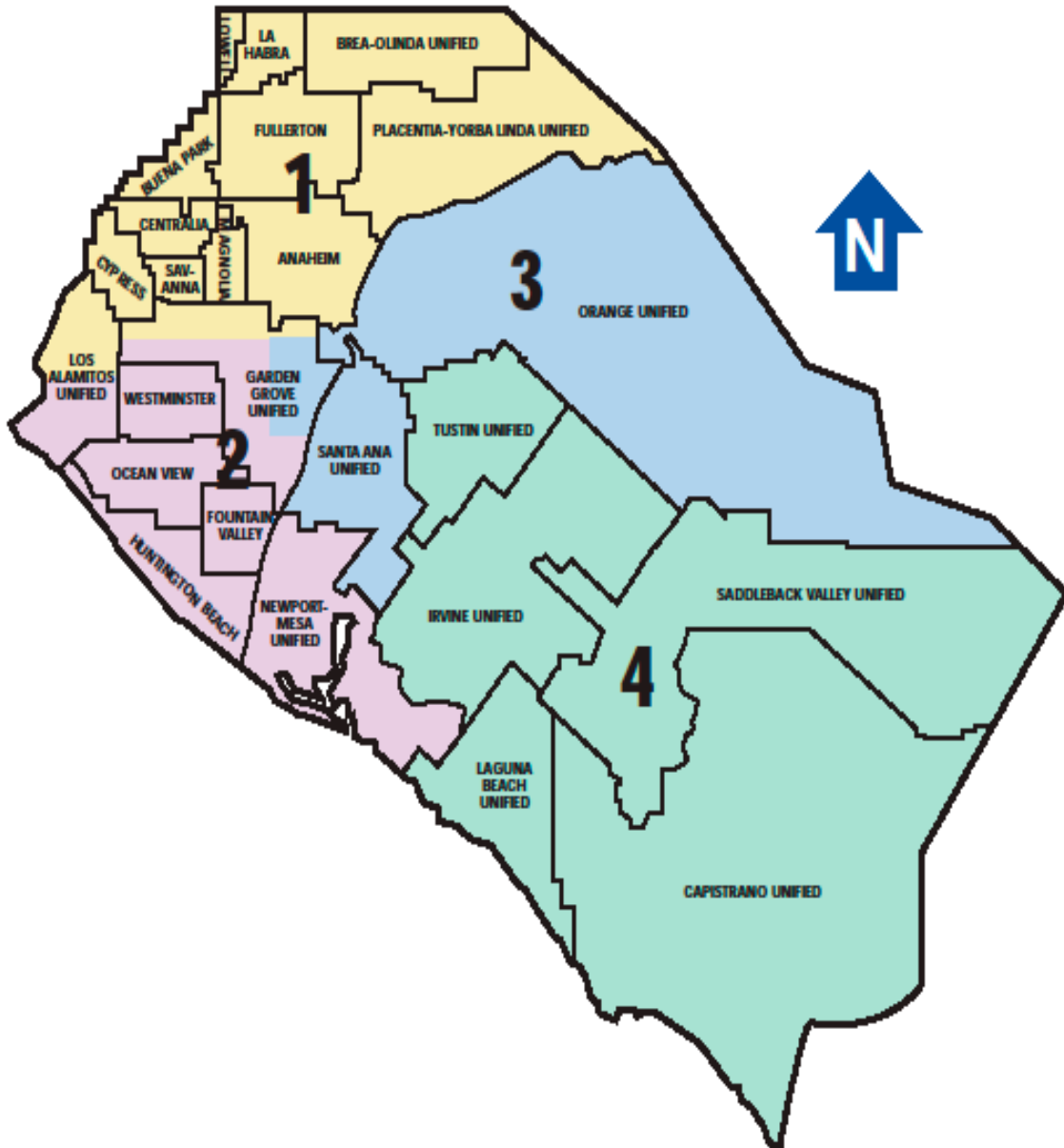
Community College Districts in Orange County

The North Orange County Community College District (NOCCCD) is composed of two colleges and numerous off campus sites. Cypress College enrolls approximately 16,000 students while Fullerton College enrolls about 21,000. The 2012-2013 district operating budget was nearly 190 million dollars. The district is managed by a chancellor appointed by seven elected board members.

South Orange County Community College District (SOCCCD) is composed of Saddleback College in Mission Viejo, Irvine Valley College in Irvine, and the Advanced Technology & Education Park in Tustin. The district serves over 42,000 students each semester and employs about 3,000 faculty and staff. The District is governed by a seven-member elected Board of Trustees and the district's chief executive officer is the Chancellor. The estimated annual budgets are estimated at 225 million dollars.

The Coast Community College District (CCCD) includes Coastline Community College, Golden West College and Orange Coast College. The three colleges enroll more than 35,000 students each year in more than 300 degree and certificate programs. The District is managed by an appointed chancellor and *five* elected board members. Each year, the estimated annual budgets are 180 million dollars.

Fig. 1: Map - Community College Districts in Orange County



1. North Orange County Community College District
2. Coast Community College District
3. Rancho Santiago Community College District
4. South Orange County Community College District

Table 1: North, South and Coast College Trustees and Chancellors (as of May 1, 2014)

North Orange County CCD: Cypress College, Fullerton College

Jeffrey P. Brown, President
M. Tony Ontiveros, Vice President
Michael Matsuda, Secretary
Barbara Dunsheath, Trustee
Leonard Lahtinen, Trustee
Molly McClanahan, Trustee
Donna Miller, Trustee
Ned Doffoney , Chancellor

South Orange County CCD: Irvine Valley College, Saddleback College

T. J. Prendergast III, President
Nancy M. Padberg, Vice President
Marcia Milchiker, Clerk
William O. Jay, Trustee
David B. Lang, Trustee
Timothy Jemal, Trustee
James R. Wright, Trustee
Gary Poertner, Chancellor

Coast CCD: Coastline College, Golden West College, Orange Coast College

Mary L. Hornbuckle, President
David Grant, Vice President
Lorraine Prinsky, Clerk of the Board
Jerry Patterson, Trustee
Jim Moreno, Trustee
Andrew C. Jones, Chancellor

The Trusteeship

I, (State Your Name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and *faithfully discharge the duties upon which I am about to enter*. (emphasis added)

- Trustee Oath of Office (Article XX, Section 3, California State Constitution)

What does it mean to be a “trustee?” A trustee (or the holding of a trusteeship) is a legal term which generally refers to any person who holds property, authority or responsibility for the benefit of another. The more common usage refers to a person who serves on a board of trustees for an (educational) institution that operates for the benefit of the general public. Trustees are frequently professionally educated, but are not on the board to practice their profession, indulge in personal benefit or represent an outside interest. Trustees are often selected to represent a geographical area of the community as in the case of some city councils. Trustees are bound by law to act in the best interest of the *college district*. There are examples in which a board of trustees may actually act in opposition to the local city government, neighborhood associations or community groups.

Trustees are responsible for ensuring that the public’s money is spent responsibly. Boards fulfill this responsibility by establishing, as policy, their parameters or boundaries on the use of public funds, and by reviewing annual audits conducted by outside firms. Trustees have authority only when they are meeting as a board. The board, as a whole, is the legal governing unit and individual trustees have no authority to direct any college staff or make personal statements representing the board. No single trustee, even an officer (i.e. President of the Board), has more authority than another trustee.

Trustees directly hire only one person, a chancellor, to manage the district for the benefit of the district, *not for the benefit of the board*. This can be an awkward situation; nevertheless, a chancellor is hired to successfully manage the district, and not to serve the needs of the board. The chancellor hires staff members who have the expertise to implement board policy and fulfill the purposes of the institution. The system works best when trustees focus on setting policies and goals. This allows the chancellor to manage the day to day operations of the district.

Successful governance requires a positive Board/Chancellor relationship. The chancellor is the primary agent of the board and is the single most influential person in creating outstanding colleges. The most important decision the board makes is hiring the right chancellor for the district, one who reflects and is committed to the district’s goals and values. The relationship is

collegial and professional. However, trustees and the chancellor should never support each other over the interest of the district.

Board policies contain the standards for ethical, legal and prudent operations in the district. These policies guide the decisions of administrators, faculty and non-teaching staff as they design and implement the programs, services and practices that achieve the goals of the district. Administrative regulations, written by staff, define *how* policy operations and management are applied on a day-to-day basis.

California State Education Code Section 70902 authorizes and defines local boards. Boards and trustees are also subject to provisions of the Open Meetings Act (Brown Act), Fair Political Practices Acts, and laws pertaining to conflict of interest. In addition, the California Community College Board of Governors has established regulations and policies, (contained in Title 5 of the California Administrative Code) that implement legislation and further delimit the authority of local governing boards.

Trustees are entrusted with the success of community colleges, institutions that fulfill an essential public good. Being a trustee for an educational institution is not the same as being a member of a legislative body. Legislators (as in the California State Assembly or US House of Representatives) represent a distinct geographical area. In certain cases, the interest of their constituents is *at the expense* of another legislator's constituents.

Trustees do not compete with each other for votes, since they are often elected by areas within the district. However, once elected, the trustees *share* the exact same constituents. It is an unusual governance structure in which a trustee is elected by a segment of the district but eventually represents all the residents of the district. A trustee's primary responsibility is to protect and promote the entire community college district.

The Trustee Office is Non-Partisan

Trustee Boards in California are officially *nonpartisan* offices. In partisan elections, candidates run as members of a political party or as independents. Each political party selects its nominees to eventually become a candidate in a general election. Candidate identification in partisan elections provides the voter with an easy way to select candidates that are aligned with a political party.

In partisan elections, the candidates may be more involved in fundraising, which might attract contributions from outside the district. The danger is that large sums of money might be used to influence voters without respect for local issues unique to that college district. Although elections may be "officially nonpartisan," in some elections (usually involving large cities or counties), the party affiliations of candidates are generally known, and the public relies on this information to select particular candidates. Political parties, by their nature, stand for certain issues and articulate "planks" to define their positions. Locally, both major parties officially fund and support *only* school/college board candidates who are party members.

In nonpartisan elections, the candidates' party affiliation is not listed on the ballot, and the political parties generally don't provide campaign resources for a candidate. This election format is designed to remove politics from local elections. Nonpartisan elections are generally held for municipal and county offices, especially school boards, and are also common in the election of judges. Those that support nonpartisan elections suggest that the issues that divide national political parties are irrelevant to local school/college elections. This concept is supported by the saying that "There's not a Republican or Democratic way to fill a pot-hole." A "non-partisan" board of trustees is by design intended to be the ideal structure for operating a K-12 or college district. A trustee is free to act: (a) in the best interest of the college district, and (b) *without the dictates of a state or national political party.*

Trustee Responsibilities, Governance and Guidelines

Trustees are regulated by an array of laws, codes, suggested guidelines and ethical practices. This information is readily available from government agencies, professional associations, and relevant internet sites. Often, the Chancellor of the district is expected to offer training and education to trustees on issues affecting the district. In addition, trustees are expected, as a primary responsibility, to be familiar with these requirements.

The California Community Colleges Board of Governors (BOG)

The BOG sets policy and provides guidance for the 72 districts and 112 colleges that constitute the system. The 17-member board is *appointed by the governor* and formally interacts with state and federal officials and other organizations. The board selects a chancellor to bring recommendations to the board on State policy decisions.

The BOG is designed to strengthen a system of communications and policy development to ensure the quality and effectiveness of community college operations and programs throughout the state of California. The line of authority of the BOG over individual college districts is defined as "providing leadership and direction." Specifically, the BOG has the greatest influence in setting minimum standards and evaluating the fiscal health of districts. The BOG works with, and is itself directed by, the state legislature, the ultimate authority over all public education in the State. College trustees are mindful of the oversight of the BOG and are careful to follow their recommendations.

Community College League of California

The Community College League of California is a nonprofit public benefit organization. Membership (with voluntary fees) consists of the 72 local community college districts in California. Within the League are two major sub-organizations which share a common mission, staff and fiscal resources: the California Community College Trustees (CCCT) and the Chief Executive Officers of California Community Colleges (CEOCCC.) These boards of the League meet approximately six times a year. The League and its boards seek to propose, organize and disseminate educational issues that are significant to successful community college programs. Although the League is a significant leader in college issues, the organization is a voluntary membership association and has no direct authority over college districts.

Accreditation Commissions

In the United States, accreditation is the primary process for a college to be certified. The process is based on a “peer review” in which professional educators evaluate a college using ideal “ACCJC Standards.” Failure to adequately meet the Standards can result in a “loss of accreditation” and a subsequent closing of the college. The organization that accredits the colleges in California is the Accrediting Commission of Community and Junior Colleges (ACCJC). This organization has published Standards as a guide for colleges to obtain accreditation. One section of these standards applies directly to trustees. (Appendix A)

The commission stresses certain themes required for trustees. The college and/or the district must have student success as a primary goal. Missions, strategic plans, budgets, spending priorities, and practices must support the good of the institution. To meet this standard, the college must demonstrate honesty, integrity and agree to comply with ACCJC Standards and *policies for public disclosure*.

The Accreditation Commission has the authority to decertify a college. The consequence of a college becoming unaccredited is essentially a death sentence. Besides losing all state and federal funding, a student’s diploma becomes virtually worthless. At the time of this report, the City College of San Francisco has been told that its accreditation will be withdrawn in July, 2014. The California Community Colleges System plans to appeal the decision, but regaining accreditation will be a significant challenge.

Trustee Stipend, Compensation and Benefits

Trustees receive compensation in a variety of ways. The California State Education Code (72024) sets the monthly stipend for attendance at “all meetings” based upon the number of full time students in the prior school year. Since the districts in Orange County have between 25,000 and 60,000 students, this stipend ranges from \$700 to \$1000 a month. Each board has, however, written policies that will pay the stipend even if the trustee is absent due to a “hardship deemed acceptable” by fellow board members. Although this is the most visible and widely discussed “compensation,” it does *not represent the bulk of the financial benefits* from public funding to trustees.

Healthcare benefits for trustees, who work part time (estimated at less than 10 hours a week), are a significant benefit to the trustee, but costly for the district. District board policies allude to the health care benefits, but the dollar amount is not specified. Although the monthly stipend is set by the Education Code, the health benefit package to trustees and their families *is set by the trustees themselves*.

Travel benefits and reimbursement for trustees varies widely between districts and between trustees in the same district. Thousands of dollars are allotted by boards for travel, and again, the amounts are set by the trustees themselves. Other benefits may include dental coverage, mileage reimbursement, free entertainment/galas, computers and retirement plans.

Trustee Transparency and Ethics

The Ralph M. Brown Act

The Brown Act (Appendix B) notes that the “Public commissions, boards, councils and other bodies of local government agencies only exist to conduct ‘the people’s business.’ The people do not yield their sovereignty to the bodies that serve them. The people covet remaining informed in order to retain control over the governmental bodies they have created.”

The public retains certain rights in order to stay informed. The public may comment on agenda items before or during consideration by a legislative body. The public may obtain a copy of any recording made by the legislative body of its public sessions. All votes, except for those cast in permissible *closed session*, must be cast in public. No secret ballots, whether preliminary or final, are permitted. Later, the board must publically report on final action taken in a closed session. If final action is taken, with respect to contracts, settlement agreements and other specified records, the public may receive copies of such records upon request. Materials provided to a *majority of a board* which are not exempt from disclosure under the Public Records Act must be provided, upon request, to members of the public.

Overwhelmingly, the majority of board decisions must be made public. However, there are certain specific Brown Acts Exceptions that are intended to protect individual privacy and to allow for the orderly operation of the college district. The restrictions are few and well defined according to the State Attorney General’s Office. Although the Brown Act provides minor exceptions, the intent of the law is to ensure an open and transparent government.

California’s Political Reform Acts (CPRA)

The California Legislature stated that access to information concerning the conduct of the public’s business is a fundamental and necessary right for every person in the State. Cases interpreting the CPRA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government.

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public unless there is a specific reason not to do so. The public may inspect or obtain a copy of identifiable public records. When a record contains exempt material, it does not necessarily mean that the entire record may be withheld from disclosure.

There are two recurring interests that justify most of the *exemptions* from disclosure. First, several CPRA exemptions are based on a public official’s right to privacy (e.g., privacy in personnel, medical or similar records.) Second, a number of disclosure exemptions are based on the government’s need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, records related to pending litigation, and preliminary notes or memoranda.)

The fact that information is in a personnel file does not necessarily make it exempt information. Information such as an individual’s qualifications, training, or employment background, is

generally *not* exempt. The Grand Jury found that the, *the gross salary and benefits of state and local officials are often found in various public records.*

In order to withhold a record, a district must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. *A particular agency's interest in nondisclosure is of little consequence in performing this balancing test; it is the public's interest, not the agency's that is weighed.*

California's Fair Political Practices Commission (FPPC)

CPRA formed the Fair Political Practices Commission (FPPC) to help regulate campaign reforms. A candidate or officeholder who has a campaign committee, or who has raised or spent or will raise or spend \$1,000 or more during a calendar year, is required to periodically file a FPPC Form 460 with the local jurisdiction. The Form 460 is also required if \$1,000 or more will be raised or spent during the calendar year at the behest of the officeholder or candidate. The form is divided into sections that account for monetary contributions, gifts, campaign expenditures and loans, etc. Copies of these forms are available for public review at the Orange County Registrar of Voters Office for districts and county elections. (Appendix E)

The FPPC, additionally, depends upon the public to be watchful citizens of politics and government. Enforcement, that may include penalties, begins with a complaint to the FPPC. Any member of the public may file a complaint with the FPPC. According to the FPPC website, "If you have any questions regarding the information required by the complaint form, do not hesitate to call and speak with a Political Reform Consultant in the Commission's Enforcement Division 916-322-5660 and press 1 or toll free at 866-ASK-FPPC and press 1. Often, discussing your complaint with a consultant will expedite its processing and resolution."

Assembly Bill 1234 (AB 1234)

"Sunlight is the best disinfectant."

— William O. Douglas

Sunshine laws are designed, as in the above quote, to require openness in government and make official actions *clean*. This transparency is generally credited with reducing bribery, government corruption and conflicts of interest. An open and transparent government is often described as necessary to maintaining a democracy. This principle has led to the passage of freedom of information legislation and the movement for government accountability. California Assembly Bill 1234 (AB 1234) is designed to give the public confidence in the actions of public officials.

AB 1234 requires that if a local agency provides any type of compensation, salary or stipend that reimburses the expenses of a member of its legislative body, then that local agency's officials must receive "training in ethics." The law is aimed at legislative bodies such as cities, counties and special districts. Although community college trustees are not *required*, by this law, to complete the training, the nature and responsibility of a trusteeship makes the training valuable.

Basically, a public official should not participate in a decision (including trying to influence a decision) if the official has financial or, in some cases, other strong personal interests in that decision. A public official's decision should be based solely on what best serves the public's interests. The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Having a conflict of interest does not imply that a public official has done anything illegal, it is designed to *reveal a potential vested interest* in a decision.

Laws are designed to set minimum standards, while ethical standards are the public's higher expectation. The Institute for Local Government has outlined several areas of ethical expectations. Basically, trustees must be individually mindful of decisions related to:

1. Personal Financial Gain – income, personal value, future employment, future lobbying
2. Perks – gifts, speaking fees, reimbursements, political acts, gifts of public funds
3. Transparency – economic interests, campaign donations, Brown Act, Public Records Act
4. Merit-Based Decisions – loans, vote trading, conflicting loyalties

The California State Controller web site provides the latest facts and figures on the State's fiscal condition, including detailed monthly cash reports, charts, tables, and news announcements that help make financial information more transparent and understandable.

The Controller's Office maintains another website (Appendix E) known as the "Government Compensation in California (GCC) Website. The site contains salary and compensation information for public entities in California, including 58 counties, over 450 cities, more than 2900 special districts and more than 90 institutions of higher learning. This is the site to locate information on salary and compensation for employees of community colleges.

To further this transparency effort, the Controller has additionally asked top public employees to go beyond the minimum requirements of State disclosure laws and post annual personal Statements of Economic Interests on the Controller's Web site. This form is commonly called "Form 700." More information on State economic disclosure and conflict of interest rules, are available on the web site of the California Fair Political Practices Commission in Appendix E.

METHOD OF STUDY

The 2013-2014 Orange County Grand Jury directed this study to include all current and recently retired Orange County community college trustees. Additional financial information was gathered concerning the current and former Chancellors of each of the districts. The Rancho Santiago Community College District was not an active part of this study. The study does not include compensation benefits paid to trustees during retirement or projected pension plans. A majority of the research focused on the 2012-2013 fiscal year, however, additional data was

reviewed for consideration as far back as January 2000. Each college district has one or two “Student Trustees” who were not included in this study. The method of study included the following process. The Grand Jury:

A. Reviewed

1. Previous Orange County Grand Jury reports on compensation studies.
2. Studies focused on school and college districts.
3. Community College Board Policies, By-laws and Administrative Regulations.
4. Registrar of Voters campaign contributions reports. (Form 460)
5. Community college candidates campaign materials.
6. The Chancellor’s employment contracts.
7. Media reports and news articles on the topic.

B. Interviewed

1. Community college faculty, staff, and administrators.
2. Former community college administrators and trustees.
3. Candidates for positions of community college trustees.
4. Professional educators and scholars.

C. Studied

1. Official Responses to selected Grand Jury reports.
2. State of California official reports and studies.
3. State of California legal opinions, appropriate laws and regulations.
4. Community college websites.
5. Trustee spending on travel and reimbursements.

D. Surveyed

1. Community college administrators.
2. Current community college trustees.
3. California community college websites outside Orange County.

E. Researched

1. Community college district compliance with the California Brown Act.
2. Community college district compliance with the California Public Records Act.
3. Best practices and model procedures for Board policies and governance.
4. District budgets, trends, and projections.

F. Attended/Visited

1. Meetings of the community college trustees and/or reviewed video recordings.
2. Community college district offices.

ANALYSIS

The community college districts in Orange County are a major economic, social and political force. Twenty six trustees, serving four year staggered terms, represent the interests of hundreds of thousands of students *and* the three million residents of Orange County. Analysis indicates that the public doesn't understand how this one billion dollar industry operates and trustees are not well known by their own constituents. Elementary and high school board meetings are frequently well attended by students, parents and community members. Community college board meetings, however, often have a very small audience. College districts are funded almost entirely by property taxes, yet, the public is unaware of their district's trustees and are unaware of district spending priorities. Together, this circumstance has the potential for inappropriate spending decisions.

The Grand Jury concluded that being a trustee requires fewer hours than a conventional part-time job. Part-time employment in schools and college districts for non-faculty positions is usually defined as 15 to 20 hours per week. Trustees themselves estimated that they work 10 or fewer hour per week on college business. The Orientation Guide for New Trustees that is published by the Community College League of California estimates that trustees spend between two and 10 hours per week on trustee duties. The Grand Jury did not include undocumented "trustee hours" spent at home reading about college business. The Grand Jury's conclusions are that the actual work hours are few and the responsibilities are tremendous. But for a part time job, the financial remuneration is quite substantial.

Trustee Responsibilities

Trustees have the distinction above legislators, representatives, councilors or other public officials, to act in the best interest of the district. The oath of office includes terms such as: support, defend, faith and allegiance. The trusteeship has a high level of public expectation for, obviously, *trust*. The office is also, by design, intended to be non-partisan. Contrary to the best interests of the college district, trustees have expressed support and have been actively supported by political parties. Political parties, by their need for wide appeal, cannot reflect the diverse needs of individual college communities. There is an apparent use of the community college trustee office as a "stepping stone" for candidates with a declared interest in a higher political office. Although not illegal, trustees have not been forthcoming in sharing that their interest in being a trustee is only as a way station for another office. Several trustees have pursued another office to the dismay of faculty leaders. On a recent occasion a trustee was simultaneously campaigning for the position of trustee while campaigning for the State Senate.

Trustees are required by law to act in the best interest of the community college district. Partisan politics requires loyalty to a political party that might be directed by leaders on the state or national level. The conflict arises when a political party focuses on a national issue that may have little or nothing to do with the education of a local community. There have been reports of political party pressure to select certain members to the position of Board President in other

districts. Unfortunately, party politics *is* influential in some college district matters. On the plus side, the three college districts under this study did not report any Brown Act violations.

The Grand Jury reviewed California Campaign Forms 460 filed by trustees with the Orange County Registrar of Voters. Form 460 is used to report campaign income, expenditures and other financial accounting. This information was cross referenced with individuals and companies that have contracts with the college district. As noted before, trustees must vote to approve all expenditures. Did trustees vote to expend college district funds to campaign contributors? *The answer is yes and more than once.*

Faculty and employee unions along with individual employees contributed campaign donations to trustees in all three districts. Other labor unions were also supporting trustees to various degrees. Political parties and their Political Action Committees (PAC) contributed large amounts but not evenly among trustees. The Grand Jury was concerned by contributions from individuals and firms that had medium size contracts for service with the district. It appears that district lobbyists, attorneys and other consultants have made major contributions to one or more trustees in districts. More than one trustee has had a “conflict of interest” by approving district contracts with a business owned by contributors.

Campaign budgets have soared in recent years. Trustees regularly spend tens of thousands of dollars to get re-elected. In one case, a trustee *started* the campaign with a \$200,000 budget. Form 460 serves the best interest of the public by revealing the source of trustee campaign donations.

New Trustees are informed by workshops, publications and fellow long-term trustees to “support each other.” The pressure to be part of “the team” misdirects trustees away from their primary objective to act in the best interests of the district. The United States Military Academy has set an ideal ethical standard. The Cadet Honor Code (CHC) is at the center of forming leaders with character. The CHC states "A Cadet will not lie, cheat, steal or tolerate those who do." Those last few words indicate that one is not just responsible for one’s own behavior, but that the organization’s integrity is dependent on everyone living up to the highest standard. Trustees are managing the asset on behalf of the community. Also, a trustee is one of several other trustees on the same board for a college district. Therefore, it is also a trustee’s responsibility to ensure that fellow trustees are also acting in the best interest of the district.

The Grand Jury found repeated instances in which trustees contributed money to each other’s campaigns. During the same period, trustees approved travel expenses for each other. Also, according to campaign and district records, trustees have approved district contracts to campaign donors.

Trustee Compensation

Trustees are entitled, by law, to a reasonable compensation for services to the district. However, the public has a vested interest to know the level of that compensation. This is at the heart of

transparency in government. Trustee compensation and benefits are a topic of conflicted reasoning. The common answer to why trustees seek office is to serve the public. No mention is made of the stipend, generous health insurance premiums, travel reimbursements, perks and other benefits. However, when these benefits are questioned or become the source of public astonishment, the answer is always the same. Trustees need to be well compensated in order to attract highly qualified candidates. However, this information on *how well* trustees are compensated is not readily available to the public.

The district's public affairs department also defends the generous compensation of stipend, health benefits and travel expenses. Spokespersons contend that these benefits are necessary to "attract good candidates to run for the office of college trustee." Contrary to this statement was the overwhelming response in the trustee survey. Not one trustee mentioned an interest in running was for the "generous compensation or health benefits." Trustees reported in the Grand Jury Survey that their reasons in running for the board of trustee were to:

1. Promote the goals and interest of the college
2. Serve the community and taxpayers
3. Use their knowledge and experience
4. Respond to friends when asked to run

The trustee stipend (approximately \$700 to \$1000 month) is the most quoted "compensation" for the position of trustee. This amount is for attending one or two meetings of the board that may last only a few hours each. But this is the proverbial tip of the iceberg. What is generally not known are the other areas of compensation. (Table 2) A trustee may have a district paid health, dental, life and pension plan that amounts to thousands of dollars per year. This amount varies by district and some trustees (to their credit) have waived this benefit. In the Coast district, for example, this amount exceeds \$15,000 per trustee per year. Insurance premiums are expensive, and if extended to a trustee's spouse and family, this can cost the district thousands of additional dollars.

Table 2: Compensation Available to College Trustees

Stipends
Health Plans
Dental Plans
Pension Plans
Life Insurance
Travel Expenses
Personal Computers
Mileage Reimbursement
Home High Speed Internet
Social Security/Medical

Office Space/Equipment
Free Tickets - Galas/Dinners
Other Perks and Benefits

Trustee travel expenditures are one area of the district budget in which individual trustees approve the most benefits for themselves. Each year, the Board sets aside an approved level of spending for itself for travel involving conferences, meetings and workshops. Popular destinations include places such as Washington DC, New York, Florida and Canada. The Grand Jury found an astounding range of expenditures from district to district and among trustees within the same district. Each district expended thousands of dollars by sending multiple trustees to the same conference. A more cost effective system is to send just one trustee as a representative.

Expenditures were justified by district personnel as insignificant when compared to the multimillion dollar district budget. This is *not* the prescribed reasoning by ethical standards, professional organizations or the accreditation commission. All expenditures must be justified by “what is the value to the district.” As a valuable tool for comparison, the Grand Jury determined that to add one more class of students to the college semester schedule would cost about \$3,000. Therefore, each time a trustee spends \$3,000 on a trip for airfare, resort hotel rooms, and in one case a \$200 dinner, 30 fewer students are denied a class. Thirty fewer students may not graduate on time.

The three tables below examine eight years of trustee travel expenses. The highest trustee column records the most expenditure for a single trustee. In several cases, it was the same trustee year after year.

Table 3: NOCCCD Trustee Travel Expenses

Trustee Travel Expenditures NOCCCD (rounded to hundreds)		
	Expenditure	Highest Trustee
2005-2006	\$8,100	\$1,900
2006-2007	\$4,700	\$1,200
2007-2008	\$6,200	\$4,000
2008-2009	\$6,700	\$2,200
2009-2010	\$9,700	\$3,800
2010-2011	\$9,800	\$3,600
2011-2012	\$8,400	\$3,400
2012-2013	\$12,700	\$6,500
Total	\$66,300	\$26,600

The North Orange County Community College District had an eight year total expenditure for travel of more than \$66,000. This amount was within the same range of two other college districts. Although there were major state-wide budget cutbacks to education since 2008, the NOCCCD trustee travel expenditures slightly increased during the same period. The \$12,700 spent in 2012-2013 was the largest amount since 2005. In two different years, one single trustee spent more than 50% of the total board budget for travel. Some individual trustee expenditures showed remarkable restraint. There were 16 instances in which trustees did not spend a single dollar of tax money on travel expenses. This

is a remarkable individual choice by trustees considering that this savings was then available to be used directly for the benefit of students.

Table 4: SOCCCD Trustee Travel Expenses

Trustee Travel Expenditures South Orange County CCD		
	Expenditure	Highest Trustee
2005-2006	\$18,000	\$11,500
2006-2007	\$9,600	\$7,100
2007-2008	\$19,700	\$15,100
2008-2009	\$13,300	\$10,900
2009-2010	\$4,200	\$3,300
2010-2011	\$4,400	\$1,900
2011-2012	\$4,000	\$3,900
2012-2013	\$4,100	\$1,500
Total	\$77,300	\$55,200

The South Orange County Community College District also exhibited interesting trends. Since the budget down turn of 2008, trustees radically trimmed their own travel budgets! As displayed on Table 4, the trustees, to their credit, slashed more than \$9,000 from their 2009-2010 travel spending and maintained around \$4,000 in spending for the following years. One sorry point occurred during the 2005-2008 years. One trustee charged travel expenses of more than \$44,000 over a four year period! The Grand Jury found that trustees often traveled to conferences in places that are near the homes of family members. Although it is not illegal to conjoin business with personal travel, the Grand Jury questions whether the same conference

experiences were available locally or within California. *Another SOCCCD trustee spent just \$95 over the same four year period.*

Table 5: Coast CCD Trustee Travel Expenses

Trustee Travel Expenditures Coast CCD		
	Expenditure	Highest Trustee
2005-2006	\$15,200	\$7,500
2006-2007	\$17,900	\$6,600
2007-2008	\$38,400	\$19,800
2008-2009	\$20,100	\$10,700
2009-2010	\$14,600	\$4,000
2010-2011	\$16,400	\$6,200
2011-2012	\$19,800	\$7,300
2012-2013	\$17,900	\$10,100
Total	\$160,300	\$72,200

The Coast Community College district had the largest total trustee travel expenses over the eight year period. More than \$160,000 of tax dollars were charged to the district, with a single year high in 2007-2008 of \$38,400. The Grand Jury believes that this is excessive especially since the Coast District has only *five* trustees (the other three college districts have seven trustees each). Of particular concern to the Grand Jury is the inadequate level of documentation and record maintenance that was discovered in reviewing expense reports. Trustee requests for reimbursement were not regularly signed off by the Division Chair or Business Manager. Frequently, meal expenses exceeded daily

limits as defined by Board Policy. In four of the eight years, a single trustee spent approximately half of the entire Board budget for travel. In one case, a college “Foundation” was charged and

paid for a trustee *laundry bill*. Foundations collect money “to support students through scholarships, endowment and other financial programs to expand the capacity to meet the diverse needs of students and the community.” Foundations collect private donations to support students, not trustees. Foundations also paid for trustees to attend galas and award dinners.

The Grand Jury found information concerning all district spending priorities difficult to ascertain. Trustee travel expenditures is published and available, but it is buried in a large line item budget print out. Better access to trustee expenses is necessary.

Trustees have the sole discretion to fund themselves for benefits and reimbursements. The Grand Jury found that most trustees are not knowledgeable or even inquisitive about fellow trustee spending habits. Added to that is the propensity to keep specific information about trustee spending obscured to the public. Trustees who travel to distant out-of-state conferences and expensive conferences, while at the same time visiting relatives, should be readily transparent to the public. It’s not illegal, but the expense in lieu of cuts to student programs should be carefully evaluated as being more important than student programs. Arguments that trustees need to travel to distant conferences in Texas, Florida, and New York, should be weighed against equally valuable conferences in Anaheim, Long Beach or Los Angeles. Traveling 2,500 miles to Washington DC to meet with a Congressional representative must be weighed against taking a 20 minute car ride to the local congressional district office.

Trustee Transparency

“Every single political corruption case I’ve ever done has been fundamentally a problem of the public not knowing what’s going on and not being engaged. I think you need to have people looking over your shoulder ... to make sure those cliques don't develop . . . That's when you don't have that light shining that that happens.”

- Max Huntsman, Los Angeles County Inspector General

Nineteen individual surveys were sent to the North, South and Coast college district trustees. Fifteen were returned, while four trustees did not provide a response. One would think that elected trustees would be highly protective of personal information about themselves. Paradoxically, trustees freely divulge very personal information. District websites and campaign literature offer detailed information about trustees, however, most information is irrelevant to the responsibilities and duties of a trustee.

The district website contains personal information about friends, family, and religion. Little information is provided about *relevant trustee performance*. The following information is proudly shared on the district website:

1. Marital status and the name of spouse
2. Spouse occupation

3. Names, gender and ages of children
4. Religious affiliation and offices held
5. Military rank and veteran status
6. City of residence
7. Names of former and current employer
8. Degrees, schools and colleges attended
9. Membership in professional organizations
10. Membership in fraternal organizations
11. Names of friends and heroes
12. Association with other politicians
13. Awards and honors
14. Youth coaching experience
15. Foreign travel experience

One trustee *did* provide information about being an elected representative of a political party committee. This information *is* relevant to residents and voters of the district who are concerned about potential outside political influence.

College trustees in California are elected to four year terms. In essence, the voters are giving the trustee a four year contract after which the trustees will be “evaluated” and possibly reelected for another four year term. In order to make a meaningful vote, members of the community are entitled to know how the trustee has acted in office. This requires transparency.

In an article written for the Orange County Register on December 4, 2013, a compelling argument was made for transparency. The article stressed that:

Public financial information – revenue and expenditures – reflect priorities and values. Spending authority is a powerful tool to advance critical public goals in health, education, public safety and economic development. From the public’s perspective, the value of these services is determined by linking the cost of each service to its benefit.

There are two points here. First, a district, by definition, spends its money on what is valued. Trustee travel expenses to resorts, while cutting student classes, is an example of what is valued. Cutting trustee travel and using the unspent revenue to keep the college library open two extra hours is another example. The second point is equally important. Every tax dollar spent must be weighed against its benefit. Spending should not be justified on the basis that the cost is small when compared to the total district budget. The Grand Jury read several statements from college district officials that concluded, “Travel budgets [for trustees] “represent a very small portion of the total anyway.” What is important is how did the district benefit from a five day \$6,000 trip?

A democratic republic is often considered the best form of government if supported by the principle of “open government.” In public service, the pursuit of self-interest at the expense of

the public's interest is fundamentally unethical. Ethics is what one ought to do regardless if it is permissible or even legal. Ethics is a higher standard that elected officials, by the nature of serving the public trust, must strive to exceed. The community is entrusting trustees with its children's education and scarce tax dollars.

There is little evidence that trustees have received extensive training in ethics. There is some evidence that they are not familiar with their own ethics policies. Rather, statements made to the Grand Jury show conformity to the lowest standard – “it's OK, it's legal” or “We will follow the law.” Public officials need to aspire to the higher level of ethical behavior.

There is also a weakness in the system of checks and balances against abuses of power. Chancellors frequently do not question the self-spending expenses of trustees who hire, fire and evaluate those same chancellors. During the last eight years, a number of Orange County chancellors have been fired or “encouraged” to retire. Although the chancellor's contract is the single most important district document, public access to the document is difficult to obtain.

The fact that it's difficult to write enough laws to protect the public from all such abuses is exactly why it's so important for conscientious local officials not to treat compliance with the law as the end in itself. When an agency has a robust culture of ethics, members of the local agency team embrace the notion that the law creates *minimum* expectations — not the level to which should be aspired.

Each college district in Orange County has an “Ethics Policy.” However, once on a board, the organization's commitment to ethics needs to be part of each trustee's on-going orientation and evaluation. Selection as Board President should be based upon exemplifying the highest standards of being a trustee. The Grand Jury found that the position of Board President is sometimes used to reward political party membership and/or punish trustees who do not bend to the wishes of other trustees.

By establishing a broad, objective disqualification standard, the Fair Political Practices Commission attempts to cover both actual and apparent conflict-of-interest situations between a public official's private interests and his or her public duties. It is not necessary to show actual bias on the part of the official and it is not even necessary to show that an official's assets or the amount of his or her income will be affected by a decision in order to trigger disqualification.

The Grand Jury makes a distinction between “conflict of interest” and an “interest.” The Grand Jury believes that every trustee should reveal an “interest” in the decision of the Board as a matter of full disclosure. It would then be the decision of a board to decide if this interest has risen to the level of a conflict. As currently situated, only individual board members self-evaluate if a campaign contribution influenced their decision. Greater transparency is needed.

At this point it is important to define “conflict of interest.” According to the California Attorney General's Office Report:

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official’s agency may be prevented from even making the contract. (Appendix C)

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Community Colleges in Orange County, the 2013-2014 Orange County Grand Jury has arrived at nine principal findings, as follows:

F.1. District Trustees by their title, oath of office and non-partisan designation are responsible for a high standard of conduct, free from outside influence and charged with the duty to act in the best interest of the district.

F.2. The trustee office is, by design, a part time position and the overwhelming management and operation of the district, in consultation with employee senates, is delegated by the board to the chancellor.

F.3. Trustees govern under guidelines, restraints and recommendations provided by the California Legislature, State Chancellor’s Office, accreditation commissions and professional membership organizations.

F.4. Trustees are not well known within their own district, and govern in meetings that are often not well attended. This was based on surveys, interviews and site visits.

F.5. Trustees can have large campaign budgets and may have received contributions from individuals and firms that do business with the district.

F.6. There is a lack of ethics training received by trustees and there is minimal oversight over their actions and behaviors, particularly their spending habits for travel.

F.7. Trustees may receive generous benefits that are often approved by themselves. Examples:

- a. Paid health, dental and life insurance benefits for trustees and their families,
- b. Large travel and conference reimbursements,
- c. A variety of miscellaneous stipends, allowances, and expenses.

F.8. Trustees provide extensive personal information on the district website but little information about their *performance in office*.

F.9. Laws, regulations, guidelines and ethics require trustees to be fully transparent in all aspects of their actions, behavior, and performance. The actions of trustees should be readily available for public review.

F.10. District chancellors are some of the most highly paid public officials in Orange County, yet their salaries or contracts are not easily accessible to the public.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Community Colleges in Orange County, the 2013-2014 Orange County Grand Jury makes the following eight recommendations:

R.1. The chancellor and trustees should complete an “Ethics Training” program similar to the requirements of California AB1234. A record of this should be maintained on the district website. **(F.1., F.2., F.3., F.5., F.6., F.7., F.8., F.9.)**

R.2. The chancellor and trustees should maintain a list (e.g. CA Form 460) of campaign contributions made to each member of the board during the previous four years. This list should be reported and updated on the district website in July and January of each year. **(F.1., F.5., F.6., F.8., F.9.)**

R.3. The chancellor and trustees should strongly consider advising the entire board of “potential” conflicts of interest on district contracts involving campaign donors from the previous four years. **(F.1., F.5., F.6., F.7., F.8., F.9.)**

R.4. The district board should develop a policy for the rotational selection of officers of the board. **(F.1., F.3., F.6., F.8., F.9.)**

R.5. The chancellor and trustees should report their total individual travel expenditures in a public meeting and on the district website. This should be reported four times each year. **(F.1., F.2., F.6., F.7., F.8., F.9.)**

R.6. Trustees should report, on the district website biography section, any official political party leadership positions. **(F.1., F.3., F.4., F.5., F.6., F.8., F.9.)**

R.7. The chancellor should report the value of all district compensation received by each trustee during the previous fiscal year. This should be reported at the first board meeting in September of each year and posted on the district website. **(F.1., F.4., F.6., F.7., F.9.)**

R.8. Strong consideration should be given to sending a copy of this 2013-2014 Orange County Grand Jury study and district responses to collaborating educational organizations. **(F.1., F.2., F.3., F.4., F.5., F.6., F.7., F.8., F.9., F.10.)**

- a) The appropriate accrediting commission agency,
- b) The California Community College Board of Governors and
- c) The California League of Community Colleges.

R.9. Strong consideration should be given to posting the chancellor's complete employment contract on the district's website to promote transparency. **(F.10.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Response Required:

Chancellor/Board of Trustees, Coast Community College District:

F.3., F.6., F.8., F.9.

Chancellor/Board of Trustees, North Orange County Community College District:

F.3., F.6., F.8., F.9.

Chancellor/Board of Trustees, South Orange County Community College District:

F.3., F.6., F.8., F.9.

Response Required:

Chancellor/Board of Trustees, Coast Community College District:

R.1., R.2., R.3., R.5., R.6., R.7., R.8., R.9.

Chancellor/Board of Trustees, North Orange County Community College District:

R.1, R.2, R.3., R.5., R.7., R.8., R.9.

Chancellor/Board of Trustees, South Orange County Community College District:

R.1, R.2, R.3., R.4., R.5., R.6., R.7., R.8., R.9.

APPENDIX A: Excerpts From the ACCJC Standards for Community College Trustees

1. Faculty and administrators have a substantive and clearly defined role in institutional governance and exercise a substantial voice in institutional policies, planning, and budget that relate to their areas of responsibility and expertise. Students and staff also have established mechanisms or organizations for providing input into institutional decisions.
2. The institution advocates and demonstrates honesty and integrity in its relationships with external agencies. It agrees to comply with Accrediting Commission Standards, policies, and guidelines, and Commission requirements for public disclosure, self-evaluation and other reports, team visits, and prior approval of substantive changes.
3. The role of leadership and the institution's governance and decision-making structures and processes are regularly evaluated to assure their integrity and effectiveness. The institution widely communicates the results of these evaluations and uses them as the basis for improvement.
4. The institution has a governing board that is responsible for establishing policies to assure the quality, integrity, and effectiveness of the student learning programs and services and the financial stability of the institution.
5. The governing board is an independent policy-making body that reflects the public interest in board activities and decisions. Once the board reaches a decision, it acts as a whole. It advocates for and defends the institution and protects it from undue influence or pressure.
6. The governing board establishes policies consistent with the mission statement to ensure the quality, integrity, and improvement of student learning programs and services and the resources necessary to support them.
7. The governing board has ultimate responsibility for educational quality, legal matters, and financial integrity.
8. The governing board's self-evaluation processes for assessing board performance are clearly defined, implemented, and published in its policies or bylaws.
9. The governing board has a code of ethics that includes a clearly defined policy for dealing with behavior that violates its code.

APPENDIX B: Key Provisions of the Brown Act

Public commissions, boards, councils and other bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.

There are certain specific Brown Acts exclusions that are intended to protect individual privacy and to allow for the orderly operation of the college district. They restrictions are few and well defined. According to the State Attorney General's Office, these restrictions are:

The Board may conduct a closed session to discuss an appointment, employment, evaluation of performance, discipline or dismissal of an employee.

The Board may meet with law enforcement or security personnel concerning the security of public buildings and services.

The Board may meet in closed session to receive advice from its legal counsel concerning existing litigation, initiating litigation, or situations involving a significant exposure to litigation.

The Board may meet in closed session with its negotiator to consider labor negotiations with represented and unrepresented employees. Issues related to budgets and available funds may be considered in closed session, although final decisions concerning salaries of unrepresented employees must be made in public.

The Board may meet in closed session with its negotiator to consider price and terms of payment in connection with the purchase, sale, exchange or lease of real property.

APPENDIX C: Key Provisions of the Political Reform Act of 1974 (Summary)

Overview

The people of the State of California enacted the Political Reform Act of 1974 (“the Act”), by an initiative measure in June 1974. It is the starting point in any consideration of conflict-of-interest laws in California. Chapter 7 of the Act (§§ 87100-87500) deals exclusively with conflict-of-interest situations. The Act also limits the receipt of specified gifts and honoraria, which is addressed in Chapter II of this Guide.

One of the declarations at the outset of the Act forms the foundation of the conflict-of-interest provisions: “[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (§ 81001, sub d. (b).) Further, the Act sets up a mechanism whereby “[a]ssets and income of public officials which may be materially affected by their official actions . . . [are] disclosed and in appropriate circumstances the officials . . . [are] disqualified from acting in order that conflicts of interest may be avoided.” (§ 81002, sub d. (c).)

The Fair Political Practices Commission (“FPPC”) is the agency primarily charged with the responsibility of advising officials, informing the public, and enforcing the Act.

The Basic Prohibition

Under the Act, public officials are disqualified from participating in government decisions in which they have a financial interest. The Act does not prevent officials from owning or acquiring financial interests that conflict with their official duties, nor does the mere possession of such interests require officials to resign from office.

The Act’s disqualification requirement hinges on the effect a decision will have on a public official’s financial interests. When a decision has the requisite effect, the official is disqualified from making, participating in making, or using his or her official position to influence the making of that decision at any stage of the decision-making process.

By establishing a broad, objective disqualification standard, the Act attempts to cover both actual and apparent conflict-of-interest situations between a public official’s private interests and his or her public duties. *It is not necessary to show actual bias on the part of the official and it is not even necessary to show that an official’s assets or the amount of his or her income will be affected by a decision in order to trigger disqualification.* (emphasis added)

APPENDIX D: OC College Trustees and Political Affiliation

DISTRICT	TRUSTEE	PARTY	TERM ENDS
NORTH ORANGE CCCD (1)	Barbara Dunsheath	(D)	2014
NORTH ORANGE CCCD (3)	Jeffrey P. Brown	(D)	2014
NORTH ORANGE CCCD (6)	Donna Miller	(D)	2014
NORTH ORANGE CCCD (2)	Leonard L. Lahtinen	(D)	2016
NORTH ORANGE CCCD (4)	Molly McClanahan	(D)	2016
NORTH ORANGE CCCD (5)	Michael Matsuda	(D)	2016
NORTH ORANGE CCCD (7)	Manny Ontiveros	(R)	2016
SOUTH ORANGE CCCD (2)	Thomas Prendergast	(NPP)	2014
SOUTH ORANGE CCCD (4)	Nancy Padberg	(R)	2014
SOUTH ORANGE CCCD (5)	Marcia Milchiker	(R)	2014
SOUTH ORANGE CCCD (1)	David B. Lang	(R)	2016
SOUTH ORANGE CCCD (3)	Bill Jay	(R)	2016
SOUTH ORANGE CCCD (6)	James Wright	(R)	2016
SOUTH ORANGE CCCD (7)	Tim Jemal	(NPP)	2016
COAST CCD (1)	Jim Moreno	(D)	2014
COAST CCD (5)	David Grant	(D)	2014
COAST CCD (2)	Jerry Patterson	(D)	2016
COAST CCD (3)	Lorraine Prinsky	(D)	2016
COAST CCD (4)	Mary Hornbuckle	(R)	2016

Source: <http://ocpolitical.com>

APPENDIX E: Selected References

1. <http://www.cccd.edu/>

This site is the portal to the Coast Community College District website and contains a variety of information about the district, colleges, programs, administration and Board of Trustees.

2. <http://www.nocccd.edu/>

This site is the portal to the North Orange County Community College District website and contains a variety of information about the district, colleges, programs, administration and Board of Trustees.

3. <https://www.socccd.edu/>

This site is the portal to the South Orange County Community College District website and contains a variety of information about the district, colleges, programs, administration and Board of Trustees.

4. <http://rscdd.edu/>

This site is the portal to the Rancho Santiago College District website and contains a variety of information about the district, colleges, programs, administration and Board of Trustees.

5. <http://www.ocde.us/>

The Orange County Department of Education (OCDE) is a public education organization offering support services to 27 school districts and more than 600 schools and 20,000 educators serving over 500,000 students in Orange County. OCDE's personnel offer support, professional development, and student programs through its divisions and departments: Administrative Services, Alternative Education, Business Services, Career and Technical Education, Information Technology, Instructional Services, Legal Services, School and Community Services, and Special Education.

6. <http://www.cccco.edu/>

The California Community Colleges Chancellor's Office is led by Chancellor Brice Harris who serves as the CEO of the board of governors and oversees the executive vice chancellors and the vice chancellors of each division. Executive Vice Chancellor Steven Bruckman directs two divisions, Legal Affairs and Internal Operations. Deputy Chancellor Erik Skinner oversees the remaining divisions except the Office of Communications, which is under the direction of Vice Chancellor for Communications Paul Feist. The Chancellor's Office oversees matters pertaining to the board of governors, the Consultation Council, the annual budget and legislative process, communications to the general public and media, and the internal operations of the agency.

Karen Gilmer is the assistant to Chancellor Harris and can be reached at kgilmer@cccco.edu or by calling (916) 322-4005.

7. <http://www.sco.ca.gov/>

The California State Controller is the Chief Fiscal Officer of California, the ninth-largest economy in the world. Elected every four years, the Controller makes sure the State's \$100 billion budget is spent properly, helps administer two of the nation's largest public pension funds, and serves on 81 State boards and commissions. These are charged with everything from protecting our coastline to overseeing crime victim compensation.

8. <https://www.accjc.org/>

The Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges (ACCJC) accredits community colleges and other associate degree granting institutions in the Western region of the U.S. The ACCJC is one of seven regional accrediting commissions. The ACCJC is authorized to operate by the U.S. Department of Education through the Higher Education Opportunity Act of 2008.

9. <http://www.ccleague.org/>

The Community College League of California is a nonprofit public benefit corporation whose voluntary membership consists of the 72 local community college districts in California. Within the League are two major organizations which share a common mission, staff and fiscal resources: the California Community College Trustees (CCCT) and the Chief Executive Officers of the California Community Colleges (CEOCCC).

10. http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf

This is one of several sites that reproduces a copy of the Brown Act as prepared by the Office of the California Attorney General.

11. <http://www.fppc.ca.gov/forms/rev201208/460.pdf>

This site provides directions for completing California Form 460 to report campaign donations in excess of \$1,000 within one calendar year.

12. <http://www.ca-ilg.org/campaigning-office>

This site presents an article offering tips on running a clean campaign including the role of conduct codes. Also, information is provided concerning the additional challenges of running as a candidate and officeholder.

**ANNUAL REPORT ON JAILS
AND
JUVENILE DETENTION FACILITIES**



GRAND JURY 2013-2014

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

SUMMARY

In accordance with the requirements of the California Penal Code Section §919(b): *“The grand jury shall inquire into the condition and management of the public prisons within the county,”*¹ Since no State prisons exist in Orange County the Grand Jury felt it prudent to inspect the jails within the County. The 2013-2014 Orange County Grand Jury has toured and examined the following Orange County detention facilities.

1. James A. Musick Facility
2. Theo Lacy Facility
3. Central Jail Complex

As the impact of Assembly Bill 109 (AB 109)² that realigns inmates from the State to local jails continues to unfold, its mandate remains a challenge for Orange County. AB 109 was implemented to transfer low level offenders from state prisons to county jails. In the last quarter of 2013, on average, 1,000 beds per month were occupied by AB 109 inmates in Orange County. In the future, State funds will be divided among all 58 counties depending on how well each county lowers re-incarcerations for these particular inmates.

The four institutions housing juvenile offenders operated by the Orange County Probation Department are reviewed in the second part of this report, “Detention Facilities Report: Part II: Juvenile.”

REASON FOR STUDY

The Grand Jury is charged by the California Penal Code 919(b) to review all detention facilities in the County. The 2013-2014 Grand Jury focused on the five County operated facilities (this includes the two separate jails located inside the Central Jail Complex). This study covers the five jails that house adult inmates and ICE³ (United States Immigration and Customs Enforcement) detainees, which are operated by the Orange County Sheriff’s Department (OCSJ). These jails are all classified by the Correctional Standards Authority as Type II maximum security level facilities. This classification allows the jails to house sentenced and un-sentenced inmates.

¹ CALIFORNIA PENAL CODE: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=&hits=20>

² Assembly Bill 109 (AB 109): <http://www.cdcr.ca.gov/realignment/>

³ ICE: <http://www.ice.gov/index.htm>

BACKGROUND AND FACTS

The OCSD currently operates five jails: the Intake Release Center (IRC) and four additional housing jails.

FACILITY	BEDS
IRC	903
Theo Lacy	3442
Central Men’s Jail	1433
Central Women’s Jail	388
James A. Musick	1322

The Central Women’s Jail, a portion of the Men’s Jail, and the north compound of the James A. Musick Facility were previously closed due to a decreased jail population. The increase in the realignment inmate population required the OCSD to open both housing areas to accommodate housing and classification challenges.

The overall jail population varies daily and spikes on the weekends/holidays. OCSD jails are on average at 92 percent capacity with roughly 3 percent of beds unavailable due to separating the most serious offenders from the general inmate populace as well as beds that require renovations.

Jail Expansion

As part of its effort to mitigate the impact of the realignment inmate population increase on California counties, the State, by way of AB 900, created a competitive grant source for expansion and/or construction of new jail facilities. The OCSD entered into the grant application process, and on March 8, 2012, the Corrections Standards Authority (CSA) recommended that Orange County receive a conditional grant award of \$100 million for expansion of the Musick Facility in Irvine. CSA required the County to provide a 10 percent match, and CSA allowed the value of the land to mitigate that requirement. In November 2012, OCSD was awarded the \$100 million grant via AB 900 and is currently in the design phase of the 512 bed expansion project at the James A. Musick Facility. Additionally, OCSD recently received another \$80 million grant via SB 1022 to further expand the Musick Facility as part of a rehabilitation program which would add 312 more beds.

AB 109 Mandate

The AB 109 legislation, implemented in October 2011, shifts substantial incarceration oversight and funding from the State to its 58 counties. Motivated by a federal court order to reduce overcrowding in the state’s prisons, the legislation affords local government discretion in how to exercise AB 109 responsibilities. These include the mandate to locally sanction offenders convicted of less serious felony offenses and to manage most of the less serious offenders paroled from State prison by county probation departments. “California’s recent corrections

realignment, authorized under AB 109, is arguably the most significant change in the state's corrections system in decades."⁴

Effects of AB 109

With the implementation of Assembly Bill 109 in October 2011, the State of California greatly expanded the responsibilities of county governments in managing criminal offenders. The new responsibilities undertaken by the counties fall into three main categories:

1. Lower-level offenders convicted of non-sexual, non-violent, and non-serious crimes with no such crimes appearing in their criminal history records will now serve their sentences under county supervision rather than in state prisons. These offenders are often referred to as "non-non-nons," "triple-nons," "n3s," or 1170(h) felons.
2. Most offenders serving time in state prison for triple-non offenses will now, upon release from prison, be supervised by county probation departments rather than state parole authorities under a function known as Post-Release Community Supervision or PRCS.
3. Parole violators who reoffend (i.e., violate the terms of their release but do not commit a new felony) are no longer remanded to state prison but are sanctioned within counties by short stays in county jails or other forms of graduated sanctions instituted by local authorities.⁵

Realignment thus affords counties considerable discretion in exercising the new responsibilities. Thus, counties are free to rely heavily on the use of local jails, effectively transferring realigned populations from state prisons to local jails. Counties are authorized to choose from a number of available sentencing options, which include: a full jail term, house arrest, GPS monitoring, or a split sentence in which the offender serves a reduced jail term followed by probation (assuming that the jail sentence is successfully completed), and "short-term flash incarceration"⁶ for inmates who violate the terms of their conditional release. The options that counties choose depend in the short term on local jail capacity and, in many instances, court-ordered population caps. In the longer term, however, several factors are likely to influence how counties respond to the mandate of AB 109, including the particular characteristics of the: realigned offender population, ideological predisposition of local criminal justice officials, county residents who are served.

A number of factors will determine the extent to which county jail populations change as a result of realignment. Realigned felons are simply being transferred to local jails, where an increase in the total population at these facilities is equivalent to the reduction in the state prison population. However, counties have a number of options at their disposal which could lower the one-to-one relationship between the decrease in the state prison population and the increase in county jail population.

⁴ Magnus Lofstrom and Steven Raphael, "Impact of Realignment on County Jail Populations," June 2013:

http://www.ppic.org/content/pubs/report/R_613MLR.pdf

⁵ CA PENAL CODE SECTION 3450-3465: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=03001-04000&file=3450-3465>

⁶ Ibid

Jail Facilities

The **James A. Musick Facility** is a one-hundred acre minimum security facility known as the “The Farm.” The 1,322 bed facility is located in an unincorporated area of Orange County near the cities of Irvine and Lake Forest. The facility was originally opened in 1963 and was named in honor of James A. Musick, who was the Sheriff of Orange County from 1947 to 1975.

Originally, the facility held a maximum of 200 male minimum-security inmates and was referred to as the “County Industrial Farm” or the “Honor Farm.” Since 1986, the inmate housing capacity has increased to 1,322 and includes both men and women. Despite opposition from some local cities, the Orange County Board of Supervisors approved an application for \$80 million of state funds to build 384 additional beds at Musick. The first phase of construction is expected to start in May of 2016. The inmates and ICE detainees housed at the facility are considered to be a low-security risk and most are in jail for crimes such as driving under the influence, minor drug possession, burglary, failure to pay child support, and/or prostitution. Inmates and ICE detainees who have committed violent crimes, sex crimes or mayhem are not eligible for transfer to this facility.

The total staff of 140 at this facility consists of:

Personnel	
Sworn Personnel	
1	Captain
5	Lieutenants
12	Sergeants
64	Deputies
Non-Sworn Personnel	
10	Sheriff Special Officers
22	Correctional Services Assistants
18	Correctional Services Technicians
5	Correctional Farm Supervisors
2	Facility Maintenance Specialists
1	Officer Specialist

The **Theo Lacy Facility** is located in the City of Orange and is the largest jail facility in the County. It is adjacent to the Santa Ana River bed and covers approximately 11 acres of land between the Orangewood Children’s Home and the Orange County Animal Shelter.

The Theo Lacy Facility, with a maximum capacity to house 3,442 inmates, maintains the custody and welfare over a diverse inmate population ranging from those charged or sentenced for misdemeanor crimes to more serious felonies. Some have been sentenced and are awaiting transfer to State Prison.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Currently there are 3,442 beds (more beds were added to accommodate the influx of new inmates) with the current population of 3,272 as of October 15, 2013.

The Theo Lacy Facility is comprised of sworn and professional staff members who are employed in a variety of assignments to ensure the safe and efficient operation of this maximum security jail. Currently there is a total of 475 staff at this facility consisting of: ⁷

Personnel	
Sworn Personnel	
1	Captain
7	Lieutenants
24	Sergeants
61	Deputy Sheriffs II
246	Deputy Sheriffs I
Non-Sworn Personnel	
13	Sheriff Special Officers II
59	Correctional Services Assistants
2	Senior Correctional Service Techs
57	Correctional Services Technicians
1	Administrative Manager I
1	Facility Maintenance Specialist I
2	Office Specialists
1	Information Processing Specialist

Inmates incarcerated at Theo Lacy are classified into various housing locations depending on their past confinement history, current charges, criminal sophistication, and a host of other indicators. Once classified, inmates are housed in areas ranging from multiple bunk dormitories to one or two-man cells.

The **Central Jail Complex** (CJX) Division One consists of the Central Men's Jail (CMJ), Central Women's Jail (CWJ); Division Two consists of the Intake/Release Center (IRC), and Transportation Bureau. The two divisions make up the four bureaus that comprise the CJX and are interconnected by a series of tunnels and corridors which make efficient movement between each facility possible.

The Central Men's and Central Women's Jail opened in November of 1968 and are traditional linear style (cell block and dormitory) facilities which house both sentenced and pre-trial maximum-security inmates. These buildings house over 1200 inmates. The Intake/Release Center (IRC) opened in January of 1988. The IRC is responsible for all processes that involve arrestees being booked and released.

⁷ Questionnaire sent to all detention facilities covered in this report.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

The Transportation Bureau is an integral part of the Orange County Jail system. This bureau's responsibilities include, but are not limited to, transporting inmates 365 days a year, 24 hours a day, to other OCSJ facilities, e.g., court, work sites, hospitals, state prison, out of county jails and mutual aid response during major events. The transportation teams utilize a variety of vehicles which include buses, vans and cars to accomplish these tasks.

Santa Ana **Intake and Release Center** (IRC) is located in the Central Jail Complex. This facility contains five maximum-security housing modules. In addition to housing and processing new bookings, the IRC houses a substantial number of un-sentenced prisoners awaiting court hearings as well as those serving sentences.

The IRC has a capacity of 901 beds. The current population is 908 (additional beds having been added to accommodate influx of inmates) of which 404 are male and 497 are female. These numbers change daily with the intake and reassignment of new inmates.

The total personnel assigned to the IRC is 64, however, on an average shift, there are usually 52 personnel on duty. Classification and numbers of each (e.g. management, guards, staff, etc.) are:

Personnel	
Sworn Personnel	
1	Captain
2	Lieutenants
4	Supervisory
41	Deputy Sheriffs
Non-Sworn Personnel	
16	Staff

METHOD OF STUDY

Charged with the annual mandate to review the condition of the jails, The Grand Jury:

1. Visited Central Jail Complex, Theo Lacy Facility, and James A. Musick Facility twice: once for an overview of the operations and the second for a more detailed inspection.
2. Sent extensive questionnaires to the Captains of each jail facility.
3. Reviewed the operation of Health Care Services provided to inmates.
4. Reviewed the most recent inspection reports prepared by the California Board of State and Community Corrections.
5. Reviewed the public safety realignment legislation (AB 109) that alters the criminal justice system of California.
6. Examined budget information obtained from the Orange County Sheriffs-Coroner Department Financial/Administrative Services.

ANALYSIS

Sometimes problems aren't what they seem. For years, California has been facing the charge that prison overcrowding is illegal and inhumane, prompting the State Supreme Court to intervene.

California prisons are overpopulated by 9,600 felons; (Orange County Register 2013) the court ordered the number reduced to 137.5% of design capacity by Dec. 31, 2013.

Current County Statistics:

As of August 2012, the non-AB 109 level of serious offenders was 19%, while the AB-109 level of serious offenders was 40%. The non-AB 109 protective custody population was 12% while the AB 109 protective custody population was 18%.

AB 109 has had more assaultive inmates, more Americans with Disabilities Act (ADA) inmates, more mental issue inmates, more 2 and 3 strike offenders, more drug incidents though fewer suicidal inmates.

Use of force incidents have remained about the same for both groups.

For a one-month period from September 2012 - October 2012, AB109 inmates were disciplined at double the rate of non AB 109 inmates.

Major rule violations committed by AB 109 inmates were 31% fighting, 20% possession of contraband, 15% failure to obey a directive, 12% disturbance and 22% other violations.

Currently, system-wide there are 863 AB109 inmates in Orange County, 511 of which are housed in Theo Lacy, 107 housed in James Musick and 245 in the Central Jail. The inmate population fluctuates on a daily basis so jail staff must find temporary accommodations to house the overflow of the ever shifting population.

After touring all jail facilities, the Grand Jury surveyed the video systems at each jail, which range from severely outdated VHS tape technology, to touch screen operations. Each jail has a different system. This Grand Jury again found that all jails were lacking adequate video monitoring equipment to protect both the inmates and the staff. Recommendations by the previous **six** Grand Jury reports have not changed this fact. The current configuration in both the Theo Lacy and James Musick facilities are antiquated and ineffective. The jails are in desperate need of perimeter security cameras as well as in the housing corridors. The Booking Loop in the IRC still uses VHS technology with delayed playback! *With technology advancing at such a fast pace, prices of digital equipment and cameras are being reduced as new technology takes over.*

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

After conversations with jail captains, facility managers and the purchasing departments the Grand Jury found that the main problem with updating the current system is not necessarily the cost of the new video equipment, but rather the infrastructure and logistics in using digital technology. Many of the jails have thick concrete walls, which makes installation particularly complicated since today's DVR systems create a significant amount of heat. If these systems are not augmented by Heating, Ventilation, Air Conditioning (HVAC) technology, there is a greater risk of a DVR system to burn out prematurely.

The Grand Jury has chosen to focus on upgraded video surveillance as the highest priority for all five Orange County adult detention facilities.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the responses are to be submitted to the Presiding Judge of the Superior Court. The 2013-2014 Orange County Grand Jury has arrived at the following findings:

Based on its investigation of the condition and management of the detention facilities in Orange County, the 2013-2014 Orange County Grand Jury has arrived at two principal findings, as follows:

Penal Code Sections 933 and 933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

F.1. All the jails have inadequate video equipment. The video equipment itself is not the hindrance. *The cost to upgrade the infrastructure to accommodate new updated equipment is the limiting factor.*

F.2. Budget constraints have marginalized upgrading efficient video equipment, thus reducing adequate monitoring of inmates.

F.3. As the quickest fix to alleviate partial improvements, prioritize what jail facilities are most in need of upgraded surveillance and then fund each one accordingly until all five jails are completed.

F.4. The skill level of employees assigned to the five jails cannot currently support upgraded video systems. An upgraded system would require advanced training in audio/video equipment, software programming and security to monitor such an enterprise.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings of this report, the 2013-2014 Orange County Grand Jury makes the following recommendations:

R.1. Each of the five jails should be funded for upgraded video camera/recording equipment installed as soon as possible. **(F.1.)**

R.2. The Board of Supervisors should add a line item to the budget to include the training required to ensure competent employees who can oversee and maintain new video equipment. **(F.4.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff-Coroner, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) 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 therefore.

(b) 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.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

A response to findings **F.1.** through **F.4.** is required from Orange County Sheriff-Coroner.

A response to findings **F.1.** through **F.4.** is required from Orange County Board of Supervisors

A response to recommendations **R.1.** and **R.2.** is required from Orange County Sheriff-Coroner.

A response to recommendations **R.1.** and **R.2.** is required from Orange County Board of Supervisors.

COMMENDATIONS

In every step, the Grand Jury's jail tours were handled professionally and confidently. The Grand Jury was met with warmth and each facility was eager to convey jail function and responsibilities.

The Grand Jury would especially like to commend the leadership and staff at Theo Lacy for a willingness on both tours to provide The Grand Jury with all requested information for this report submitted to the facility in a questionnaire format. Responses were returned both timely and hand delivered!

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

The informative tours at James Musick were equally professional. The staff enlightened the Grand Jury on the approved expansion plans set for 2016 and how this will alleviate the space and overcrowding the State's realignment program has burdened County facilities with.

JUVENILE DETENTION FACILITIES

SUMMARY

The Orange County Probation Department currently operates four juvenile detention and treatment facilities in the County. There were originally five facilities. However, Los Piños, which was located on the Ortega Highway in Lake Elsinore, was closed in 2009, though it continues to be leased by the Orange County Probation Department. The 2013-2014 Grand Jury traveled to each of the four facilities in use today (below) and was given presentations by senior staff.

1. Juvenile Hall
2. Youth Leadership Academy
3. Youth Guidance Center
4. Joplin Youth Center

The Grand Jury determined that all four facilities had many similar needs. There was a need for a new gym, medical facilities, a longer commitment than the typical ninety days to take advantage of the numerous programs offered and aftercare programs. More efficient, up-graded video systems were also needed at all of the facilities.

REASON FOR STUDY

The Grand Jury is charged by the California Penal Code 919(b) to review all detention facilities in the county. Part II of the Annual Report on Jails focuses on four juvenile detention and treatment facilities in Orange County.

This study is in conjunction with the Annual Report on Jails as mandated by the California Penal Code Section 919(b) requiring the Grand Jury to "...inquire into the condition and management of the public prisons within the county." The 2013-2014 Grand Jury opted to include the Juvenile Detention Centers as an addendum to the jail report since Juvenile Detention lies within the purview of the Grand Jury as well.

BACKGROUND AND FACTS

During 2013-2014, the Orange County Probation Department operated four juvenile detention centers. They are as follows:

1. Juvenile Hall
2. Joplin Youth Center
3. The Youth Leadership Academy
4. The Youth Guidance Center

Another detention center, Los Piños, was closed in 2009, though the land and buildings continues to be leased by the Orange County Probation Department in the event the facility may be reopened.

The intent of the Probation Department is to help prepare juvenile offenders to be more productive and law abiding in their communities when they leave the program.

The Probation Department strongly believes that effective rehabilitation is better than punishment and incarceration. Described in this report, the Probation Department has numerous programs to reduce recidivism and to give juvenile offenders the opportunity to prepare for a successful and productive return to society.

Orange County Juvenile Hall

Juvenile Hall is located on City Drive in the City of Orange. The facility is located next to the Lamoreaux Justice Center where the juvenile courts are held. The age range of the youth is from 10 to 21 years old. There are a total of 434 beds in this maximum security facility though it is currently staffed at 380 beds. The population at the time of the Grand Jury visit was 208 which consisted of 191 males and 17 females. Last year at this same time, there were 229 youth which declined to 198 by year's end. The Grand Jury learned that the population at Juvenile Hall has been decreasing for the last five years. This coincides with a nationwide drop in juvenile crime due to better policing and policies such as finding ways to work with offenders through educational and professional programs rather than simply detaining them. At full capacity, Juvenile Hall employs a maximum staff of 472, though only 390 positions were actually filled at the time of the Grand Jury visit.

The average length of stay at Juvenile Hall is 27 days which includes youth spending at least one night (until parents can be located), to some youth committed up to three years for serious crimes. Visitation hours are limited to two hours in duration and typically take place on Saturdays and Sundays. Visitation is for families only (no minors) and only two family members at a time may attend. Special visits may be arranged as needed for those juvenile detainees who actually have children.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Juvenile Hall was built in phases from 1950 to 2005 and is compliant with the ADA. There are nurses on-site 24/7 as well as doctors throughout the day and on call when they are not on-site. An OB/GYN (obstetrics and gynecology) physician attends to female detainees once a week. There is also a dentist that meets the needs of the youth at the facility.

Boys and girls are assigned to *separate* living units designed to house 20 to 60 juveniles. The units have sleeping rooms, restrooms, showers, and a day room for leisure activities. The Intake and Release Center houses boys and girls who have been newly arrested as well as those awaiting an initial court appearance. There are also units that separately house non-violent minors, sex offenders, violent offenders, and the mentally ill.

There is a very complete, though outdated video recording system with good coverage. The cameras are highly visible throughout the facility. There is also a central video monitoring center. Various upgrades to the video system are scheduled for the latter part of 2014 and will be upgraded to a newer digital system.

The Orange County Department of Education provides a fully accredited academic program on site. The accreditation is provided by the Otto Fischer High School, which also accommodates a middle school curriculum. This is a State aligned curriculum that follows California State Standards and Framework for all classes. There is a full-time Principal for the Otto Fischer High School who serves as the Principal for the middle school as well; there are 50 full time teachers on-site. There is a well-stocked library with mobile book carts that transport books to various sections of the facility as needed. The youth attend school all day, Monday through Friday, which includes a 1-hour exercise program per day. The school also has a full-time sports league, which teaches the value of team sports.

There are many programs and services available for the youth offenders. Noteworthy are:

- a) “Thinking for a Change,”⁸ is a program which has proven to reduce recidivism by 36%. This program is a multi-week, behavioral treatment program designed to assist youth with cognitive restructuring, and the development of social and problem solving skills. It guides juvenile offenders through the *Trouble Cycle* which is recognizing the thinking that leads to trouble and teaches them about bad decisions and their consequences versus positive decisions that lead to better outcomes.
- b) “Decision Points,”⁹ is similar to “Thinking for a Change,” though of minimal duration with 4 sessions lasting only 2 weeks. This program is comprised of cognitive and behavioral management that focuses on key social and problem solving skills designed specifically for short-term stays. This shorter session ensures more youths can complete the course during their detention.

⁸ <http://www.nicic.gov/t4c>

⁹ Interview with O.C. Juvenile Hall personnel

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

- c) “Stop the Cycle” is a program that, with parental involvement, helps youth control their thoughts and feelings by turning negative behaviors into more positive ones.

Juvenile Hall partners with the Parks and Recreation Department to allow some youth to engage in Saturday and Sunday work programs like cleaning parks rather than being detained at the facility. This allows juveniles an opportunity to go offsite in supervised activities that give them a sense of pride and accomplishment. There are also programs for substance abuse, family therapy, parenting, computer classes, and Regional Occupational Programs (ROP)¹⁰ for students who want to expand vocational opportunities through vocational classes besides academics.

Disciplinary issues are handled with verbal counseling, room confinement, additional work hours, early bed time, or writing assignments.

Joplin Youth Center

The Joplin Youth Center is a juvenile correctional facility nestled in the foothills of the Santa Ana Mountains above Trabuco Canyon. This is a minimum-security facility that houses boys from ages 13 to 16 and was built in 1958 with a maximum capacity of 64 beds. The average length of stay at Joplin is approximately 35 days. At the time of the Grand Jury inspection visit, 49 beds were occupied. Although Joplin’s location is very isolated with little security, there are no armed officers. Youth are carefully screened for suitability. Those with a history of running away are not considered good candidates. Juveniles are assigned at the Orange County Juvenile Hall and typically have 30 to 60 days remaining on their court commitments.

Joplin employs a staff of 52, of which 44 are employed by the Orange County Probation Department. The remaining eight consists of therapists, a nurse and counselors. A nurse is on site three days a week (Monday, Wednesday and Friday) and Juvenile Hall’s Medical Unit is available by phone 24 hours a day.

Additionally, there are four teachers who provide onsite state curriculum to Joplin High School overseen by the Orange County Department of Education. A typical school day at Joplin consists of five, 55-minute classes in which the students work on individualized courses of instruction. Juveniles also receive special education classes, employment training, library access and math tutoring as needed. The school administration consists of a part-time Assistant Principal who is at Joplin on average, two days a week, and a full-time front office specialist. Rehabilitation and academics are a priority at Joplin by the staff and the Orange County Health Care Agency who provide counseling for youth that have abused drugs and alcohol. Other topics such as gang violence intervention, anger management, and parenting skills are also provided.

There are numerous programs and activities available to the juveniles such as gardening, culinary arts, “Thinking for a Change,” Alcoholics Anonymous, Narcotics Anonymous, and vehicle

¹⁰ <http://rop.ocde.us/>

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

maintenance that provides them with basic work habits and improvement of social skills. Additionally, there are apprentice programs in skills for laundry, kitchen help and woodshop. Boys are expected to complete various daily and weekly chores which include maintaining the Joplin grounds, as well as office and kitchen cleanup. Boys also have the opportunity to learn skills in a clean, well-stocked industrial shop for woodworking that houses machinery like lathes and radial saws, etc. Boys are also instructed on how to cooperate and follow directions in the proper use of a variety of industrial tools in safe, effective ways. All youth receive at least one hour of large muscle exercise daily plus there are sports leagues that are available such as basketball, flag football and soft ball. Volunteers offer numerous other services such as Bible study, worship services, tutoring and crafts. The programs are designed so that Joplin functions as a small community where the boys learn to relate to one another in more positive ways and hopefully learn to function in society with stronger interpersonal skills.

The juveniles are divided into five living groups and are graded by the staff on a daily basis, both as individuals and group members. Some of the basic responsibilities include following rules, personal hygiene and being respectful to help the youth develop a better sense of responsibility. Each month the group with the most points receives a reward for their efforts. Weekly payments in “Joplin Money” are made to those earning rewards and are subsequently used at an on-site store to purchase additional snacks and personal items beyond what is made available to all the boys at Joplin Youth Center.

Parents and legal guardians are allowed to visit their boys on-site each Sunday from 9 a.m. to 11:30 a.m. Other relatives may visit if they are approved prior to the visit. Some find it difficult to get to Joplin due to the remote location, in which case, boys can be transported to Juvenile Hall for special visits when necessary.

Disciplinary problems are handled with a variety of informal sanctions for petty infractions. For major or repeated violations of institutional rules, disciplinary options include loss of privileges for a specified period of time up to and including removal to Juvenile Hall. The staff does break up fights and are trained in the use of physical, mechanical, and chemical methods (such as pepper spray) if necessary. The boys wear different colored T-shirts that represent their status at Joplin. Severe infractions, including running away, result in a disciplinary hearing and a transfer to Juvenile Hall.

The Grand Jury discovered that the program benefits would be greatly enhanced by longer terms in residence. The brief stays result in a high rate of turnover of students creating a difficult situation for the school staff, effectively minimizing the lasting carryover effects of the rehabilitative experience from many of the programs offered.

Youth Leadership Academy

Youth Leadership Academy is a medium security juvenile residential and treatment center operated by the Orange County Probation Department. The facility is centrally located behind Juvenile Hall, consisting of two, two-story buildings, is ADA compliant, and has a capacity of 120 beds. Only half of the beds are currently in use due to budget reductions. At the time of the Grand Jury visit, only 25 beds were occupied. The population consists of youths between 17 to 20 years old who have experienced problems with aggression and anti-social behavior with a moderate to high risk to re-offend. Only males reside in this facility with an average length of stay usually under 50 days. The facility opened in 2006. It is self-contained and includes laundry and intake/release services. Each building contains a control center, dayrooms, dining and multi-purpose areas with shared access to four school classrooms and outdoor recreation space. A third building serves as the administration building. The multi-lingual staff consists of the following:

Probation Division Director	1
Supervising Juvenile Corrections Officer	3
Deputy Juvenile Corrections Officer	23
Administrative and Clerical	2

The above unarmed staff positions are all employed by the Orange County Probation Department. All Deputy Juvenile Corrections Officers complete the state mandated “Juvenile Corrections Officer Core Course” prior to working in the institution. The five-week course provides a broad range of specialized training to prepare officers for working with youth in a custody setting. Individuals with health problems go to Juvenile Hall and are assessed then treated by the Orange County Health Agency where youths receive whatever medical care they need; preventative *or* emergency.

The Youth Leadership Academy provides a comprehensive residential program designed to prepare youth to re-enter and transition back into the community through enhanced programs including, but not limited to, remedial education, rehabilitative treatment programs, substance abuse programs, mental health services, and community outreach opportunities.

Education is provided by the Orange County Department of Education at Otto Fisher High School on the grounds of Juvenile Hall. A full range of educational services are provided including special education, General Education Development (GED) preparation, high school graduation, educational counseling services, and transition to community schools after release from custody. A total of four teachers are on the Otto Fisher staff, employed by the Orange County Department of Education. A certified counselor, a psychological clinician, as well as special education evaluations and services, help juveniles achieve success.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Religious services are available and primarily provided through the Catholic Detention Ministries and Pacific Youth Correctional Ministries. Services are conducted one time a week and evening bible studies are available one evening a week for each ministry.

All youth are provided a minimum of three hours of recreation and physical exercise each school day and five hours of recreation and physical exercise during non-school days. Youth are given the opportunity to participate in sports leagues such as basketball, flag football and soft ball.

The Youth Leadership Academy also utilizes Evidence Based Programs¹¹ and activities that have been proven to be effective like “Thinking for a Change” and “Decision Points” previously mentioned under the heading; Orange County Juvenile Hall.

Efforts are made to include the youth’s family and are assigned a probation officer throughout each phase of these programs to ensure a successful transition into the community.

Staff led activities and programming are developed and presented to promote pro-social attitudes and life skills. Some of these programs and activities include landscaping crews, driver education, college tours, vocational skills, and anger management courses.

Visitation at the Youth Leadership Academy takes place every Saturday from 9 a.m. to 11 a.m. for two hours with up to two parents, guardians, or other approved visitors. Special visits with younger siblings, infant children of youth housed at the facility, and other individuals who have a positive relationship with the youth are arranged on a case-by-case basis. Duration of these visits is determined based on the juvenile’s relationship to the visitor and case objectives. Youth who successfully achieve higher citizenship levels become eligible for on-site furloughs in which families are allowed to have lightly supervised visits. Youth who achieve the highest level of citizenship and show sustained positive behavior may earn an off-site furlough (escorted by their parent or guardian) to attend activities such as employment searches, job interviews, participate in family activities, or attend religious services.

Discipline is handled on a case-by-case basis. Verbal counseling and redirection is used for minor infractions. More serious discipline problems can result in work assignments and loss of free time activities. Youth who commit major rule violations such as violent acts may be returned to court or transferred to Juvenile Hall. Staff is trained in a variety of verbal and physical interventions designed to control youth who are acting out. The staff must also be proficient in empty hand techniques (no use of weapons), use of handcuffs and leg restraints, and the approved use of pepper spray.

Work release programs are available for juveniles who are housed at the Youth Leadership Academy. Those who achieve the highest level of citizenship and show sustained positive behavior, with a desire to actively work on transition into the community, may be permitted to

¹¹ Interview with Youth Leadership Personnel

attend a community college during the day or participate in part-time employment at a local business during weekend hours. This activity is usually reserved for a youth coming to the end of a longer than average period of confinement.

Youth Guidance Center

The Orange County Youth Guidance Center is a minimum security facility centrally located in Santa Ana across the river from Juvenile Hall and the Youth Leadership Academy. It has a total of 125 beds with 30 currently occupied as of this writing. The facility is ADA compliant. The facility houses male and female juveniles ranging in age from 14 to 20 years old. They are separated during confinement. At the time of the Grand Jury visit, there was a population of 83 youths residing at the facility; 65 males and 18 females, with an average 90-day length of stay. There are a total of 71 unarmed staff members on-site, all employed by the Orange County Probation Department. The staff is multi-lingual in Spanish, Tagalog, Korean, Cantonese, and Samoan/Hawaiian. The facility offers substance abuse rehabilitation for the youths. A program is offered to reduce recidivism through behavior modification.

All residents participate in academic programs at the on-site Rio Contiguo High School operated by the Orange County Superintendent of Schools/Department of Education. Students normally attend six classes each day. Selected students may attend off-site college courses or correspondence and televised courses for college credit. The teaching staff consists of six General Education teachers and one Special Education teacher. The staff is trained in behavior for At-Risk Youths in the Classroom and Discipline Training. Gang Probation Officers lecture to juveniles on current trends in Orange County. Several of the Administration staff have attended the Annie E. Casey Foundation Administrative Training Program; a private charitable foundation, dedicated to helping build better futures for disadvantaged children in the United States.

Rio Contiguo High School also offers two life-skills programs that affect behavior modification: "Thinking for a Change" (mentioned earlier) and "Aggressive Replacement Training," which features three coordinated and integrated components that include social skills training, anger control and moral reasoning. The ROP teaches skills such as business technology, culinary arts and parenting. This program gives students the opportunity to work in a business environment and learn the skills necessary for such an undertaking. There are no work release programs for juveniles housed at this facility.

Drug abuse is a central issue for the juveniles at the Youth Guidance Center. There are several programs that deal with this problem. Individual treatment plans are tailored to each juvenile's specific needs. Each of the living units has an on-site psychologist, drug counselor and probation officer who establish goals and objectives for youth during their stay. There is a nurse available on-site Monday thru Friday from 7:00 a.m. until 3:00 p.m.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Discipline is handled progressively according to the offense, which is broken down into minor and major categories. Fights are broken up by the staff with verbal commands, use of force and pepper spray if needed with serious infractions sending juveniles back to court or Juvenile Hall.

Visiting hours are held weekly on Saturday from 2:00 p.m. to 4:00 p.m. Only 2 adult parents or guardians are allowed to visit. Furloughs are sometimes permitted for 2 hours on-site and from 2 to 12 hours off-site.

METHOD OF STUDY

The Grand Jury visited and inspected each of the existing four facilities. Two visits were made to Juvenile Hall and Youth Leadership Academy and one visit was made to Youth Guidance Center and Joplin Youth Center. Managers and some staff were interviewed at length with prepared questions. The Grand Jury also reviewed documents presented by each facility that support protocols necessary for juvenile rehabilitation.

ANALYSIS

Orange County Juvenile Detention Facilities have a fluctuating population on a daily basis. The Grand Jury determined that none of the facilities were over staffed based on the fact that each facility was staffed twenty-four/seven. Each facility had trained staff to take care of use-of-force incidents by verbal commands, pepper spray when needed and physical restraints if appropriate.

All four detention facilities offered numerous programs that help youth achieve success after being released from confinement. The Grand Jury learned there is a majority consensus amongst staff from all the facilities that longer terms of confinement are of greater benefit to detainees. It was determined that longer stays reinforce newly acquired behaviors and contribute to the declining rate of recidivism.

The Grand Jury discovered that the juvenile detention centers are also in need of more efficient up-graded video systems, though these facilities *do not* have the same infrastructure constraints as James A. Musick, Theo Lacy, and the Central Jail Complex.

Juvenile Hall

The Grand Jury believes the following facility enhancements would benefit youth, staff, and the County:

1. A gym also used as a visiting center, as well as a chapel. *There is already space to accommodate this.* The gym could also be used for graduations, assembly and activity when the youths cannot go outside due to weather conditions.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

2. An infirmary with a negative pressure room for juveniles affected by any form of contagion. This would save time and costs for the staff rather than having to transport youth to an outside medical facility. This infirmary could be built in an existing area across from the current intake unit.
3. Updating the antiquated video surveillance system to a new, digital system that could be easily viewed from throughout the facility.

Joplin Youth Center

The Grand Jury has determined that the following three staffing improvements are necessary:

1. A full-time school administrator who will:
 - a) attend to minor school disciplinary issues within the school environment in order to better prepare youth for their return to public school, and
 - b) oversee the teaching staff and curriculum on a daily basis; to enhance communication and collaboration between probation and the school. (The OC Department of Education is not a County agency but acts on behalf of the County when educating juveniles).
2. Due to budget and position cuts experienced over the past five plus years, Joplin lost the only assigned Transitional Deputy Probation Officer at that facility two years ago. Reinstating such a critical position would be highly beneficial by enhancing an already short-staffed probation department at Joplin.
3. Additional mental health and substance abuse services would be beneficial.

Youth Leadership Academy

The Grand Jury identified one of the largest and most complex issues confronting juvenile justice in California is the need for mental health services for youth in custody and post-custody. The Academy continues to explore ways to connect youth with programs that while in custody will eventually help facilitate their transition back into their family and community.

Youth Guidance Center

The Grand Jury believes that detainees should be confined longer than 90 days to take full advantage of the numerous programs offered. Also, there is a need for more aftercare programs and additional probation officers to supervise these programs.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.5, the 2013-2014 Grand Jury requires (or, as noted, requests) the responses are to be submitted to the Presiding Judge of the Superior Court.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Penal Code Sections 933 and 933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

Based on its investigation of Juvenile Detention and Treatment facilities in Orange County, the 2013-2014 Orange County Grand Jury has arrived at nine principal findings, as follows:

F.1. The juvenile Hall facility is in need of a gym that can also be used as a visiting center and chapel. Such a facility could be used for graduations, assemblies and other activities when youths cannot be outside due to inclement weather. There is already space to accommodate this.

F.2. An infirmary in Juvenile Hall with a negative pressure room for contagion would be highly beneficial. This would save time and costs instead of transporting youth to an outside facility. This infirmary could occupy an existing area across from the current intake unit.

F.3. All four facilities have an antiquated video surveillance system.

F.4. There is a need at the Joplin Youth Center for a full-time school administrator to enhance communication and collaboration between probation and the school.

F.5. Due to budget and position cuts experienced over the past five plus years, Joplin lost the only assigned Transitional Deputy Probation Officer two years ago.

F.6. Joplin is in need of mental health and substance abuse services. One of the largest and most complex issues confronting justice in California is the need for mental health services for youth in custody and for post-custody.

F.7. The four facilities would benefit from longer terms of residence beyond the typical 90 days in order for youth to have full advantage of the numerous programs offered.

F.8. The Academy needs to continue exploring additional ways to connect youth with services while in custody that will transition them back into the community and assist the entire family.

F.9. There is a need for additional post release programs with more probation officers to supervise these programs.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

Based on its investigation of Juvenile Detention and Treatment facilities in Orange County, the 2013-2014 Orange County Grand Jury makes the following recommendations:

R.1. The Orange County Probation Department should determine the feasibility of constructing a gym at Juvenile Hall which could also be used as a visiting center and chapel. **(F.1.)**

R.2. The Probation Department should prioritize the addition of an infirmary with a negative pressure room at Juvenile Hall. **(F.2.)**

R.3. The Probation Department should update antiquated video surveillance to a more advanced digital system at all four juvenile detention and treatment facilities. **(F.3.)**

R.4. The Probation Department should add a full-time school administrator at the Joplin Youth Center **(F.4.)**

R.5. The Probation Department should establish a budget to reinstate the Transitional Deputy Probation Officer. **(F.5.)**

R.6. The Probation Department should establish a budget for the addition of mental health and substance abuse services. **(F.6.)**

R.7. The Probation Department should conduct a study to determine if program benefits would be enhanced by longer terms of residence beyond the typical 90 days. **(F.7.)**

R.8. The Probation Department should determine if the Youth Leadership Academy has the need to explore additional ways to connect youth with services while in custody that will transition them back into the community and assist their family. **(F.8.)**

R.9. The Probation Department should determine the possibility of additional post release programs with more probation officers to supervise these programs. **(F.9.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

(a) 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 therefore.

(b) 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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

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

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

A response to findings **F.1.** thru **F.9.** is requested from the Orange County Probation Department.

A response to findings **F.3.** **F.5** and **F.6.** is required from the Orange County Board of Supervisors.

A response to findings **F.4.** is required from the Superintendent of Schools/Department of Education.

ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES

A response to recommendations **R.1.** thru **R.9.** is requested from the Orange County Probation Department.

A response to recommendations **R.3.**, **R.5.** and **R.6.** is required from the Orange County Board of Supervisors.

A response to recommendation **R.4.** is required from the Superintendent of Schools/Department of Education.

COMMENDATIONS

The Grand Jury would like to commend all four of the Juvenile Detention Facilities that were visited. The degree of professionalism and cooperation was outstanding. The rehabilitation programs offered the youth were explained in detail. The staff at each facility showed great determination to helping youth succeed in improving their lives after their release from confinement.

**MAXIMIZING THE BENEFITS
OF JOHN WAYNE AIRPORT
TO BETTER SERVE ORANGE COUNTY**



MAXIMIZING THE BENEFITS OF JOHN WAYNE AIRPORT TO BETTER SERVE ORANGE COUNTY



Photograph: Statue of John Wayne at John Wayne Airport between Terminal A and Terminal B

“My hope and prayer is that everyone know and love our county for what she really is and what she stands for.” John Wayne

Table of Contents

SUMMARY	4
REASON FOR THE STUDY	5
BACKGROUND AND FACTS	5
History	6
John Wayne Airport Benefits	9
<i>Economic Drivers.....</i>	<i>9</i>
<i>Local Economic Impact.....</i>	<i>10</i>
Current Operations.....	11
<i>Airport Infrastructure Modifications and Source of Financing.....</i>	<i>11</i>
<i>Constraints on Growth.....</i>	<i>16</i>
<i>Airport Noise and Capacity Act of 1990.....</i>	<i>19</i>
<i>Air Pollution Impacts and Mitigation.....</i>	<i>19</i>
<i>Ground Traffic Impacts.....</i>	<i>20</i>
<i>Cost and Convenience Competitiveness.....</i>	<i>21</i>
<i>Security and Safety Compliance.....</i>	<i>24</i>
<i>Flight Safety.....</i>	<i>25</i>
<i>Passenger Processing Capacity.....</i>	<i>26</i>
Future Operations	26
<i>Noise Constraints.....</i>	<i>26</i>
<i>Impact of Forecasted Increases in Demand.....</i>	<i>27</i>
Potential Constraint Mitigation Measures.....	28
<i>Low Emissions Engine and Fuel Technology.....</i>	<i>28</i>
<i>Quiet Engine Technology.....</i>	<i>28</i>
<i>Runway Modifications.....</i>	<i>30</i>
<i>2014 Incentives to Increase near Term Airport Utilization.....</i>	<i>32</i>
General Aviation	32
<i>Tie Down Fee Comparison.....</i>	<i>34</i>
<i>Fuel Price Comparison.....</i>	<i>35</i>
METHOD OF STUDY	37

ANALYSIS	38
Current Demand	38
Demand and Constrained Capacity.....	38
Demand and Constraint Mitigation.....	40
Security and Safety.....	43
Policies and Procedures	43
General Aviation Business Model.....	43
FINDINGS.....	44
RECOMMENDATIONS.....	45
REQUIRED RESPONSES.....	46
COMMENDATIONS	48
APPENDICES.....	48
Appendix A: Acronyms	48
<i>Airport Codes</i>	<i>49</i>
<i>Airline Codes.....</i>	<i>51</i>
<i>Commuter Airline Codes.....</i>	<i>52</i>
<i>Air Cargo Codes.....</i>	<i>52</i>
Appendix B: Glossary	52
Appendix C: Settlement Agreement Terms Proposed by Various Stakeholders.....	56
Appendix D: John Wayne Airport Noise Limits (see Figure 3 for locations).....	57
Appendix E: 2013 Forecast – John Wayne Airport Enplanements	58
Appendix F: 2013 Forecast – John Wayne Airport Operations	59
Appendix G: 10 Most Popular John Wayne Airport Destinations.....	60
Appendix H: Market and Carrier One Way Fare Information	61

SUMMARY

John Wayne Airport's (SNA) ability to meet the growing demand for air transportation service is important to sustain the local and regional economy and the overall quality of resident life. John Wayne Airport is currently being under-utilized, having about 10% more permitted capacity than current passenger traffic. Projections for the next 10 to 15 years indicate that additional passenger traffic demand will be significantly underserved due to environmental constraints as specified in the pending Stipulated Settlement Agreement between John Wayne Airport and the various stakeholders.

Orange County's demand for commercial air travel will continue to increase. The Regional Aviation Plan for the 2012 Regional Transportation Plan published by Southern California Association of Governments forecasts the demand for the entire Southern California region to be nearly 170 million annual passengers by the year 2035.¹ Under present operating capacity constraints, the Federal Aviation Administration forecast commercial aviation demand will exceed John Wayne Airport's authorized passenger capacity of 12.5 Million Annual Passengers (MAPs) by 2027.²

Policies to lower parking and air fare prices could create a more immediate passenger demand in order to fill some of the current excess capacity. John Wayne Airport commercial airfares are significantly more expensive (3% to 24%) than other local airports such as Los Angeles International Airport, Bob Hope Airport (Burbank), Long Beach Airport (Daugherty Field) and Ontario International Airport.³ Also, adding more national and international destinations can potentially increase passenger traffic. Policies and procedures for increasing passenger traffic by making John Wayne Airport a more user friendly and financially attractive would also benefit the local airport economy.

John Wayne Airport also supports a large general aviation fleet which generates 65 percent of John Wayne Airport's take-offs and landings. Coexistence of commercial airline, general aviation and air cargo operations having to share air space and taxiways imposes some additional requirements on airport safety. In the future, general aviation and air cargo may limit the frequency of commercial aircraft take-offs and landings during peak periods. Zoned security responsibilities between airport operations over general aviation, Transportation Security Administration (TSA) over terminal security, and Federal Aviation Administration (FAA) over aircraft ground control complicate safety and security.

¹ Regional Aviation Plan for 2012 Regional Transportation Plan Published by Southern California Association of Governments

² March 2013 Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement

³ United States Department of Transportation's Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter

Long term plans need to accommodate more commercial departures to accommodate a significant increase in passenger demand and improve ground and airspace safety. This might require runway modifications and improvements in vehicle parking and traffic flow. New aircraft technology, such as light weight airframes, cleaner burning fuels and more fuel efficient and quieter jet engines are evolving and will be commercially available by 2017. These technologies could mitigate or even reduce the environmental impacts of the forecasted future passenger demand.

Now is the time to perform cost benefit and environmental impact studies for making major infra-structure improvements to John Wayne Airport. These projects typically take 10 to 15 years to design, permit and construct.

REASON FOR THE STUDY

The most recent Grand Jury's review of the John Wayne Airport was in 2003 and focused on John Wayne Airport Security. The purpose of this investigation is to identify and evaluate issues related to passenger demand, capacity, and methods of achieving a more user friendly environment while concurrently taking into consideration the needs of the surrounding community. This report will also identify and investigate approaches for achieving a safer, quieter and a more desirable world-class departure and destination airport. It will also examine and review customer and user services to ensure that John Wayne Airport is competitive with alternative local regional and international airports and benefit the future Orange County economy.

BACKGROUND AND FACTS

John Wayne Airport has a rich history in its transition from a barn-storming, privately owned airport to a world class facility. Current operations and infrastructure projects are examined in light of this history and used to identify current and future projects and policies to safely and securely meet demand while maximizing John Wayne Airport's favorable impact on the Orange County economy. There are three operational airports in Orange County they are:

1. John Wayne Airport (SNA),
2. Fullerton Municipal Airport (FUL), and
3. Los Alamitos Army Airfield (SLI).

John Wayne Airport is the only one that serves general aviation, commercial aviation and air cargo operations.⁴

⁴ History of Orange County Airport by Scott A. Thompson

History

Eddie Martin opened Eddie Martin Airport in 1923 and started a flying school on Irvine Ranch property. In 1925 Orange County began buying up farm land south of Eddie Martin Airport from James Irvine as seen in **Figure 1**.⁵ The County of Orange bought 40 acres a year from 1925 through 1928 until it had a full quarter section, or 160 acres. When the land purchase was completed, Orange County began work on building an airport then located just east of the present airport. The Orange County Airport's formal dedication was held on April 7, 1928. An Administration building, control tower, hangar and two runways were the first structures. These were the first paved runways in Orange County.

Figure 1: Eddie Martin Airport Surrounded by Agriculture in 1935



Photograph: Land the County of Orange bought that would become Orange County Airport

The new Orange County Airport was used regularly for a year, but with Eddie Martin's Airport so close, and so well known, there just wasn't much need for another airport and the project faltered. Eddie Martin Airport was located at the end of South Main Street. In 1936, the Board of Supervisors considered reactivating the original Orange County Airport. It soon became apparent that Eddie Martin's Airport would have to close since the plans to extend South Main Street continued to move forward.

⁵ History of Orange County Airport by Scott A. Thompson

The Federal Aviation Administration gives this new airport called Orange County Airport the designator **SNA** for Santa Ana because it was the closest big city at the time. The new Orange County Airport opened for business on August 15, 1941. Subsequently, Eddie Martin moved into the new Orange County Airport as a tenant. Shortly after Pearl Harbor, the Army Air Corps took over the operation of the airport, which was renamed the Santa Ana Army Airbase. The Army extended the runways to 4,800 feet and built a number of barracks and buildings. The surrounding area was substantially agricultural during this period.

After World War II, the Santa Ana Army Airbase was returned to Orange County with the stipulation that it remain open to all aviation uses. In 1952 Arizona based Bonanza Airlines (later to become Hughes Airwest) and Republic Airlines began the first regular passenger service using DC-3's. Early destinations were Imperial County Airport (El Centro), Los Angeles, San Diego, Phoenix, and Yuma International Airport.⁶

In 1964, the airport was rebuilt with its present two parallel runway configuration. The first runway is 5,701 feet long by 150 feet wide and is oriented with a magnetic heading 190 degrees for Runway 19R and a magnetic heading of 10 degrees for Runway 01L. The second runway is 2,887 feet long by 75 feet wide and is oriented with a magnetic heading 190 degrees for Runway 19L and a magnetic heading of 10 degrees for Runway 01R.

On June 20, 1979 on a motion from Orange County Board of Supervisor Thomas F. Riley, the Orange County Airport was renamed the John Wayne Airport. John Wayne Airport has three terminals, Terminal A, Terminal B and Terminal C. These three terminals together are named Thomas F. Riley Terminal after General and former Orange County Board Supervisor Thomas F. Riley.

John Wayne Airport operated similarly as other commercial and general aviation airports with runway incursions as their number one concern. A runway incursion is an incident where an unauthorized aircraft, vehicle or person is on a runway. This adversely affects runway safety, as it creates the risk that an airplane taking off or landing will collide with the object.

Terrorist attacks against the United States on September 11, 2001, triggered the implementation of federal regulations that have dramatically altered the way airports conduct business. The airport is now regulated by the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and by two county agencies:

1. The Orange County Airport Commission makes recommendations to the Orange County Board of Supervisors for development, maintenance and operation of John Wayne Airport and other airports which may be operated by the County of Orange. It advises the Orange County Board of Supervisors and makes recommendations on any matter pertaining to airports or air transportation. It also conducts investigations as it

⁶ History of Orange County Airport by Scott A. Thompson

may deem necessary in the exercise of the powers enumerated above. The Airport Commission consists of five members who are appointed by one each of the Orange County Board of Supervisors.

2. John Wayne Airport land use is governed by the Airport Land Use Commission. The Airport Land Use Commission is governed by the Public Utilities Code Section which has the basic responsibilities of assisting the local agencies in ensuring that compatible land use in the vicinity of all airports within Orange County. The Airport Land Use Commission also ensures that land use does not affect the operational integrity of the navigable airspace and airports. The Airport Land Use Commission consists of seven members. They meet every 3rd Thursday of the month.⁷

The incursion of industrial, commercial, and residential uses surrounding John Wayne Airport as shown in **Figure 2** is now a source of conflict over environmental issues such as noise and air pollution.

Figure 2: John Wayne Airport with Commercial and Residential Incursions



Photograph: John Wayne Airport 2010 (View from the North Looking South)

⁷ www.ocair.com

Due to a gradual shift of the Earth's magnetic poles, the runway designations are currently out of alignment with their magnetic bearings. The Federal Aviation Administration's (FAA) Aeronautical Information Manual (AIM) designates the runway number as the whole number nearest one-tenth the magnetic bearing of the centerline of the runway, measured clockwise from the magnetic north. A September 2010 survey was made of John Wayne Airport's runway and was determined that the runways held a 16°E magnetic bearing thus requiring the change of runway designations.

Starting in July 2014, John Wayne's Airport runways will be renumbered as follows: A magnetic heading is now closer to 200 degrees and will correspond to Runway 20R; and a magnetic heading is now closer to 20 degrees and will correspond to Runway 02L for the longer runway and Runway 20L and Runway 02R for the shorter runway.⁸

John Wayne Airport Benefits

Economic Drivers

John Wayne Airport is a significant engine for the Orange County economy and is a critical component to both commercial business activities and leisure traveler's access to local resort destinations. Since World War II, Orange County has been one of the most rapidly growing urban areas in the United States. This growth has been fueled by significant investments in technology, corporate facilities, residential, and commercial development. The rapid growth in the economy has generated requirements for additional commercial, cargo and general aviation facilities. Orange County strives to satisfy the demand for air transportation service as it improves the local economy and the overall quality of resident life.

The knowledge industry, a potent incubator of high wage employment, is becoming an essential element of the Orange County economy. In a global economy, just in time manufacturing and delivery is a significant business model which items are created to meet demand, not created in surplus or in advance of need. For the growth of associated business support services, airports are vital linchpins of regional competitiveness. Knowledge-based economies, such as Orange County's, rest on such pillars as a world class research university, superior quality of life, and proximity to an international airport.

⁸ Federal Aviation Administration's Aeronautical Information Manual

Local Economic Impact

John Wayne Airport is a county job builder that creates jobs in three ways:

1. **Direct-** All people who work directly from airport activities. Direct Employment by Industry type at John Wayne Airport are Airlines, Airline Support Services, Crew Accommodations, General Aviation, Retail Concessions, Ground transportation, Government Agencies and Contract Operations.
2. **Indirect-** Employment that is generated by suppliers to business directly related to airport activities. Indirect Employment Industry by type at John Wayne Airport would be a food service firm who supplies food or products to an airlines catering company.
3. **Induced-** Employment that is created by successive rounds of local spending: direct and indirect activity which creates more economic spending that includes household expenditures at local businesses. Multipliers effects combine the indirect and induced impacts.⁹

These job classifications have a *multiplier effect* that creates more than three off-site jobs for every job supported by John Wayne Airport.¹⁰ This does not account for other economic activities that depend on air transportation as an infrastructure asset. There are few industry categories unaffected by the economic impact created by John Wayne Airport.

John Wayne Airport directly supports 3,626 high level jobs as shown in **Table 1**. Other regional competitive airports like Long Beach Airport (Daugherty Field) Bob Hope Airport (Burbank), and Ontario International Airport employ significantly fewer workers, but all are dwarfed by Los Angeles International Airport which employees 50,000 workers. John Wayne Airport also is a key determinant in locating corporate headquarters. Fortune 500 companies' headquarters near John Wayne airport include Ingram Micro, Western Digital, Broadcom, Spectrum Group International, Pacific Life and Allergan.

John Wayne Airport and its related activities are also significant generators of state and other local taxes. These include sale taxes, aviation fuel taxes and income taxes paid by airport related employees and business tenants. At the future forecasted demand levels, John Wayne Airport will generate additional millions in state and local taxes.¹¹

The benefits of having a local international airport with shorter vehicle travel times, particularly for those living in South Orange County, should not be overlooked. This time translates into a significant, but difficult to quantify economic gain and less vehicle emissions that need to be balanced against local noise and air pollution issues.

⁹ John Wayne Airport Economic Impact Study. Prepared by Inter Vistas Consulting LLC. March 4, 2014

¹⁰ Applied Development Economics, Incorporated: Data from a California Airport Employment survey: March 1, 2013 report.

¹¹ Lease Holders

Table1: Direct Employment Comparison-California Airports

Airport		Total Jobs
Long Beach (Daugherty Field)	(LGB)	1,295
Santa Maria Public	(SMX)	1,310
McClellan – Palomar	(CLD)	1,477
Fresno Yosemite International	(FAT)	2,190
Burbank – Bob Hope	(BUR)	2,242
Ontario International*	(ONT)	2,479
San Jose International – Norman Y. Mineta	(SJC)	2,801
Sacramento International	(SMF)	3,598
Orange County – John Wayne	(SNA)	3,626
San Diego International	(SAN)	5,381
Oakland International	(OAK)	7,680
San Francisco International*	(SFO)	29,556
Los Angeles International*	(LAX)	50,000
Total		113,635

Source: Applied Development Economics, Incorporated: Data from a California Airport Employment survey: March 1, 2013 report.

Notes:

1. Ontario International Airport employment was based on the total badge employee count.
2. Los Angeles International Airport employment was based on the total badge employee count.
3. San Francisco International Airport employment comes from their 2009 economic impact analysis.

Current Operations

Airport Infrastructure Modifications and Source of Financing

The facilities at John Wayne Airport are in excellent condition with a reported very low backlog of deferred maintenance. Budgets are more than adequate to cover known annual expenditures for maintenance and repair.

In 2006, the Orange County Board of Supervisors awarded an initial six-year contract to Parsons Transportation Group, Incorporated to manage the John Wayne Airport Improvement Program. This \$543.1 million program’s objective is to meet the traveling publics and other stakeholder needs. Parsons provides overall program management which includes project design and construction management (including monitoring and reporting), and advising on program planning, costs, schedules, and budgets.¹² The work is being performed under a time and

¹² John Wayne Improvement Program by Parsons Transportation Group, Incorporated an engineering, construction, technical, and management service firm. 2006-2013

materials contract where the buyer agrees to pay for a defined scope of work plus the contractor’s mark up, regardless of whether the work is over budget. The contract allows the buyer to pay a lesser amount if the job is completed more quickly or at a lower cost. Parsons will complete their scope of work under a time and materials contract with a not to exceed limit.

Table 2 shows the John Wayne Airport Capital Improvement Program (CIP). The sources of funds include revenue bonds, facility charges, airport income and grants. Projects are currently projected to come in under the total budget of \$543,100,000 of which \$266,600.00 will be generated by internal airport revenues.

**Table 2: John Wayne Capital Airport Improvement Program
Financing Sources
As of October 31, 2013¹³**

Sources of Funds	As of October 31, 2013	April 2009 Budget
Internal John Wayne Airport Revenue	\$266,600,000	\$187,700,000
General Airport Revenue Bonds	\$209,300,000	\$209,300,000
Federal Aviation Administration Grants	\$35,900,000	\$33,100,000
Passenger Facility Charge	\$15,700,000	\$49,800,000
Other	\$15,500,000	\$19,500,000
Subordinated Debt	0	\$43,700,000
John Wayne Airport Capital Improvement Plan - Total	\$543,100,000	\$543,100,000

- Internal John Wayne Airport Revenues** – John Wayne Airport revenues.
- General Airport Revenue Bonds (GARBs)** – Bonds are payable from, and are secured by a pledge of, the net Airport revenues and Passenger Facility Charge (PFC) revenues.
- Federal Aviation Administration (FAA) Grants** – John Wayne Airport can receive reimbursement of up to 80 percent of the cost of eligible capital projects in Airport Improvement Program (AIP) grants from the Federal Aviation Administration.
- Passenger Facility Charge (PFC) Revenues** – Created by Congress in 1990, is intended to assist airports in funding major infrastructure development. The fee generates \$4.50 per enplaned passenger for a defined collection period.
- Other** – These funds are from Caltrans for seismic retrofit projects and from John Wayne Airport Air Carriers for the hydrant fueling system.
- Subordinate Debt** – This short-term financing mechanism could supplement the County’s long term debt financing program, if needed.

¹³ John Wayne Airport Executives

Table 3 shows the John Wayne Airport Capital Improvement Program Budget. The two largest expenditures are 46% for terminal improvements (primarily terminal expansion and rehabilitation), and 16% for Phase 2 Projects (primarily safety and maintenance).

Table 3: John Wayne Airport Capital Improvement Program Budget
As of December 17, 2013¹⁴

April 2009 Budget	Anticipated Budget	Original Commits	Approved Change Orders	Total Commitments	Forecast
Terminal					
\$189,749,147	\$237,244,733	\$190,127,743	\$43,099,508	\$233,227,251	\$237,113,119
Central Plant and Southwest Parking Structure C1					
\$76,166,228	\$78,270,226	\$71,761,029	\$7,237,605	\$78,988,634	\$78,270,226
Professional Services					
\$48,550,978	\$48,480,903	\$36,084,159	\$12,676,318	\$48,760,477	\$48,579,593
Contingency					
\$33,030,348	\$6,312,487	0	0	0	\$6,312,487
Other Capital Improvement Program					
\$26,271,000	\$28,566,808	\$27,917,249	(\$1,081,959)	\$26,835,290	\$28,466,808
Completed Projects					
\$60,976,374	\$58,259,797	\$55,388,630	\$3,059,678	\$58,448,309	\$58,259,797
Capital Improvement Project Phase 2 Projects					
\$108,360,382	\$85,969,413	\$36,713,326	\$2,262,518	\$38,975,844	\$85,969,413
John Wayne Airport Capital Improvement Plan - Total					
\$543,104,457	\$543,104,457	\$417,992,137	\$67,253,668	\$485,245,805	\$542,971,443

1. **Terminal** – Terminal Expansion, North Terminal Extension, Terminal A & B Baggage Belt Upgrade, Common Use Passenger System, Loading Bridges, 400Hz and Pre Conditioned Air Equipment, Baggage Handling Terminal C, Airline Offices Tenant Improvements, Concessionaire Tenant Improvements, Miscellaneous Site Restorations and Terminal B Chiller Room Modification.
2. **Central Plant and Southwest Parking Structure C1** – Central Plant and Southwest Parking Structure C1.

¹⁴ John Wayne Airport Executives

3. **Professional Services** – Project Controls Master Schedule, Project Controls Estimating Services, Airport Improvement Program Management, Construction Management Services, Commissioning Agent Terminal C, Program Insurance, Safety and Geotechnical.
4. **Contingency** – Settlement Amendment Implementation Plan and funds set aside for unanticipated costs and also reflect savings from other projects.
5. **Other Capital Improvement Program** – Flight Information Display System, Boarding Information Display System, Gate Information Display System, Ramp Information Display System, Cogeneration Electric Generation Plant, Settlement Amendment Implementation Plan Preparation, Communications Infrastructure Additions, Parking Revenue and Control Systems Upgrade, Reconstruct Perimeter Road West Phase II, Taxi Lot Lavatory, Tie Down Shade Structures and Seismic Elevated Roadway.
6. **Completed Projects** - Settlement Amendment Implementation Plan and Financial Analysis, Reconstruct 19R-1L, Geo Tech Architectural and Engineering Services, Terminal Re-carpet – Upper Level, New Uninterrupted Power Supply, Airport Telephone Switch – Private Branch Exchange (PBX) and Voice Over Internet Protocol (Val), Rental Car, Employee, Valet, Taxi Relocation, Refurbished Terminal Restroom, Design Only New South Remain Over Night, New South Remain Over Night, Substation Relocation, Surface Parking Lot C, Deconstruct B1 Parking Garage, Airside Dock Access and Trash Compactor and JONAIR Removal by Southern California Edison.
7. **Capital Improvement Program Phase 2 Projects** – Seismic Retrofit Terminal, Capital Improvement Program Contingency, Terminal Generator Replacements, Terminal Marble Rehabilitation Interior, Electronic Signs for Gates and ticket Counters, Project Management Services – Oviedo, Butier, Testing and Inspection, Parking Structure C Phase 2, Terminal Improvement Project, Bristol Street Slope Stabilization, Maintenance Building, Wireless Communications Terminal Building, Refurbish Remaining Terminal Restrooms, Paularino Street Gate Relocation, Terminal Heating Ventilation and Air Conditioning (HVAC) Rehabilitation, Terminal Building Fire Code Upgrade, Waterproof Planters, Runway Guard Lights, Changeable Message Sign, Baker Street Realignment and Baggage Handling System Terminals A & B Transportation Security Administration (TSA).¹⁵

85% of the John Wayne Airport Capital Improvement Program has been completed as of December 17, 2013.

¹⁵ John Wayne Airport Executives

John Wayne Airport was built to withstand and recover quickly from earthquakes and power failure while continuing to provide an acceptable level of service. John Wayne Airport has spent hundreds of millions of dollars on new construction. Terminals A and B were upgraded and renovated with seismic retrofits in 2011. The new Terminal C design along with more than 2,000 parking spaces meets California's structural seismic standards for essential operations and was also completed in 2011. Parking structure C also incorporates seismic upgrades. The upper departure roadway support pillars were retrofitted in 2012.¹⁶

John Wayne Airport has installed a state-of-the-art Parking Access and Revenue Control System in all parking structures. This system features two options: a traditional paper ticket system and a new ticketless feature. With the new ticketless option a patron will be able to swipe a credit card to gain access to the parking structure. The same credit card must be used upon exit, eliminating the need to retain a paper parking ticket.

The parking space and count system allows passengers to determine how many spaces are available on each level as they enter the parking facility. Sensors imbedded in airport roadways allow for the Parking Access and Revenue Control System to count vehicles entering and exiting facilities. Individual sensors located in The Americans with Disabilities Act and short-term (2-hour) spaces provide the exact count of the status of these spaces which are displayed on roadway signage. The space count system also informs passengers on the roadway if the lot is full. The Parking Access and Revenue Control System will be integrated with the airport website, allowing passengers to view parking availability online and via mobile devices

John Wayne Airport completed its own Central Utility Plant in 2011. The Central Utility Plant supplies the Thomas F. Riley Terminal complex with power and chilled water for the air conditioning system. The facility houses four natural gas-fired internal combustion engines producing seven megawatts of electricity and two 550-ton absorption chillers, one 125-ton air cooled centrifugal chiller, three 750-ton centrifugal chillers and all ancillary mechanical support equipment. John Wayne Airport will purchase approximately 5% of its power from Southern California Edison Company (SCE).¹⁷

John Wayne Airport can only support limited air cargo service by Federal Express (FEDEX) and United Parcel Service (UPS) due to three issues:

1. Noise restrictions
2. Lack of local warehousing
3. Larger aircraft that cannot be accommodated by the short runway

¹⁶ John Wayne Improvement Program by Parsons Transportation Group, Incorporated an engineering, construction, technical, and management service firm. 2006-2013

¹⁷ Five on site inspection and facility tours.

This can result in uneconomical departures of partially loaded aircraft. The current operating constraints limit air cargo flights to arrivals no earlier than 4:00 P.M. P.M. and no departures no later than 7:45 P.M.

All cargo aircraft are off loaded and loaded in a parking area that is also used for airline aircraft overnight parking. Cargo aircraft must leave before the overnight airline aircraft are ready to be parked. Overnight airline aircraft are serviced to be ready to be the first flights out of John Wayne Airport in the morning the next day.

The infrastructure currently has additional built-in capacity, is nearly self-sufficient in power, and has been seismically upgraded to recover quickly from earthquake events and should provide adequate and reliable service well into the future.

Constraints on Growth

Currently, the most significant limitation on airport growth as measured by Million Annual Passengers (MAPs) is noise from departing and arriving aircraft. In future year's infrastructure capacity such as runway length or passenger vehicle traffic during peak periods may be the limiting factors.

Noise Constraints on Operations- Local, state and federal noise and air quality regulations are increasingly important issues for airports. It is significant to note that in the years of 2012, 2013 and 2014 no quarterly average noise violations were recorded at any of the ten noise monitoring stations around John Wayne Airport for any commercial airlines (type Class A and Class E) or commuter aircraft.

The current 1985 John Wayne Airport Stipulated Settlement Agreement and the future new and unapproved January 1, 2016 John Wayne Airport Stipulated Settlement Agreement, highly restrict airport operations, particularly the amount of passenger traffic as measured by Million Annual Passengers (MAPs) and number of Average Daily Departures (ADDs). Different positions have been taken by the various stakeholders (airlines, airport and coalition groups) on these limitations as shown in **Appendix C**. During the term January 1, 2026 to December 31, 2030 they range from 12.2 to 15 Million Annual Passengers (MAPs) and 95 to 135 Average Daily Departures (ADDs) between these groups.¹⁸

Community activists would prefer that this new agreement be even more restrictive:

1. Limit Daily Flights
2. Limit Annual Passengers
3. Decrease hours of operation
4. Close John Wayne Airport

¹⁸ Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement. March 2013

Airport capacity growth has been severely constrained by the terms of a Federal Court approved 1985 agreement between the County Board Supervisors, City of Newport Beach and two community groups:

1. Airport Working Group
2. Stop Polluting our Newport

The 1985 John Wayne Airport Stipulated Settlement Agreement settled numerous noise related lawsuits against Orange County and resulted in a revised Master Plan that was approved by the County Board of Supervisors. John Wayne Airport has adequately planned and expanded to meet present and future air travel demand within these constraints while taking local public opinion into account.¹⁹

The 1985 Stipulated Settlement Agreement was amended in 2003. It limited John Wayne Airport’s regularly scheduled commercial airlines to 10.3 Million Annual Passengers (MAPs) in any one year beginning on January 1, 2003 through December 31, 2010 and not more than 10.8 Million Annual Passengers (MAPs) beginning on January 1, 2011 through December 15, 2015.

Commercial operating hours are also severely constrained as seen in **Table 4**.

Table 4: Curfew Restrictions at John Wayne Airport

Commercial Airlines		
Operations	Days	Hours
No Departures	Monday through Saturday	10:00 P.M. – 07:00 A.M
	Sunday	10:00 P.M. – 08:00 A.M
No Arrivals	Monday through Saturday	11:00 P.M. – 07:00 A.M
	Sunday	11:00 P.M. – 08:00 A.M
Cargo		
	Days	Hours
No Departures	Monday through Sunday	No Later than 07:45 P.M.
No Arrivals	Monday through Sunday	No Earlier than 04:00 P.M.

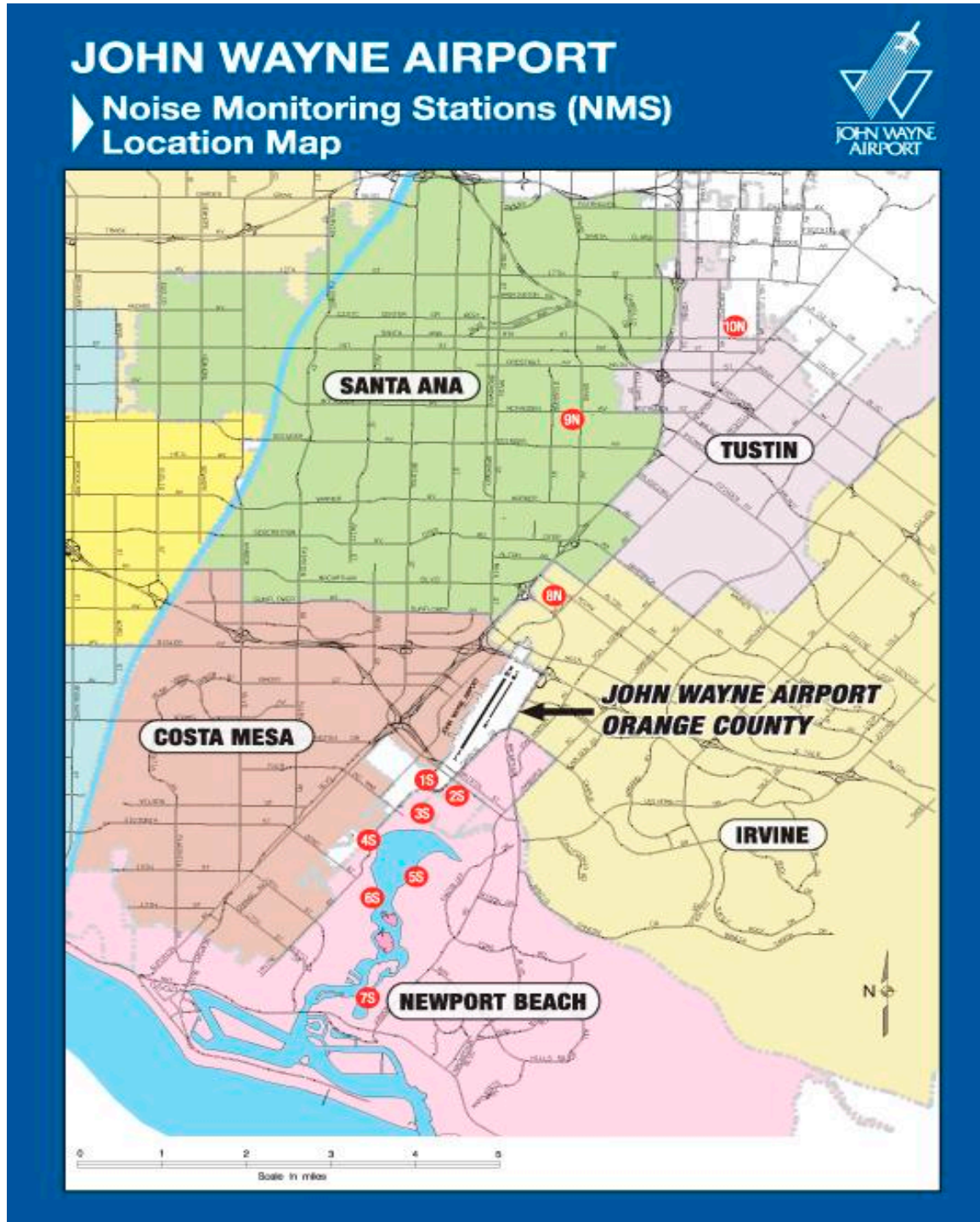
Source: www.ocair.com

- Notes:**
1. Curfews restrictions were established in 1971 separate from current and propose extension of the John Wayne Airport Settlement Agreement. The curfew restriction however has been and will be referenced in any future settlement agreement and will remain in effect until December 31, 2035 under the proposed updated terms.
 2. There are no curfew hours on general aviation aircraft

¹⁹ 1985 John Wayne Airport Stipulated Settlement Agreement

The current noise monitoring system, **Figure 3**, uses strategically located sensors to evaluate the impact of aircraft take-offs and landings for ground level violations. The current protocol requires maintaining levels below 86.0dB Single Event Noise Exposure Level to 101.8dB Single Event Noise Exposure Level depending on, time of day, aircraft class and sensor location. Actual noise limits at each monitoring station are summarized in **Appendix D**.

Figure 3: Ground Level Noise Monitoring Stations



Airport Noise and Capacity Act of 1990²⁰

The passage of the Airport Noise and Capacity Act of 1990 (ANCA), gives the power to regulate airport noise with very few exceptions, to the exclusive province of the Federal Government. Airport Noise and Capacity Act of 1990's principal aim was to advance quiet engine technology to relieve restrictions on airport operations.

To carry out that aim, Airport Noise and Capacity Act of 1990 mandated that the noisiest, Stage 2, aircraft in excess of 75,000 lbs. would be phased entirely out of the existing fleet by December 31, 1999 and no new Stage 2 aircraft above 75,000 lbs. could be added after November 5, 1990. In return for ensured technological advances, Airport Noise and Capacity Act of 1990 divest local proprietors of the power to unilaterally regulate airport noise.

Air Pollution Impacts and Mitigation

Faced with demands on capacity and pressure from local communities, airport operators need to understand, plan, and mitigate the environmental impacts without compromising security, safety and airport capacity.

John Wayne Airport has implemented ground traffic fuel substitutions and operational measures to improve air quality. These include:

1. Installed electric charging stations for ground service equipment and airport vehicles.
2. Provided electric preconditioned air units for servicing commercial aircraft. These electric preconditioned air units require 10 times less fuel than jet-fueled on board Auxiliary Power Units (APUs).
3. Required that fleet vehicles, such as taxi cabs and parking shuttles, use clean burning compressed natural gas (CNG) or other cleaner burning fuel alternative. John Wayne Airport's 2013 current taxi provider, Orange County Yellow Cab, uses 100 percent compressed natural gas (CNG) vehicles.²¹

Jet A Turbine Fuel is currently used in jet and turboprop engine commercial aircraft. Jet A is a kerosene grade of fuel which produces air pollutants (Nitrogen Oxide, Carbon Dioxide, and Soot Emission) on take-off. The Federal Aviation Administration is targeting to replace one billion gallons per year of conventional fuel with a sustainable alternative jet fuel by 2018.²² Though they are created from renewable sources, drop-in fuels mimic the chemistry of petroleum jet fuel and can be used in today's aircraft and engines without modification while providing the same level of performance and safety as today's petroleum-derived jet fuel.

²⁰ Department of Transportation Airport Noise and Capacity Act of 1990

²¹ www.ocair.com

²² Federal Aviation Administration: Environmental and Energy Research and Development. Sustainable Alternatives to Jet A Fuel. November 15, 2012

Leaded 100LL, also known as 100 Octane Low Lead aviation fuel is used for reciprocating, general aviation aircraft engines. These are relatively clean burning fuels but are responsible for low levels of soot, hydrocarbon, carbon dioxide, and lead emissions.²³

Increased passenger demand will require more flights of more heavily loaded aircraft leading to increased emissions. *Significant advances in engine and fuel technology (discussed later) should mitigate the effect of increases in annual passengers.*

Ground Traffic Impacts

Table 5 presents the John Wayne Airport latest Vehicle Traffic Survey conducted in 2001, 2003 and 2013. The Projected Vehicle Traffic Survey is based on the currently authorized 10.8 Million Annual Passengers (MAPs). Cars may stop at the curbside of the terminals only long enough to drop off or pick up passengers²⁴. Peak traffic occurs in the early morning and late afternoon with afternoon traffic being significantly higher. Traffic flow is exacerbated by the fact that vehicles must loop through the airport departure area until their passenger(s) arrive curbside. *There is currently no car waiting, cell phone parking.*

Table 5: Peak John Wayne Airport Ground Traffic

John Wayne Airport Existing and Projected Vehicle Traffic Generation Summary							
		AM Peak: 7:30AM to 8:30AM			PM Peak: 5:00PM to 6:00PM		
Source	MAPs	In	Out	Total	In	Out	Total
2001(1)	7.3	1,240	1,138	2,278	1,875	1,879	3,754
2003(1)	8.5	1,240	1,090	2,330	1,720	1,830	3,550
		AM Peak: 7:00AM to 9:00AM			PM Peak: 4:00PM to 6:00PM		
2013 (2)	9.2	1,300	1,177	2,477	1,168	1,340	2,508
Projected	10.8	1,534	1,385	3,019	1,374	1,582	2,956

- Source:**
- (1) John Wayne Airport Traffic Technical Report Appendix C May 26, 2004 by Austin-Foust Associates, Incorporated
 - (2) John Wayne Airport Traffic Technical Report Appendix G April 30, 2014 by Fehr & Perris

Notes: 1. MAPs: Million Annual Passengers

Based on the previous **Table 5** vehicle traffic survey of John Wayne Airport, a small cell phone parking waiting area would help reduce repetitive traffic of motorist going through the airport loop waiting for their arriving passengers and would also reduce vehicle emissions.

²³ Federal Aviation Administration. Aviation Rulemaking Committee. Unleaded Aviation Gasoline Transition. February 17, 2012

²⁴ John Wayne Airport Supplement Environmental Impact Report. Traffic Report May 26, 2004 and April 30 2014.

Cost and Convenience Competitiveness

Passenger demand, particularly for the leisure traveler, is partially driven by user trip costs. Business traveler demand is driven more by convenience (frequency and duration of flights, and number of destinations). User costs for parking and airfare, and operating hours and destinations are compared to other Southern California airports in this section. Comparisons may suggest pricing or policy changes which would make John Wayne Airport more attractive and result in near-term, increased user demand.

Air Fare Cost Comparisons-The Regional Air Passenger Demand Allocation Model surveyed residents of Orange County. It concluded that John Wayne Airport was their first departure choice, although other factors influenced their actual airport selection including:²⁵

1. Flight Schedule
2. Destination Availability
3. Cost of air fare and parking

John Wayne Airport's higher fares are driven by its limited number of flights and fast approaching passenger ceiling Settlement Agreement limits. The rising airfares at John Wayne Airport have obviously driven some passengers, particularly discretionary leisure travelers, to more distant regional airports with lower airfares. This longer commute results in increased vehicle air pollution, lost traveler productive time, and loss of John Wayne Airport revenue.

United States Department of Transportation's Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter identified John Wayne Airport as the most expensive major airport in California as measured by airfare per passenger mile. It is 28% above the national average by this standard.

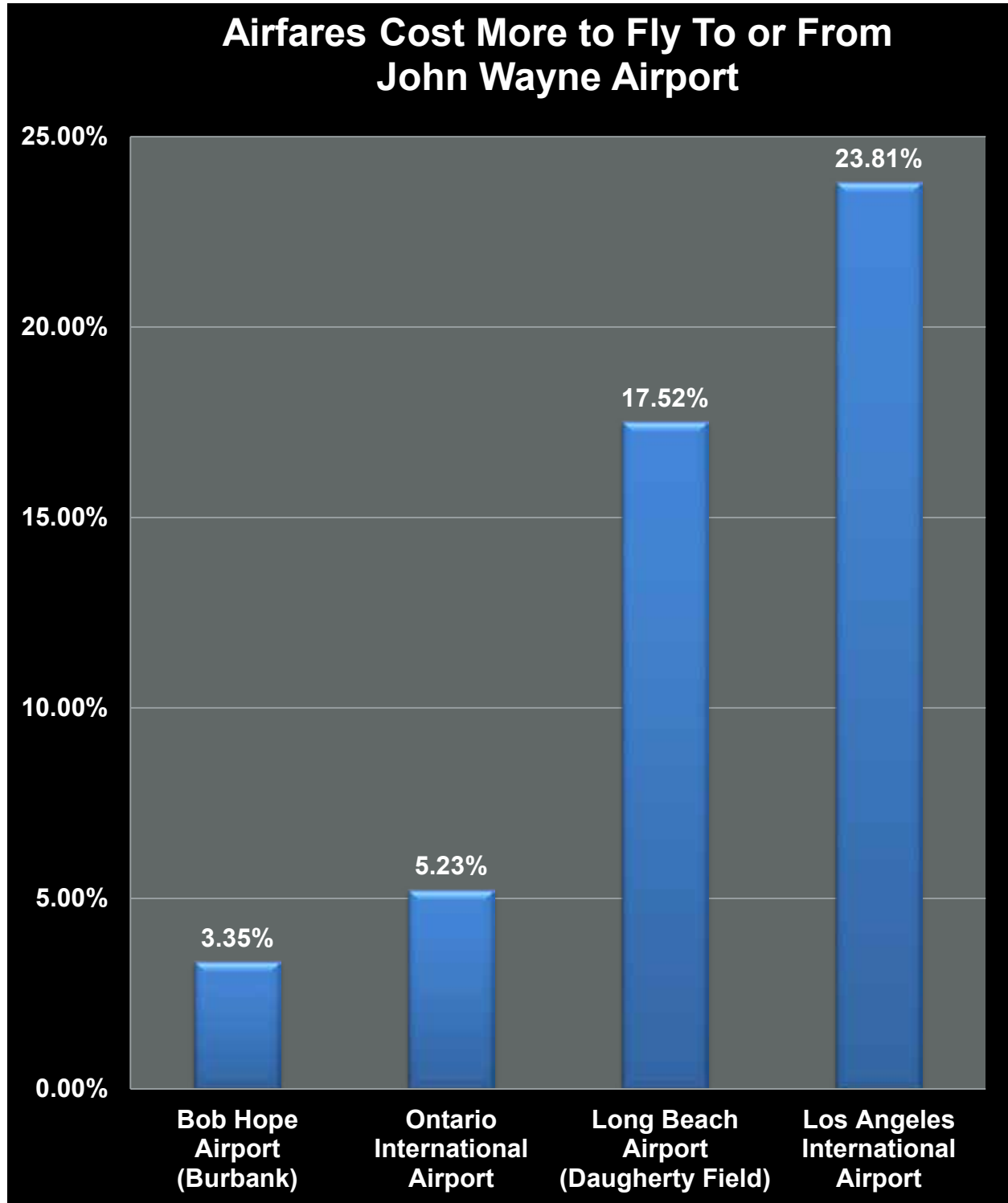
Airfare comparisons were made from 15 national airports. The 15 airport destinations were chosen because they are destinations that a passenger could fly non-stop from John Wayne Airport, but can also fly from Bob Hope Airport (Burbank), Los Angeles International Airport, Long Beach Airport (Daugherty Field), and Ontario International Airport and could be made on a fair and consistent basis.²⁶ These five airports were chosen because airlines consider these airports as part of the Metropolitan Area Airports of Los Angeles.

²⁵ Regional Air Passenger Demand Allocation Model (RADAM) 2008 modeling for the Southern California Association of Governments (SCAG)

²⁶ United States Department of Transportation's Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter

The airfare comparisons are summarized below in **Figure 4** and detailed in **Appendix H**:

Figure 4: Airfares cost in percentages



Source: United States Department of Transportation’s Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter.

Competitive Parking Costs-Terminal parking at John Wayne Airport is reasonably competitive with other local commercial airports, **Table 6**. There is little advantage to choosing an alternative airport, although John Wayne Airport is the only one that does not have car waiting or cell phone parking for passenger pick-up. However, for extended stays typically used by leisure travelers parking costs have a more substantial impact.

Table 6: Comparative Airport Parking Fees

Airport	Outside		Terminal		Car Wait	Shuttle
	\$/Day	\$/Hour	\$/Day	\$/Hour		
SNA	14	2	20	2	No	Free
ONT	9	3	18	3	Yes	Free
BUR	10	3	31	5	Yes	Yes
LAX	12	4	30	3	Yes	Free
LGB	17	2	19	2	Yes	N/A

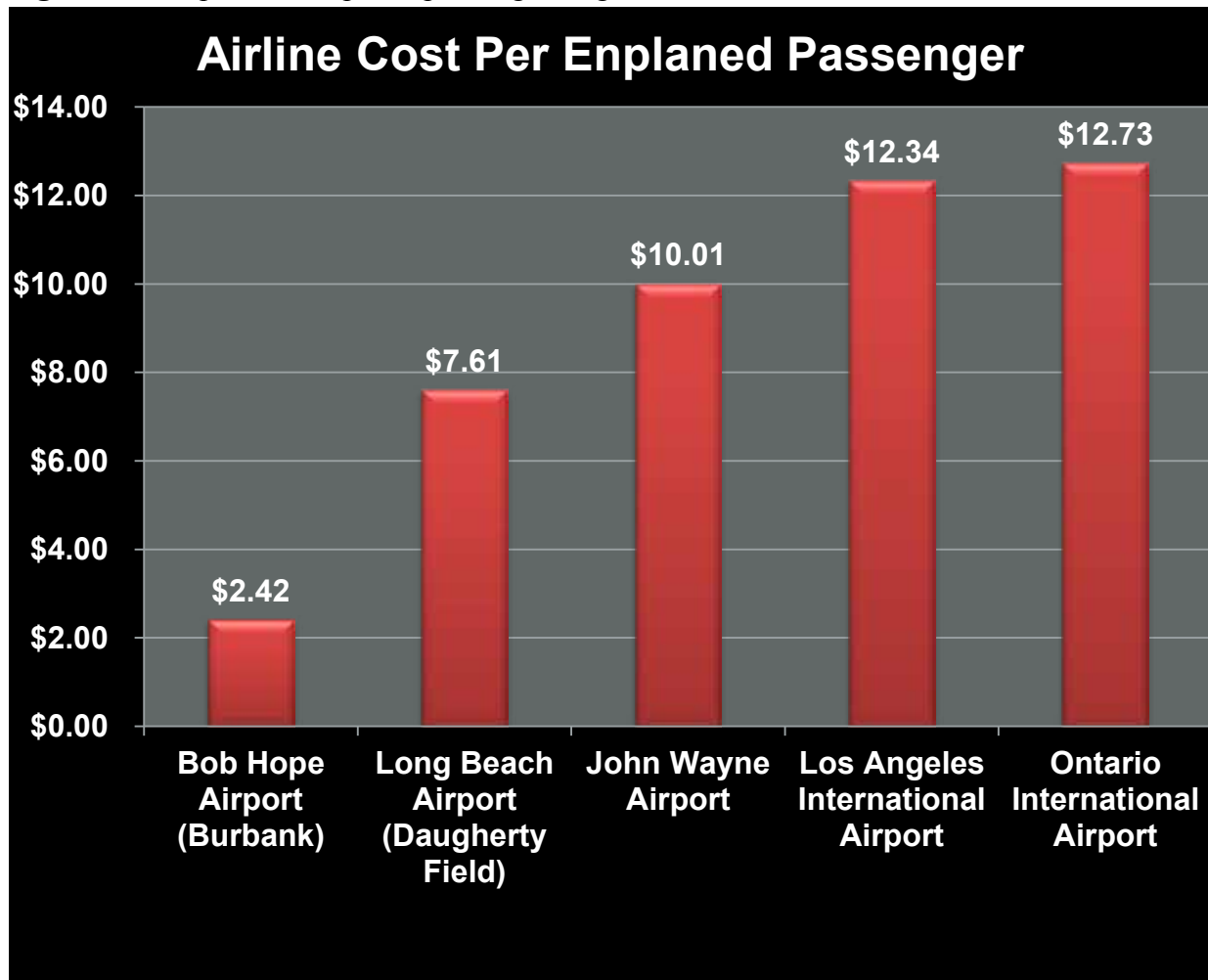
Source: www.ocair.com
www.lawa.org/welcome_ont
www.burbankairport.com/parkingmap.html
www.lawa.org/welcome_lax
www.lgb.org

Airline Cost per Enplaned (Boarding) Passenger-Air fares are somewhat impacted by the airline airport facilities cost per enplaned passenger. The components of this cost are: Terminal rents, Federal Inspection Station Fees, Baggage System Fees, Landing Fees, Gate Fees, Apron Fees, Remain Overnight Parking Fees, Aircraft Taxi Time Cost, En-route Delays, Gate Delays, Baggage Systems, Mishandled Baggage, Passenger Ticketing, Bag Check, Terminal Special Facility debt, Terminal Operations and Maintenance, Loading Bridges, Baggage Consortium Fees.²⁷

Airlines are constantly struggling to reduce operating costs, including airport operating costs that are passed through to them. If the cost to the airline for operating at a particular airport becomes too great, an airline will increase ticket prices, reduce or discontinue air service at the airport or move flights to another less expensive airport. **Figure 5** shows the airline cost at John Wayne Airport as per Enplaned Passenger basis is the third highest among the following five regional airports.

²⁷ Federal Aviation Administration Report 127. December 2013.

Figure 5: Competitive Airport Operating Charges to Southern California Airlines



Source: Federal Aviation Administration Report 127. December 2013

Security and Safety Compliance

John Wayne Airport has an excellent safety and operational history. This record is the result of the commitment of the operating organizations and their ability to allocate resources appropriately to the tasks at hand (safety records, full compliance with Federal Aviation Administration regulations, and compliance with other appropriate directives that establish environmental requirements or community compatibility issues such as noise levels). Of particular note is John Wayne Airport’s recent record of performance on successfully passing the 2013 Federal Aviation Regulation Part 139 Annual Inspection – Certification of Airports.²⁸

²⁸ 2013 Federal Aviation Regulation Part 139 Annual Inspection – Certification of Airports

Before September 11, 2001, one of the Federal Aviation Administration safety concerns was preventing runway incursions. John Wayne Airport continues to provide an aggressive program to achieve these objectives. This is extremely important because of the unusual 2:1 ratio of general aviation to commercial operations as seen in **Table 7** and **Appendix F**

There are two security zones within the John Wayne Airport boundaries:

1. Secured General Aviation zone controlled by John Wayne Airport
2. Highly secured Transportation Security Administration (TSA) zone for commercial airlines

General Aviation security requires a John Wayne Airport identification badge and a Personal Identification Number code to open a vehicle gate to access aircraft parking and loading areas. No pedestrians or bicycles may enter or exit vehicle gates. People and vehicles are only cleared for one zone and are not permitted to move between them. The Security Identification Display Area is also called a sterile area. Color coded badges and color coded vehicle stickers are used to distinguish which area is permitted.²⁹ Security within the General aviation zone is enforced by airport security; security within the commercial zone is managed by the Transportation Security Administration (TSA).

Flight Safety

Reduced visibility, congested runways, bad weather, and sharp turns during take-off or landing are typical pilot concerns. While all major hubs in the United States are considered safe, some have geographic or operational restrictions which make take-offs difficult. Strict noise

Figure 6



suppression procedures for flights coming in and out of John Wayne Airport have been implemented to appease local residents.³⁰ These procedures require that departing planes perform a steep angle of climb of 25 degrees instead of the standard 15 degrees until they reach 800 feet of altitude, as shown in **Figure 6** which feels like a rocket ship ascent followed by a sudden thrust reduction along a zigzagging trajectory.

Photograph: Steep Angle of Climb during Takeoff

²⁹ General Aviation Pilots

³⁰ Commercial Airline Pilot

Pilots must thread a tight needle that only a computer can fly. An engine failure during the initial climb would make it extremely difficult to manage. John Wayne Airport also has a very short runway so landings are also critical.³¹

Runway and taxiway improvements should be evaluated to determine if improvements in safety, passenger traffic and noise level can be cost effectively accommodated.

Passenger Processing Capacity

Passenger processing capacity may be limited by the physical airport infrastructure. Adequate vehicle access to drop-off zones and parking, sufficient number of gates, and limits on departure frequency at peak passenger demand are among the potential bottlenecks to be mitigated. The current infrastructure's passenger capacity is in excess of current demand by some 8 Million Annual Passengers (MAPs).

Future Operations

John Wayne Airport will remain under-utilized for about the next 10 years relative to authorized passenger levels according to current projections. Policies that encourage increased passenger use through offering more frequent flights and destinations, competitive fare pricing and user friendliness could potentially improve user demand. However, by about the year 2027 demand is projected in to exceed the Million Annual Passengers (MAPs) and the physical infrastructure will be the limiting factor after 2040 as seen in **Figure 13** and **Appendix C**.

Noise Constraints

A number of Settlement Agreement modifications have been proposed; several of the most likely are summarized below and detailed in **Appendix C**.

Proposed New Settlement Agreement -The current 1985 John Wayne Airport Stipulated Settlement Agreement will end December 15, 2015. The next John Wayne Airport Stipulated Settlement Agreement has not been finalized but will start January 1, 2016. The key elements of the new proposed settlement agreement (**Appendix C**) are:

1. A proposed extension to an agreement that sets limits on operations at John Wayne Airport would allow some increases in passengers and flights at the airport after 2020.
2. The proposed extension would continue the limit of 10.8 Million Annual Passengers (MAPs) through 2020. The annual passenger cap would then expand to 11.8 Million Annual Passengers (MAPS) between 2021 and 2025.³²
3. The settlement represents the consensus of representatives of government and community groups, including the County of Orange, the City of Newport Beach, the Airport Working Group and an organization called Stop Polluting Our Newport.

³¹ Commercial Airline Pilot

³² Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement. March 2013

4. If the airport sees at least 11.21 Million Annual Passengers (MAPs) during any one year over that five-year period (January 1, 2021 through December 31, 2025), it could add another 700,000 passengers to the annual cap between 2026 and 2030. Otherwise, the cap would only increase by 400,000 passengers beginning in 2026.

Alternate Proposed Extensions- Three alternatives to the New Settlement Agreements have also been proposed and their positions in the out-years are summarized below:

1. By the end of the year 2030 the proposed extension of the settlement agreement limits annual passengers to 12.2 or 12.5 Million Annual Passengers (MAPs) and 95 Average Daily Departures (ADDs).
2. By the end of the year 2030 the Federal Aviation Administration forecast demand is 12.8 Million Annual Passengers (MAPs) and 135 Average Daily Departures (ADDs).
3. By the end of the year 2030, John Wayne Airport’s terminal area physical capacity with current hours of operations will be 16.9 Million Annual Passengers (MAPs) and 288 Average Daily Departures (ADDs), far in excess of the forecasted or noise limited constraints until 2044.³³

Table 7

John Wayne Airport Statistics			
	2013	2012	2011
Total passengers	9,232,789	8,857,944	8,609,008
Enplaned	4,600,192	4,417,599	4,287,955
Deplaned	4,632,597	4,440,345	4,321,053
Air Cargo Tons	17,568	17,366	15,569
Total Aircraft Operations	248,225	255,688	252,943
General Aviation	163,565	171,873	169,870
Commercial	81,841	80,691	79,658
Commuter	2,130	2,631	3,188
Military	689	493	227

Source: www.ocair.com

Impact of Forecasted Increases in Demand

Future John Wayne Airport passenger demand will be driven by a wealthier and larger population of retired leisure travelers and a new generation Orange County high technology businesses. As high-tech firms mature, they rely more, not less, on airports. These firms have among the highest air travel rates, airport travel time sensitivities and air cargo utilization rates of any industry. The Federal Aviation Administration time line for passenger demand is based upon the actual 2013 9,232,789 passengers (see **Table 7** above) and their annual enplanement estimate to 2040 (converted to Million Annual Passengers (MAPs) by approximately doubling the

³³ Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement. March 2013

enplanement estimate). This data may be found in the Federal Aviation Administration Office of Aviation Policy and Plans Terminal Area Forecast Detail Report 2013. **Appendix E**³⁴

This and other studies of John Wayne Airport commercial operations estimate that demand has been, is presently and continues to be below the projected physical infrastructure capacity of 16.9 Million Annual Passengers (MAPs). It should be noted that the current Settlement Agreement currently limits airport capacity to 10.8 Million Annual Passengers (MAPs) regardless of actual demand.

Potential Constraint Mitigation Measures

Developing aircraft technologies (clean fuels, engine and airframe technology) will substantially mitigate noise and aircraft emissions issues and could pave the way for more lenient airport capacity constraints including the use of larger aircraft. Such policy and infrastructure changes could result in lower user costs and more user friendly services for commercial and general aviation flyers. These measures are presented below and their impacts are interpreted in the Analysis Section of this report.

Low Emissions Engine and Fuel Technology

Commercial aviation faces fuel cost and environmental challenges arising from the use of petroleum based jet fuel. Sustainable alternative jet fuels can reduce exhaust emissions that impact ground level air quality. The objectives are a local carbon foot print reduction while expanding domestic energy sources and contributing to price and supply stability.

Federal and supplier fuel and engine technologies currently under development include the replacement of:

- a) Jet A turbine fuel with renewable generated fuel, and³⁵
- b) 100LL aviation fuel with an unleaded, high octane and least impact on the general aviation fleet.³⁶
- c) Older polluting and noisy turbojet engines with quiet, clean burning engines

Quiet Engine Technology

Prior to 1968, the United States Federal government did not regulate aircraft noise. In 1969, the Federal Aviation Administration adopted its first standards for new designs of civil subsonic turbojet aircraft engines. In 1977, Federal Aviation Administration adopted more stringent noise

³⁴ Federal Aviation Administration Office of Aviation Policy and Plans Terminal Area Forecast Detail Report 2013.

³⁵ Federal Aviation Administration. Environmental and Energy Research and Development. Sustainable Alternative to Jet A Fuel. November 15, 2012

³⁶ Federal Aviation Administration: Aviation Rulemaking Committee. Unleaded Aviation Gasoline Transition. February 17, 2012

standards and applied them to all newly manufactured aircraft. The noise level restrictions have evolved through a number of stages; the more recent and future noise standards in **Table 8** are:³⁷

Table 8: Current and Future Commercial Aircraft Noise Standards

Stage	Noise Standard	Effective Date	Comments
4	10 db less that Stage 3	2005	Stage 3 standard varies from 89-106 db
5	3 to 11 EPNdb less than Stage 4	2020	EPN, Effective Perceived Noise

Source: Federal Aviation Administration

Notes: Noise Measurement Locations

1. Takeoff Point: 6,500 meters (19,685 feet) from takeoff roll at ground level.
2. Approach Point: 2,000 meters (6,562 feet) and 120 meters (394 feet) above ground level from touchdown.
3. Previous stage are not relevant as they proceed 2005 and not shown

Aircraft noise originates from three main sources:

1. Engine noise (largely the result of exhaust turbulence and the most dominate)
2. Aerodynamic noise (resulting from surface friction turbulence), and
3. Noise from aircraft rotating systems such as auxiliary power units.

Several new engines for aircraft currently authorized for use at John Wayne Airport are in development. The Pratt & Whitney 1124G/1127G/1133G Pure Power engines will feature a high-bypass, geared turbofan power train which is projected to reduce noise levels on departure by as much as 50%. A 10 dB reduction is equivalent to a 50% reduction noise perception.³⁸ The fan drive gear system achieves lower exhaust speeds than the older low-pressure compressor and turbine engines. These engines will be used on the new Airbus A-320neo with an entry into service in 2017.

The Leading Edge Aviation Propulsion (LEAP-1A) and LEAP-1B turbofan engines are being developed by CFM International, the builder of the CFM-56 engine which currently powers most Boeing 737’s and the Airbus A-320’s. The LEAP-1A and LEAP-1B engine will use new composite materials in fan blades and engine casings. This will decrease weight and decrease fuel consumption by 15%. CFM International says that the LEAP-1A and LEAP-1B engines will reduce the perceive noise levels by 50%. The LEAP-1A engine will be used for the Airbus A320neo with an entry date of 2016. The LEAP-1B engine will be used for the Boeing 737 MAX with an entry date of 2017.

A recent noise-reducing technology now commercially available for large engines uses nacelle chevron technology to break up the exhaust shear layer, **Figure 7**.

³⁷ Federal Aviation Administration

³⁸ Bureau of Transportation Statistic of the Research and Innovative Technology Administration for the year 2013 representing data from January 2013 – December 2013.

Figure 7: Engine Noise Abatement with Nacelle Chevrons



Photograph: Nacelle Chevrons



Photograph: Nacelle Chevron

Chevrons are the saw tooth pattern seen on nacelle trailing edges which control the rate of engine exhaust and by-pass air mixing to reduce turbulence. These modifications are currently flying on the Boeing B787 and the Boeing B747-8 which are too heavy and require longer runways than can be accommodated at John Wayne Airport.

Runway Modifications

The Federal Aviation Administration's (FAA) Aviation Capacity Enhancement (ACE) plan in **Figure 8** has an option to increase the departure length of John Wayne Airport's runway, while holding the arrival length of the runway the same 5,701 feet. The pavement for both runway 19R and 01L does not stop at the end of the 5,701 runway.

Runway 01L on the south end of the airport currently extends an additional continues 1,000 feet beyond the end of the runway but is not paved as thick as the runway. This area is used in case of an emergency, such as an aircraft landing short, or overshooting the main runway on landing, or aborting a takeoff run. This area is called the clear zone, or crash zone, or the ditch zone. An additional 225 feet can also be added for takeoff if the localizer equipment for instrument landings in bad weather is moved. The final determination as to the location of the localizer antenna critical area, which is between 1,000 to 2,000 feet from the end of the runway, is determined by an actual flight check by the Federal Aviation Administration.

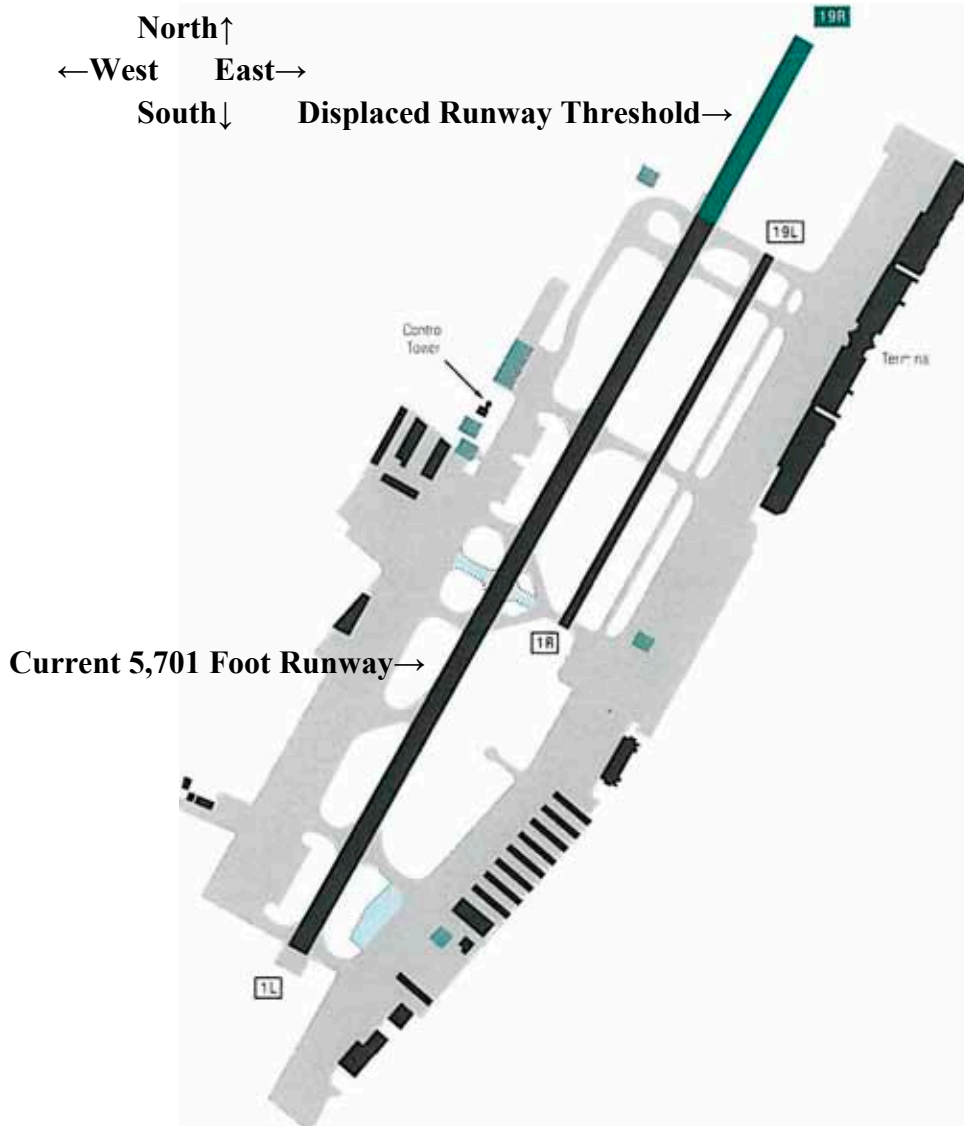
Having a displaced runway threshold at 19R on the north end of the airport would reduce the noise footprint over Newport Beach and Costa Mesa. This can be done by extending the runway 19R at John Wayne Airport for takeoffs further north and closer to the San Diego 405 Freeway, within John Wayne Airport's current boundary.³⁹

The farther north that airline and commuter airline aircraft start their south bound departure take offs, the higher they will be when they do fly over Newport Beach and Costa Mesa, and the lower their noise footprint. Extending runway 19R to the north will increase safety distance if the

³⁹ Federal Aviation Administration's (FAA) – Office of System Capacity. Aviation Capacity Enhancement (ACE) 2002 plan.

pilot must abort a take-off or the pilot lands too far. It will also reduce ground collision risk with aircraft using the shorter runway (19L) when airline and commuter aircraft cross the shorter general aviation runway (19L) to get to the longer commercial runway (19R) with aircraft currently. With a Displaced Runway Threshold (DRT) at 19R the airline and commuter aircraft would use a dedicated extended taxi way to cross directly to the longer runway.

Figure 8: Potential Commercial Runway Modifications



Source: Federal Aviation Administration’s (FAA) – Office of System Capacity. Aviation Capacity Enhancement (ACE) 2002 plan for John Wayne Airport runway 19R only.

Runway 19R has a 1,353 foot long grassy area toward the 405 Freeway. This area is used in case of an emergency, such as an aircraft landing short, or overshooting the main runway on landing, or aborting a takeoff run. This area is called the clear zone, or crash zone, or ditch zone. Of the 1,353 feet, 1,103 feet can be extended for takeoffs only and 250 feet to be used for the width of a taxi way and for a jet blast barrier area.

Requiring airline and commuter aircraft to land at the beginning of the existing runway would maintain the present runway for landing at 5,701 feet. A displaced runway threshold (DRT), while maintaining current noise and curfew restrictions would ensure that John Wayne Airport can be more safe, effective and efficient in its operations.⁴⁰

2014 Incentives to Increase near Term Airport Utilization

John Wayne Airport and the Orange County Board of Supervisors are offering more than \$1,250,000 in terminal rent incentives as shown in **Table 9** to attract airlines willing to make more direct flights to Hawaii, Mexico, and Washington District of Columbia area.

Table 9: Airline Added Destinations Incentives

Airline	Destination	Frequency Flights per Week	Term Months	Rental Incentive
All	Hawaii	2	9	\$50,000
South West, Air Tran	Mexico	N/A	N/A	\$900,000
All	Washington DC	5	12	\$300,000
				Total: \$1,250,000

Source: John Wayne Airport Executives

Notes: Mexican Airline Interjet will discontinue service of it’s once a day flights to Mexico City and Guadalajara on July 20, 2014. John Wayne Airport executives are looking for a replacement.

General Aviation

General Aviation refers to private aircraft that are not used for scheduled air services (passengers or cargo) or military operations. They are typically smaller aircraft that may be prop, jet airplanes, or helicopters. They may be owned by individuals or by corporations.

The significance of General Aviation becomes greater when it is realized that every airline and military pilot must begin their journey to professional competence in the cockpit of a general aviation aircraft.

⁴⁰ Federal Aviation Administration – Office of System Capacity 2002 Aviation Capacity Enhancement Plan

In the past 40 years, two general aviation airports closed in Orange County:

1. Capistrano Airport (L38) located in San Juan Capistrano closed in 1978
2. Meadowlark Airport (L16) located in Huntington Beach closed in 1989

Fullerton Airport (FUL) and John Wayne Airport (SNA) are the only airports within Orange County currently used by general aviation pilots for tie-down and fueling.

Fixed Base Operators are commercial businesses granted the right by an airport to operate at the airport and provide general aviation services such as fueling, hangar, tie-down and parking, aircraft rental, aircraft maintenance, charter flights and flight instruction.⁴¹

Fixed Base Operators (FBO) for John Wayne Airport are:⁴²

1. Atlantic Aviation
2. Signature Flight Support

Fullerton Municipal Airport is home base for 255 tie-down spaces (231 base tie-down spaces and 24 transient tie-down spaces) and 125 hangar spaces.⁴³ **Figure 9**

John Wayne Airport is home base for approximately 550 general aviation aircraft parking. This includes **Figure 10**:

- 1) Enclosed hanger spaces
- 2) Spaces available from Fix Based Operators
- 3) Direct tie-down lease to the County of Orange

⁴¹ Fixed Base Operators

⁴² www.ocair.com

⁴³ www.cityoffullerton.com

Tie Down Fee Comparison

Fullerton Municipal Airport and John Wayne Airport offers tie down spaces to our general aviation community.

Base and Transient aircraft parking spaces at Fullerton Airport and John Wayne Airport (SNA) are managed by full-service Fixed Based Operators (FBOs).

Fullerton Municipal Airport Tie down fees start at: \$110.00 per Month⁴⁴

John Wayne Airport Tie down fees start at: \$140.00 per month⁴⁵

Figure 9



Photograph: Fullerton Municipal Airport

Figure 10



Photograph: John Wayne Airport

⁴⁴ www.cityoffullerton.com

⁴⁵ www.ocair.com

Fuel Price Comparison

Table 10 compares the fuel prices of 100LL and Jet A of John Wayne Airport to other area airports

Table 10

Airport		100 LL	Jet A
John Wayne Airport (SNA)	Full Service	\$7.50	\$7.32
Chino Airport (CNO)	Self Service	\$4.95	N/A
	Full Service	\$4.95	\$4.50
Fullerton Municipal Airport (FUL)	Self Service	\$6.29	\$5.39
	Full Service	\$6.99	\$6.04
Cable Airport (Upland) (CCB)	Self Service	\$5.49	\$4.90
	Full Service	\$5.69	N/A
Riverside Municipal Airport (RAL)	Self Service	\$5.49	N/A
	Full Service	\$5.69	\$4.69
Long Beach Airport (Daugherty Field) (LGB)	Self Service	\$6.26	N/A
	Full Service	\$6.30	\$5.25
El Monte Airport (EMT)	Self Service	\$5.99	N/A
	Full Service	\$6.19	\$5.20
Hawthorne Municipal Airport (Jack Northrop Field) (HHR)	Self Service	\$6.46	N/A
	Full Service	\$7.46	\$6.60
Brackett Field Airport (La Verne) (POC)	Self Service	\$5.99	N/A
	Full Service	\$6.19	\$5.20
Compton Woodley Airport (CPM)	Self Service	\$6.15	N/A
	Full Service	\$6.35	N/A
Zamperini Field (Torrance) (TOA)	Self Service	\$6.25	N/A
	Full Service	\$6.51	N/A
Corona Municipal Airport (AJO)	Self Service	\$5.49	N/A
Rialto Municipal Airport (Miro Field) (Rialto) (L67)	Self Service	\$5.49	N/A
Flabob Airport (Riverside) (RIR)	Self Service	\$5.59	N/A

Source: www.airnav.com June 2014

Self Service: Self-service fueling requires the pilot in **Figure 11** and **Figure 12** to:

1. Position the aircraft near the fueling station.
2. Provide a method of payment (typically a credit card) to the automated fueling station.
3. Follow the instructions and procedures for the automated fueling station to dispense fuel to the aircraft.
4. Obtain a receipt from the automated fueling station.

Figure 11



Photograph: 100LL Self-Serve

Figure 12



Photograph: Jet A Self-Serve

Full Service: Full service fueling is provided by the Fix Base Operator (FBO) employees who will:

- 1) Drive a fuel truck to aircraft,
- 2) Dispense fuel from truck to aircraft and
- 3) Collect payment from pilot or aircraft operator⁴⁶

The pilot or aircraft operator does not have to be involved in the fueling operation. Additionally, the aircraft generally does not have to be repositioned for fueling, since the truck delivers the fuel to the aircraft's location. Since full-service fueling requires manual operation by Fix Base Operator (FBO) employees, the pilot or aircraft operator should ensure that those services are available for their aircraft at the time desired.⁴⁷

Atlantic Aviation Fueling Hours:

Sunday – Saturday: Open 05:30 A.M. to 11:00 P.M

Signature Flight Support Fueling Hours:

Sunday: Open 06:00 A.M. to 10:00 P.M.

Monday – Saturday: Open 06:00 A.M. to 11:00 P.M.

⁴⁶ www.airnav.com

⁴⁷ Fix Base Operators

METHOD OF STUDY

The Grand Jury conducted this investigation through interviews with the stakeholders, review of relevant documents and reports, and inspection tours as described below.

The Grand Jury interviewed:

1. Lease Holders
2. Community Groups
3. Fixed Base Operators
4. General Aviation Pilots
5. Commercial Airline Pilots
6. John Wayne Airport Executives
7. Federal Aviation Administration

The Grand Jury studied the following documents and reports:

1. Survey of Smarter Travel readers and pilots on July 31, 2010.
2. John Wayne Airport May 26, 2004 and April 30, 2014 Supplemental Environmental Impact Report Traffic Reports.
3. Federal Aviation Administration Aviation Policy and Plans Terminal Area Forecast 2013.
4. Proposed March 2013 Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement.
5. Regional Aviation Plan for 2012 Regional Transportation Plan published by Southern California Association of Governments.
6. United States Department of Transportation's Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter.
7. Economic Impact Study of California Airports prepared on March 1, 2013 by Applied Development Economics for California Airports Council.
8. Regional Air Passenger Demand Allocation Model (RADAM) 2008 modeling for the Southern California Association of Governments (SCAG).
9. United States Department of Transportation Bureau of Transportation Statistic of the Research and Innovative Technology Administration for the year 2013 representing data from January 2013 – December 2013.
10. John Wayne Airport Improvement Program Contracts by Parsons Transportation Group, Incorporated, an engineering, construction, technical, and management services firm from 2006-2013

The Grand Jury conducted interviews, on-site inspection and facility tours on five different occasions. The on-site inspection and facility tours were used to supplement the interviews and to provide a visual verification of infrastructure condition, security, sustainability, operation, cost and capacity demand.

ANALYSIS

The background discussion suggests that this report's findings and recommendations should focus on the following issues:

1. Policies to attract more leisure and business travelers
2. Potential infrastructure upgrades to improve security and safety
3. Ways to better match the physical capacity of the airport to current and future demand
4. The impact of new aircraft technology on noise abatement strategies and operating constraints.
5. Making the facility more attractive and safe for general aviation users.

Current Demand

The Federal Aviation Administration forecast for John Wayne Airport passenger demand in **Figure 13** indicates a continued and sustained use of the airport. Superimposed on this graph are two constraints on use:

1. The current Settlement Agreement of 10.8 Million Annual Passengers (MAPs)
2. The physical capacity of the John Wayne Airport infrastructure, 16.9 Million Annual Passengers (MAPs)⁴⁸

Annual actual passenger volume for John Wayne Airport in 2013 was 9,232,789 (**Table 7**), well below the existing cap of 10.8 Million Annual Passengers (MAPs). **Figure 13** shows that in the future the airport could accommodate about 17% more passengers before reaching the current settlement agreement limitation of 10.8 Million Annual Passengers (MAPs).

Demand and Constrained Capacity

Figure 13, Appendix C and Appendix E also shows the Federal Aviation Administration forecast (**Appendix E**) for John Wayne Airport passenger demand while considering two additional constraints on future operations:

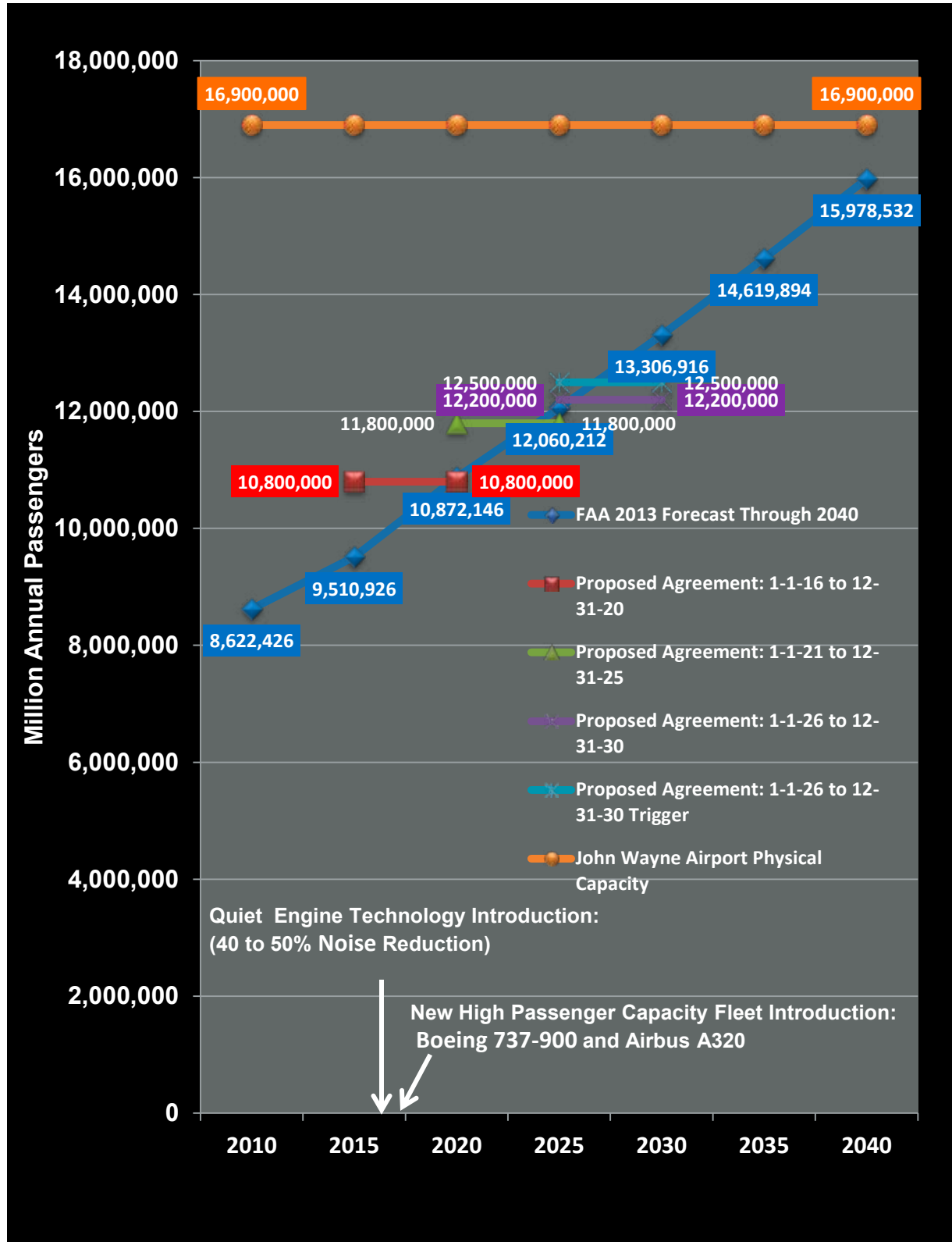
1. 95 Average Daily Departures (ADDs) shown in **Appendix C** and
2. 12.2 or 12.5 Million Annual Passengers (MAPs) shown in **Figure 13**

The airport demand would reach these operating constraints in 2027.

There are other potential bottlenecks at very high capacities which should be evaluated such as peak travel period vehicle traffic flow, access to short term parking, and passenger processing through security.

⁴⁸ March 2013 Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement

Figure 13: Federal Aviation Administration Forecast and New Technology Introduction



Source: Appendix C, Appendix E and Federal Aviation Administration

Demand and Constraint Mitigation

Currently, John Wayne Airport is underutilized relative to the Settlement Agreement constraints. Additional patronage might be incentivized through attracting more leisure travelers. They are more sensitive to air fare and parking fee costs. Airfares will probably be more difficult to control since John Wayne Airport has a very limited ability to directly affect airline policy. Perhaps the best hope for lower airfares is to increase passenger traffic. The airline, would achieve improve economies of larger scale allowing them to pass along some of the savings. Increased capacity could also generate more flights and airline service, thus generating more competition and lower fares.

Orange County passengers can expect little or no airfare relief in the future if the Settlement Agreement continues to limit the number of flights and passengers in the face of growing demand for air travel.⁴⁹

Satisfying future demand will be even more challenging. After about 2026 the Settlement Agreement imposed limits constrain operations to either the 12.5 Million Annual Passengers (MAPs) or the 95 average daily departures (ADDs) constraints. The Average Daily Departures (ADDs) will control if departing flights leave with the same, fixed number of passengers per departure over the 2026 to 2045 period. The number of passengers per enplanement is constrained by both the cabin and airframe configuration and the load capacity factor. In the future the next generation aircraft operating out of John Wayne Airport will be larger and quieter. **Table 11** lists airframe models and relevant performance parameters affecting capacity (number of passengers) and destinations (range), lower model numbers are typical of current operation; larger capacity, higher numbered models will be more typical of the fleet in the 2026 time frame. These aircraft can take-off with the current 5,701 foot runway, but not with full fuel, full cargo and full passenger occupancy.

Table 11: Selected Current Fleet Operating Out of John Wayne Airport

Manufacture	Model	Number of Passengers	Range: Nautical miles	Capacity Increase
Boeing	737-400	144	2,370	Reference
Boeing	737-800	162	3,115	12%
Boeing	737-900	180	3,100	25%
Airbus	A319	124	3,740	Reference
Airbus	A320	150	3,300	20%
Airbus	A321	185	3,200	49%

Source: www.boeing.com
www.airbus.com

⁴⁹ United States of Transportation’s Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter

Absent the Settlement Agreement constraint, passenger traffic could increase by about 50% from 2014 to 2043. Failure to reach this demand level translates into a loss in potential local economic activity and an inconvenience to the leisure travelers who will have to travel further to find cheaper flights.

Clearly, new generation aircraft have the ability to increase passenger traffic by 20% to 49% for Average Daily Departures (ADDs) limited flights. The next generation model capacities and the Average Daily Departures (ADDs) limits were used to estimate the equivalent Million Annual Passengers (MAPs) to determine if Average Daily Departures (ADDs) are the limiting criteria. The results are sufficiently close to the Million Annual Passengers (MAPs) constraints that either constraint will result in the following conclusions:

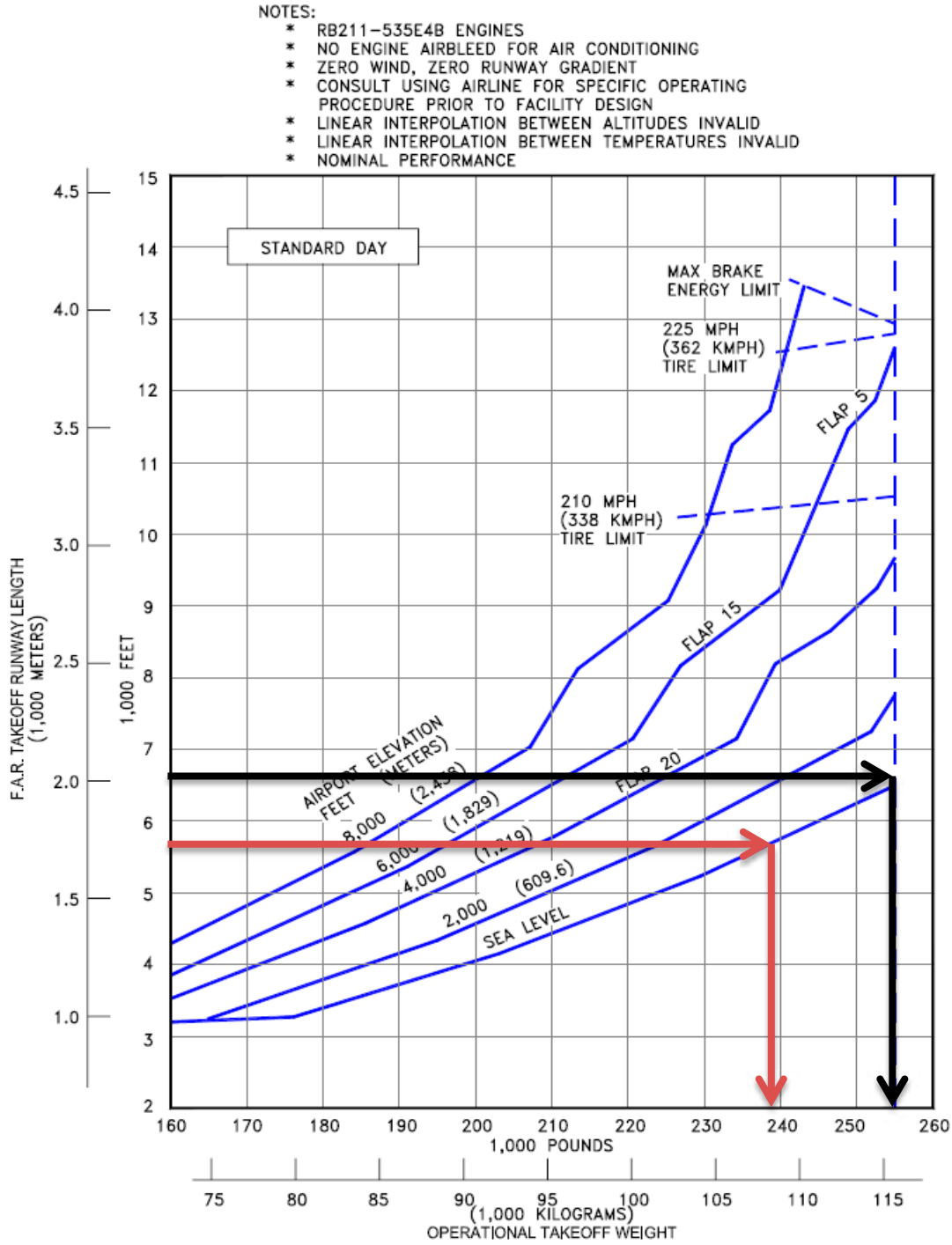
1. Over the next seven years about 1.6 Million Annual Passengers (MAPs) could be added without exceeding the Settlement Agreement limits
2. Forecasted demand cannot be met after 2027.
3. From 2027 until 2040, on average, 2.2 Million Annual Passengers (MAPs) cannot be served because of Settlement Agreement limits.⁵⁰

Passenger and cargo capacity might also be expanded in future years with larger aircraft. This would likely require an increase in runway length. For illustrative purposes, **Figure 14** estimates an increase in Boeing 757 take-off weight (about 17,500 lbs.) achievable by extending the existing 5,701 ft. runway by 1000 ft. This take-off weight increase could be used to load more fuel to extend the destination range or fly more passengers or cargo.⁵¹

⁵⁰ March 2013 Proposed Project and Alternatives of the Proposed Extension of the John Wayne Airport Settlement Agreement

⁵¹ www.boeing.com

Figure 14: Federal Aviation Regulation Takeoff Runway Length Requirements – Standard Day Model: Boeing 757-300 with RB211-535E4 Engines



Source: www.boeing.com

An extended commercial runway could significantly mitigate the potential risks of implementing noise control procedures during aircraft landing and takeoff and potentially allow for heavier aircraft departures

John Wayne airport will be an underutilized asset after about 2027 with the proposed Settlement Agreement operating constraints.

Security and Safety

John Wayne Airport is a multi-use facility handling general and commercial aviation, and air cargo. This requires that users share common infrastructure such as air space, taxiways and parking areas. Although there have not been any serious incursions, a second look at the utility and feasibility of an extended runway should be considered with a specific focus on configurations which:

1. The potential to improve airport security.
2. Further separate the three operations to avoid incursions.
3. Allow the operation of larger or more loaded aircraft, particularly air cargo and longer range commercial, e.g.: increase commercial destinations or passenger capacity.

Security at the interface of the general, cargo and commercial aviation zones should be reviewed to confirm incursions are adequately controlled.

Policies and Procedures

John Wayne Airport is active in promoting near term facility use, primarily focused on incentivizing airlines to provide additional and more convenient long range flight destinations. The incentives primarily take the form of rebates on airport services. These incentives should be expanded with the objective of encouraging airlines to promote:⁵²

- a) The leisure traveler with lower cost flights and more resort destinations, and
- b) The business traveler with more frequent non-stop flights to business destinations

General Aviation Business Model

Orange County is losing business income to other metropolitan area airports around John Wayne Airport from transient General Aviation community because of three reasons:

1. Highest fuel prices
2. No fuel available during off hours
3. Highest temporary tie-down fees

John Wayne Airport should be more competitive with other airports in these areas.

⁵² John Wayne Airport Executives

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as notes, request) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of John Wayne Airport in Orange County, the 2013-2014 Orange County Grand Jury has arrived at 13 principal findings, as follows:

- F.1.** John Wayne Airport has an imbalance of high demand and constrained capacity which, if optimized, could lead to future higher patronage and a more competitive user cost, all leading to a more robust Orange County economy.
- F.2.** John Wayne Airport has completed significant infrastructure upgrades which include improved seismic safety and increased airport capacity. This increase in airport capacity is significantly more than any future authorized Million Annual Passengers (MAPs) increases per the Settlement Agreement.
- F.3.** John Wayne Airport has one of the most challenging take-off flight paths in the world for commercial airliners.
- F.4.** New fuel and engine technology will substantially mitigate noise and pollution issues and allow for higher passenger limits and flights without increases in noise or pollution.
- F.5.** John Wayne Airport runways have the space to utilize a Displaced Runway Threshold (DRT) to allow for heavier commercial and cargo aircraft use.
- F.6.** The Settlement Agreement operating constraints significantly impair John Wayne Airport's ability to serve future demand.
- F.7.** John Wayne Airport has the highest commercial air-fares of the five regional airports. John Wayne Airport airfares and long term parking fees are not competitive relative to local regional and international airports.
- F.8.** John Wayne Airport travelers can now travel to Canada and Mexico, making it a truly international airport.
- F.9.** John Wayne Airport tie down fees are higher than Fullerton Municipal Airport, the only other general aviation airport in Orange County.
- F.10.** John Wayne Airport has the highest price for 100LL aviation fuel and Jet A fuel of any of the regional airports for general aviation. John Wayne Airport does not allow self-service fueling for general aviation pilots.

- F.11.** The Airport Noise and Capacity Act of 1990 (ANCA) gives the Federal Government the exclusive right to regulate airport noise.
- F.12.** There have been no noise violations of any commercial or commuter airline using any of its aircraft type or class that has exceeded any quarterly average noise limits in the years of 2012, 2013, and 2014.
- F.13.** Vehicle traffic thru the airport is increasing. Repetitive traffic has increased through the airport loop waiting for arriving passengers. This is creating congestion during peak hours and safety issues.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as notes, request) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of John Wayne Airport in Orange County, the 2013-2014 Orange County Grand Jury makes the following seven recommendations:

- R.1.** The John Wayne Airport Director should evaluate and recommend to the Board of Supervisors implementation of revenue neutral policies for lowering long term airport parking fees to incentivize leisure travelers to use John Wayne Airport in lieu of other commercial regional airports. **(F.1. and F.7.)**
- R.2.** The John Wayne Airport Director should evaluate and recommend to the Board of Supervisors adoption of the 2013 Federal Aviation Administration Office of Aviation Policy and Plans Terminal Area Forecast Detail Report predictions of passengers demand and Class A Average Daily Departure (ADDs) limits. **(F.2. and F.6.)**
- R.3.** The John Wayne Airport Director should evaluate and recommend to the Board of Supervisors to determine the cost/benefit of increasing runway length to improve safety and allow for larger aircraft or heavier take-offs in accordance with the Federal Aviation Administration Displacement Runway Threshold (DRT) study. **(F.3., and F. 5.)**
- R.4.** The John Wayne Airport Director should evaluate and recommend to the Board of Supervisors implementation of a separate cell phone waiting area to reduce repetitive traffic looping through the terminal to pick up arriving passengers. **(F.13.)**

- R.5.** The John Wayne Airport Director should recommend to the Board of Supervisors to evaluate and consider promoting increasing operating hours when newer airline aircraft can fly 86.8 dB or less SENEL (Single Event Noise Level) at Noise Monitoring Station 1S; 86.9 dB or less SENEL (Single Event Noise Level) at Noise Monitoring Station 2S; and 86.0 dB or less SENEL (Single Event Noise Level) at Noise Monitoring Station 3S; 4S; 5S; 6S; 7S; 8N; 9N; 10N., during those extended hours after 2035. No Averaging. **(F.4., F.11 and F.12)**
- R.6.** The John Wayne Airport Director should recommend to the Board of Supervisors consider renaming John Wayne Airport to John Wayne International Airport to reflect the new Customs Service and the increase in international flights. **(F.8.)**
- R.7.** The John Wayne Airport Director should recommend to the Board of Supervisors implementation of a self-serve 100LL aviation fuel and Jet A fueling station for general aviation pilots. **(F.10.)**

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) 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 as explanation of the reasons therefore.
- (b) 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 time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Response Requested to Findings:

John Wayne Airport Director:

F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, F.12, and F.13

Response Required to Findings:

Orange County Board of Supervisors:

F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, F.12, and F.13

Response Requested to Recommendations:

John Wayne Airport Director:

R.1, R.2, R.3, R.4, R.5, R.6, and R.7

Response Required to Recommendations:

Orange County Board of Supervisors:

R.1, R.2, R.3, R.4, R.5, R.6, and R.7

COMMENDATIONS

The 2013-2014 Orange County Grand Jury is pleased to commend the John Wayne Airport's Airport Director and Deputy Airport Director of Facilities and their staff for their exemplary performance in achieving a world class, international airport. The successful and on-budget completion of the infrastructure improvement projects was also exemplary.

APPENDICES

Appendix A: Acronyms

ADD:	Average Daily Departures
ADT:	Average Daily Traffic
AIM:	Aeronautical Information Manual
AIP:	Airport Improvement Program
APU:	Auxiliary Power Unit
ASTM:	American Society for Testing and Materials
CIP:	Capital Improvement Plan
CNG:	Compressed Natural Gas
CO ₂ :	Carbon Dioxide
Db:	Decibel
DRT:	Displacement Runway Threshold
EPNdb:	Effective Perceived Noise Level decibels
FAA:	Federal Aviation Administration
FAR:	Federal Aviation Regulations
FedEx:	Federal Express
FBO:	Fixed Base Operators
ICAO:	International Civil Aviation Organization
MAP:	Million Annual Passengers

NMS: Noise Monitoring Station
NO_x: Nitrogen Oxide
RADAM: Regional Air Passenger Demand Allocation Model
SCAG: Southern California Association of Governments
SENEL: Single Event Noise Exposure Level
TSA: Transportation Security Administration
UPS: United Parcel Service

Airport Codes

ACK: Nantucket Memorial Airport (Nantucket, Massachusetts)
AJO: Corona Municipal Airport
ATL: Hartsfield-Jackson Atlanta International Airport
BRR: Barra Airport (Barra, Scotland)
BUR: Bob Hope Airport (Burbank)
BWI: Baltimore Washington International Airport
CCB: Cable Airport (Upland)
CNO: Chino Airport
CPM: Compton Woodley Airport
CRW: Yeager Airport (Charleston, West Virginia)
DCA: Ronald Reagan Washington Airport (Arlington, Virginia)
DEN: Denver International Airport
DFW: Dallas/Fort Worth International Airport
EMT: El Monte Airport
EWR: Newark Liberty International Airport
FUL: Fullerton Municipal Airport
GIB: Gibraltar International Airport

GUA: La Aurora International Airport (Guatemala City, Guatemala)

HHR: Hawthorne Municipal Airport (Jack Northrop Field)

HOU: William P. Hobby Airport (Houston)

IAD: Washington Dulles International Airport (Sterling, Virginia)

IAH: George Bush Intercontinental Airport (Houston)

L67: Rialto Municipal Airport (Miro Field)

LAS: McCarran International Airport (Las Vegas)

LAX: Los Angeles International Airport

LGA: LaGuardia Airport (Flushing, New York)

LGB: Long Beach Airport (Daugherty Field)

MDW: Chicago Midway International Airport

MSP: Minneapolis-Saint Paul International Airport

OAK: Oakland International Airport

ORD: O' Hare International Airport (Chicago)

ONT: Ontario International Airport

PBH: Paro International Airport (Paro, Bhutan)

PDX: Portland International Airport

PHX: Phoenix International Airport

POC: Brackett Field Airport (La Verne)

RAL: Riverside Municipal Airport

RIR: Flabob Airport (Riverside)

SEA: Seattle-Tacoma International Airport

SFO: San Francisco International Airport

SLC: Salt Lake City International Airport

SLI: Los Alamitos Army Airfield

SMF: Sacramento International Airport

SNA: John Wayne Airport (Orange County)

TGU: Toncontin International Airport (Tegucigalpa, Honduras)

TOA: Zamperini Field (Torrance)

YUM: Yuma International Airport

WLG: Wellington International Airport (Wellington, New Zealand)

Airline Codes

AA: American Airlines

AS: Alaska Airlines

B6: Jet Blue Airways

DL: Delta Airways

F9: Frontier Airlines

FL: Air Tran

G4: Allegiant Air

NK: Spirit Airlines

SY: Sun Country Airlines

UA: United Airlines

US: US Airways

VX: Virgin American

WN: Southwest Airlines

WS: West Jet

YV: Mesa Airlines

Y4: Volaris Airlines

40: Interjet

Commuter Airline Codes

CP: Compass Airlines

OO: Sky West Airlines

Air Cargo Codes

FM: FedEx Express

5X: UPS (United Parcel Service)

Appendix B: Glossary

Aeronautical Information Manual:	The federal regulatory body's official guide to basic flight information and air traffic control procedures.
Airport Improvement Program:	United States federal grant program that provides funds to airports to help improve safety and efficiency.
American Society for Testing and Materials:	International standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. The organization's headquarters is in West Conshohocken, Pennsylvania.
Average Daily Departures:	Average number of scheduled departures per day of air carrier aircraft computed on the basis from April 1 of each year to March 31 of the following year.
Average Daily Traffic:	Total vehicles entering and leaving the airport over a 24 hour period.
Auxiliary Power Unit:	Provides energy for functions other than propulsion.

Capital Improvement Plan:	A short-range plan, usually four to ten years, which identifies capital projects and equipment purchases, provides a planning schedule and identifies options for financing the plan.
Carbon Dioxide:	Chemical compound composed of two oxygen atoms each covalently double bonded to a single carbon atom. Plants, algae, and cyanobacteria use light energy to photosynthesize carbohydrate from carbon dioxide and water, with oxygen produced as a waste product.
Compressed Natural Gas:	Methane stored at high pressure. It is made by compressing the gas to less than 1 percent of its volume.
Decibel:	Unit of measure of sound proportional to the logarithm of the measured sound pressure.
Displacement Runway Threshold:	Located at a point other than the physical beginning or end of the runway. The portion of the runway so displaced may be used for takeoff but not for landing. Landing aircraft may use the displaced area on the opposite end for roll out.
Enplaned Passenger:	Revenue passenger boarding an aircraft
Effective Perceived Noise Level decibels:	Perceived Noise Level in decibels plus a tone correction and a duration correction.
Federal Aviation Administration:	National aviation authority of the United States of America. An agency of the United States Department of Transportation, it has authority to regulate and oversee all aspects of American civil aviation.
Federal Aviation Regulations	Rules prescribed by the Federal Aviation Administration (FAA) governing all aviation activities in the United States.

Federal Express:	Federal Express Corporation is an American global courier delivery service company headquartered in Memphis, Tennessee.
Fixed Base Operators:	Commercial business granted the right by an airport to operate on the airport and provide aeronautical services such as fueling, hangar, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction.
International Civil Aviation Organization:	A specialized agency of the United Nations. It codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. Its headquarters are located in Montreal, Quebec, Canada.
Million Annual Passengers:	Counting Arriving and Enplanement passengers in a year.
Nitrogen Oxide:	Produced during combustion, especially at high temperature.
Noise Monitoring Station:	Permanent stations with a microphone and the sound level measurement device.
Regional Air Passenger Demand Allocation Model:	Forecasting the demand for the region aviation needs. Publish by the Southern California Association of Governments.

- Southern California Association of Governments:** Metropolitan planning organization of six of the ten counties in Southern California, serving Imperial County, Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County. It is the largest metropolitan planning organization in the United States, containing 18 million people within 38,000 square miles and is mandated by the federal government to research and draw up plans for transportation, growth management, hazardous waste management, and air quality.
- Single Event Noise Exposure Level:** Noise exposure level of a single aircraft event measured over the time between the initial and final points when the noise level exceeds a predetermined threshold.
- Transportation Security Administration:** Agency of the United States Department of Homeland Security that exercises authority over the security of the traveling public in the United States.
- United Parcel Service:** United Parcel Service of America, Incorporated is an American global package delivery company headquartered in Sandy Springs, Georgia.

Appendix C: Settlement Agreement Terms Proposed by Various Stakeholders

Principal Restrictions	Proposed Project Extension of the Settlement Agreement	Federal Aviation Administration Office of Aviation Policy and Plans Terminal Area Forecast Detail Report	John Wayne Airport Commercial Air Service Providers Input	John Wayne Airport's Physical Capacity: Current Hours of Operations
Term	1-1-16 through 12-31-2030	1-1-16 through 12-31-2030	1-1-16 through 12-31-2030	1-1-16 through 12-31-2030
Curfew	1-1-16 through 12-31-2035	1-1-16 through 12-31-2035	1-1-16 through 12-31-2035	1-1-16 through 12-31-2035
Annual Passenger Limit: Million Annual Passengers (MAPs)				
1-1-16 to 12-31-20	10.8 MAPs	10.8 MAPs	10.8 MAPs	16.9 MAPs
1-1-21 to 12-31-25	11.8 MAPs	11.4 MAPs	13.0 MAPs	16.9 MAPs
1-1-26 to 12-31-30	12.2 or 12.5 MAPs*	12.8 MAPs	15.0 MAPs	16.9 MAPs
Passenger Flights (Class A Average Daily Departures [ADDs] for Passenger Service)				
1-1-16 to 12-31-20	85 Class A ADDs	107 Class A ADDs	100 Class A ADDs	288 Class A ADDs
1-1-21 to 12-31-25	95 Class A ADDs	120 Class A ADDs	100 Class A ADDs	288 Class A ADDs
1-1-26 to 12-31-30	95 Class A ADDs	135 Class A ADDs	115 Class A ADDs	288 Class A ADDs
Cargo Flights (Class A Average Daily Departures [ADDs] for all-cargo service)				
1-1-16 to 12-21-30	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs
Passenger Loading Bridges				
1-1-16 to 12-21-20	20	20	20	No Limit
1-1-16 to 12-21-30	No Limit	No Limit	No Limit	No Limit

Source: www.ocair.com

Class A: Aircraft that serve long and medium haul market more than 1,000 miles.

* Trigger for capacity increase to 12.5 MAPs: Air carriers must be within 5 percent of 11.8 MAPs in any one year during the January 1, 2021 through December 31, 2025 time frame.

Appendix D: John Wayne Airport Noise Limits (see Figure 3 for locations)

Noise Monitoring Station	Commercial Aircraft		General Aviation	
	Class A	Class E	Daytime	Nighttime
NMS 01S	101.8 dB SENEL	93.5 dB SENEL	101.8 dB SENEL	86.8 dB SENEL
NMS 02S	101.1 dB SENEL	93.0 dB SENEL	101.1 dB SENEL	86.9 dB SENEL
NMS 03S	100.7 dB SENEL	89.7 dB SENEL	100.7 dB SENEL	86.0 dB SENEL
NMS 04S	094.1 dB SENEL	86.0 dB SENEL		86.0 dB SENEL
NMS 05S	094.6 dB SENEL	86.6 dB SENEL		86.0 dB SENEL
NMS 06S	096.1 dB SENEL	86.6 dB SENEL		86.0 dB SENEL
NMS 07S	093.0 dB SENEL	86.0 dB SENEL		86.0 dB SENEL
NMS 08N				86.0 dB SENEL
NMS 09N				86.0 dB SENEL
NMS 10N				86.0 dB SENEL

Source: John Wayne Airport – www.ocair.com

dB: Decibel.

SENEL: Single Event Noise Exposure Level.

Class A: Aircraft which operate at gross takeoff weight not greater than 140,000 pounds for dual main landing gear configurations and 300,000 pounds for aircraft for dual tandem landing gear configurations. These aircraft serve long and medium haul market more than 1,000 miles. These aircraft requires more fuel to reach its destination and as a result, requires greater thrust on departure. The combination of heavy fuel loads and a greater thrust correlate to the higher noise levels.

Class E: Aircraft which operate at gross takeoff weight not greater than 140,000 pounds for dual main landing gear configurations and 300,000 pounds for aircraft for dual tandem landing gear configurations. These aircraft serve short haul markets less than 1,000 miles and carry less fuel and are, as a result, lighter and quieter.

In the years of 2012, 2013 and 2014 there has been no noise violations of any commercial airline using any of its aircraft type under Class A that has exceeded any quarterly average noise limits.

In the years of 2012, 2013 and 2014 there has been no noise violations of any commercial airline using any of its aircraft type under Class E that has exceeded any quarterly average noise limits.

In the years of 2012, 2013 and 2014 there has been no noise violations of any commuter airline using any of its aircraft type that has exceeded any quarterly average noise limits.⁵³

⁵³ www.ocair.com

Appendix E: 2013 Forecast – John Wayne Airport Enplanements

**Federal Aviation Administration
Office of Aviation Policy and Plans
Terminal Area 2013 Forecast - John Wayne Airport Enplanements**

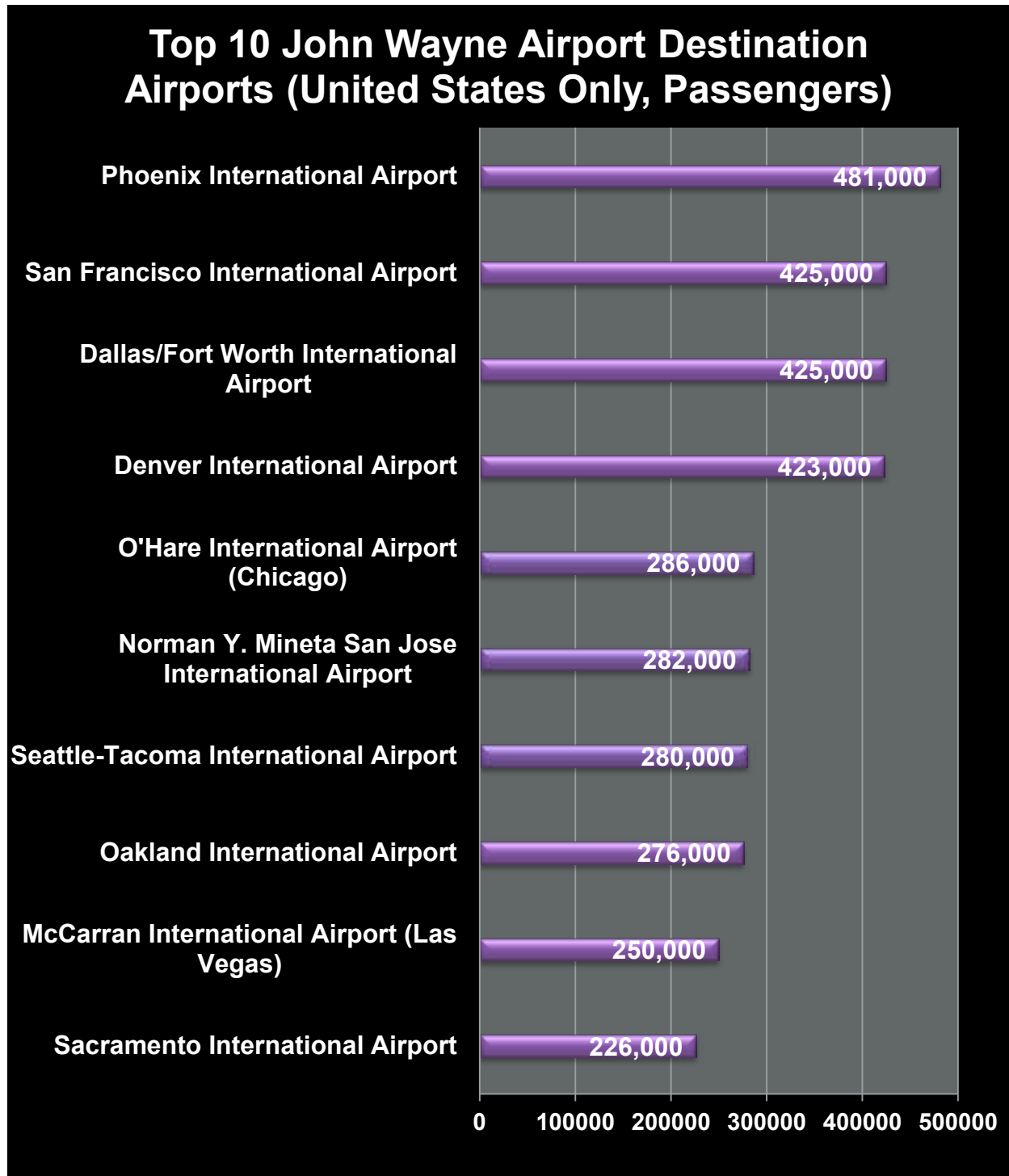
Year	Forecast	Air Carrier	Commuter	Total International Enplanement	Total Enplanements
2008		4,366,016	233,034	402	4,599,452
2009		3,984,673	264,441	1,179	4,250,293
2010		4,108,624	194,575	8,014	4,311,213
2011		4,102,052	122,165	28,526	4,252,743
2012		4,083,745	143,574	77,445	4,304,764
2013	*	4,181,682	146,270	202,317	4,530,269
2014	*	4,245,856	140,337	233,248	4,619,441
2015	*	4,347,893	143,392	264,178	4,755,463
2016	*	4,448,453	146,583	295,108	4,890,144
2017	*	4,552,750	149,823	326,037	5,028,610
2018	*	4,657,972	153,257	356,964	5,168,193
2019	*	4,759,495	156,493	387,894	5,303,882
2020	*	4,857,640	159,610	418,823	5,436,073
2021	*	4,940,873	162,209	449,753	5,552,835
2022	*	5,022,345	164,813	480,683	5,667,841
2023	*	5,105,957	167,484	511,613	5,785,054
2024	*	5,195,409	170,349	542,543	5,908,301
2025	*	5,283,601	173,032	573,473	6,030,106
2026	*	5,371,306	175,811	604,400	6,151,517
2027	*	5,457,444	178,533	635,329	6,271,306
2028	*	5,547,576	181,384	666,258	6,395,218
2029	*	5,639,659	184,236	697,188	6,521,083
2030	*	5,737,877	187,463	728,118	6,653,458
2031	*	5,833,762	190,512	759,048	6,783,322
2032	*	5,929,730	193,704	789,978	6,913,412
2033	*	6,025,192	196,723	820,908	7,042,823
2034	*	6,121,001	199,775	851,838	7,172,614
2035	*	6,224,170	203,012	882,765	7,309,947
2036	*	6,330,037	206,289	913,694	7,450,020
2037	*	6,433,627	209,623	944,623	7,587,873
2038	*	6,535,990	212,724	975,553	7,724,267
2039	*	6,634,030	215,687	1,006,483	7,856,200
2040	*	6,733,070	218,783	1,037,413	7,989,266

Appendix F: 2013 Forecast – John Wayne Airport Operations

**Federal Aviation Administration
Office of Aviation Policy and Plans
Terminal Area 2013 Forecast - John Wayne Airport Operations**

		AIRPORT OPERATIONS						
		Itinerant Operations				Local Operations		
Year	Forecast	Air Carrier	Air Taxi	General Aviation	Military	Civil	Military	Total Airport Operations
2008		88,985	27,739	120,219	65	91,946	0	328,954
2009		87,439	14,749	101,963	83	84,000	0	288,234
2010		88,133	10,423	104,680	65	83,387	0	286,688
2011		83,172	9,346	97,975	172	74,394	0	265,059
2012		82,675	9,083	96,949	464	71,342	0	260,513
2013	*	85,001	10,251	96,170	592	69,328	76	261,418
2014	*	84,180	10,631	95,805	592	68,315	76	259,599
2015	*	86,480	10,737	96,997	592	68,658	76	263,540
2016	*	88,758	10,844	98,203	592	69,002	76	267,475
2017	*	91,100	10,952	99,425	592	69,348	76	271,493
2018	*	93,471	11,061	100,662	592	69,696	76	275,558
2019	*	95,767	11,171	101,914	592	70,046	76	279,566
2020	*	97,996	11,281	103,181	592	70,398	76	283,524
2021	*	99,940	11,392	104,464	592	70,752	76	287,216
2022	*	101,854	11,506	105,763	592	71,108	76	290,899
2023	*	103,807	11,618	107,079	592	71,466	76	294,638
2024	*	105,872	11,731	108,411	592	71,825	76	298,507
2025	*	107,910	11,844	109,760	592	72,186	76	302,368
2026	*	109,943	11,958	111,126	592	72,549	76	306,244
2027	*	111,943	12,072	112,507	592	72,914	76	310,104
2028	*	114,025	12,187	113,906	592	73,281	76	314,067
2029	*	116,143	12,305	115,323	592	73,650	76	318,089
2030	*	118,380	12,424	116,758	592	74,021	76	322,251
2031	*	120,565	12,547	118,210	592	74,394	76	326,384
2032	*	122,755	12,673	119,681	592	74,769	76	330,546
2033	*	124,937	12,798	121,170	592	75,145	76	334,718
2034	*	127,125	12,924	122,676	592	75,522	76	338,915
2035	*	129,455	13,053	124,201	592	75,901	76	343,278
2036	*	131,824	13,183	125,746	592	76,282	76	347,703
2037	*	134,171	13,314	127,311	592	76,665	76	352,129
2038	*	136,480	13,446	128,894	592	77,050	76	356,538
2039	*	138,707	13,580	130,498	592	77,437	76	360,890
2040	*	140,961	13,715	132,122	592	77,826	76	365,292

Appendix G: 10 Most Popular John Wayne Airport Destinations



Source: United States Department of Transportation
Research and Innovative Technology Administration
Bureau of Transportation Statistics
2013 Represents data from January 2013 – December 2013

Appendix H: Market and Carrier One Way Fare Information

The Department of Transportation’s Office of Aviation Analysis releases a quarterly fare report. It lists the number of one-way passenger’s trips per day, the nonstop distance, the average market fare, and identifies the airlines with the largest market share and the lowest average fare; market share and average fares are provided for both airlines. Average fares are average prices paid by all fare paying passengers. They therefore cover first class fares paid to carriers offering such service, but they do not cover free tickets such as those awarded by carriers offering frequent flyer programs.

The lowest fare carrier is the carrier with the lowest average fare that has at least 10 percent share of the traffic in the market, except for markets where only a single carrier has a 10 percent of greater share in such markets the carrier with the lowest average fare is identified even if its market share is less than 10 percent. In some markets the market average fare will be lower than the fare for its lowest fare carrier because several carriers that do not individually account for a 10 percent share can collectively account for a significant share. Often they charge lower average fares than individual carriers with greater market participation.⁵⁴

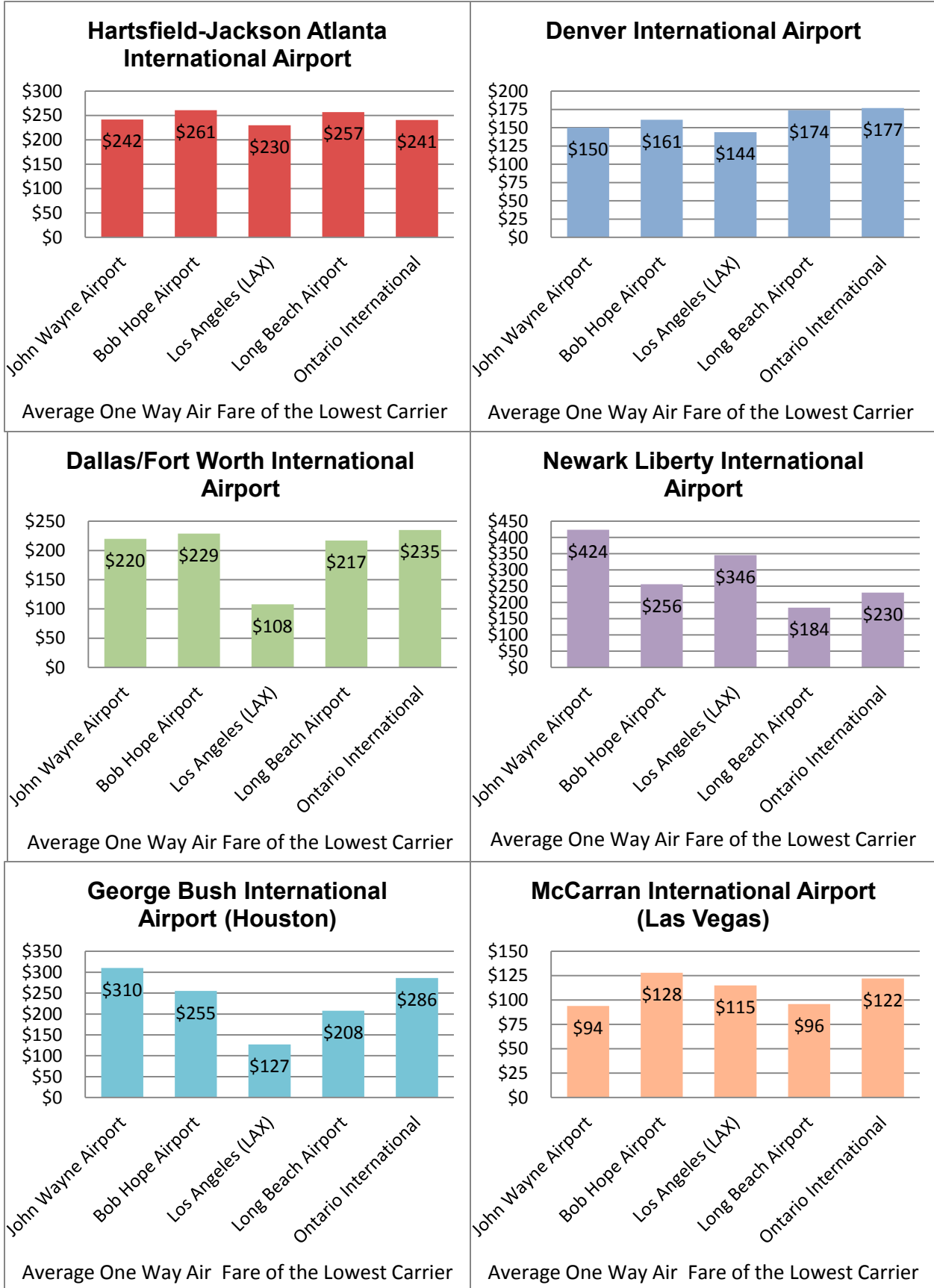
Market and Carrier One Way Fare Information Per Day										
Airport Code		Distance Miles	Passengers	Overall Average Fare	Largest Carrier	Market Share Largest Carrier	Average Fare Largest Carrier	Carrier With Lowest Fare	Market Share Lowest Carrier	Average Fare Lowest Carrier
ATL	SNA	1,919	396	\$319	DL	67.5%	\$345	WN	10.1%	\$242
	BUR	1,941	36	\$270	WN	54.2%	\$261	WN	54.2%	\$261
	LAX	1,947	2,092	\$296	DL	64.6%	\$320	FL	10.3%	\$230
	LGB	1,933	21	\$274	DL	48.4%	\$287	US	47.9%	\$257
	ONT	1,900	159	\$270	WN	31.0%	\$258	AA	18.0%	\$241
DEN	SNA	846	1,327	\$162	WN	40.9%	\$154	F9	28.0%	\$150
	BUR	850	370	\$175	WN	72.0%	\$161	WN	72.0%	\$161
	LAX	862	2,607	\$159	WN	36.9%	\$147	F9	18.7%	\$144
	LGB	854	15	\$183	DL	53.0%	\$194	US	44.0%	\$174
	ONT	819	352	\$189	WN	76.6%	\$177	WN	76.6%	\$177
DFW	SNA	1,205	866	\$259	AA	79.3%	\$265	AS	11.4%	\$220
	BUR	1,231	40	\$245	US	80.3%	\$229	US	80.3%	\$229
	LAX	1,235	2,669	\$217	AA	55.7%	\$237	NK	11.3%	\$108
	LGB	1,221	20	\$220	US	86.5%	\$219	DL	10.3%	\$217
	ONT	1,188	331	\$243	AA	75.8%	\$243	US	19.8%	\$235

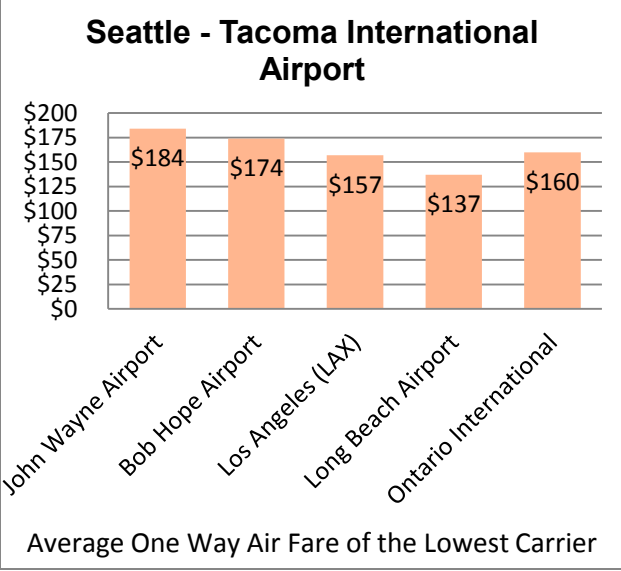
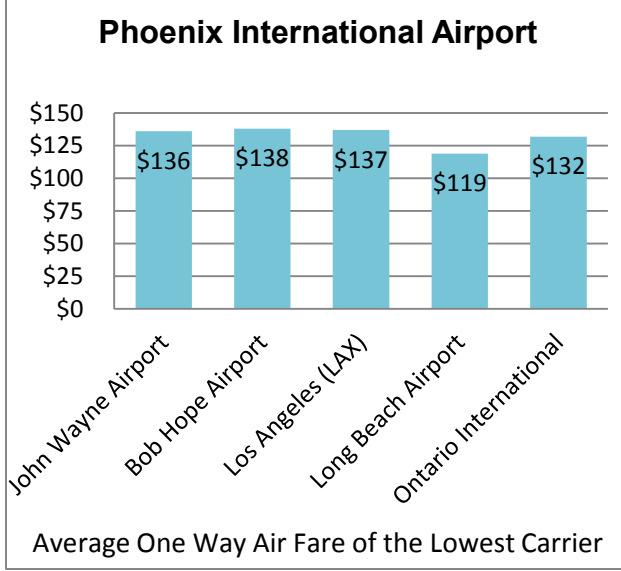
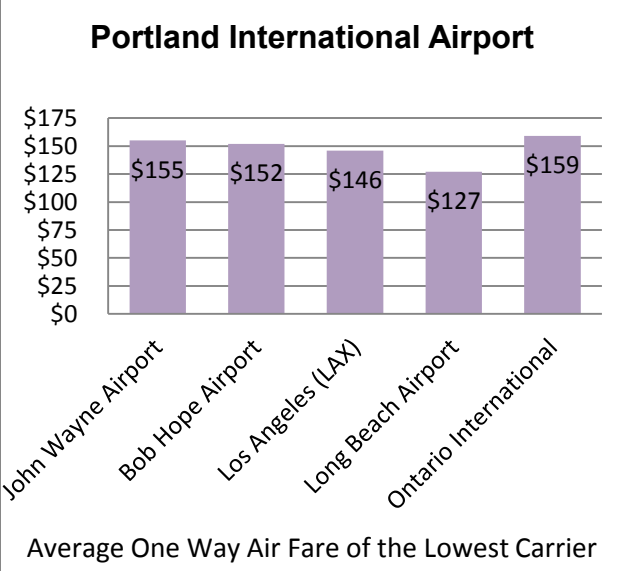
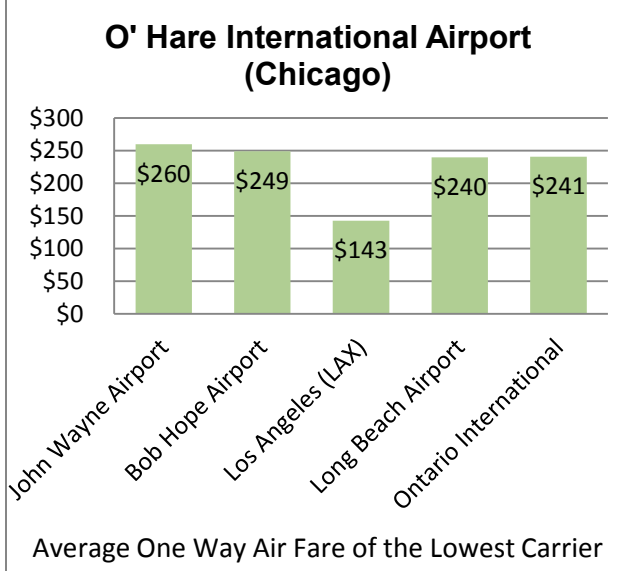
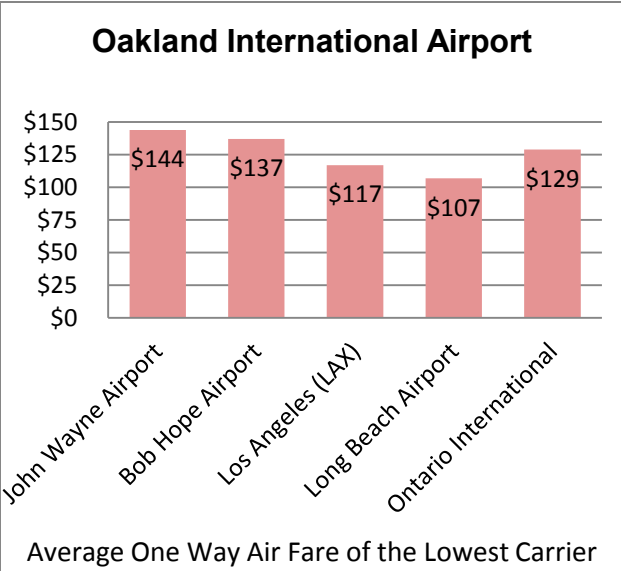
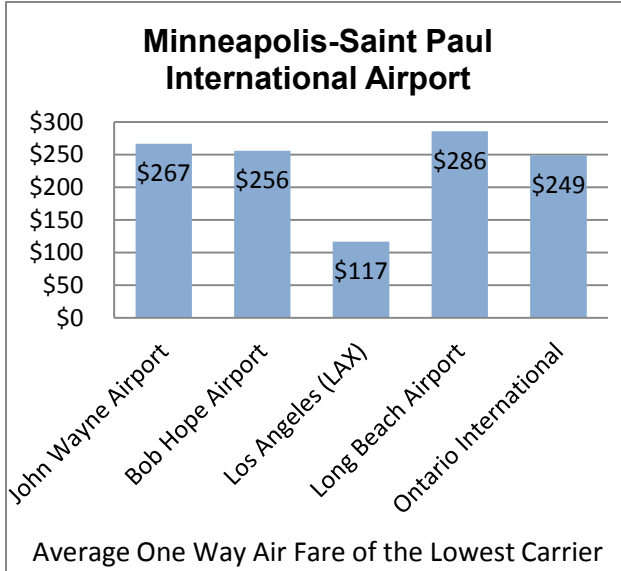
⁵⁴ United States Department of Transportation’s Office of Aviation Analysis Air Transport Association Domestic Airfare Report 4th Quarter.

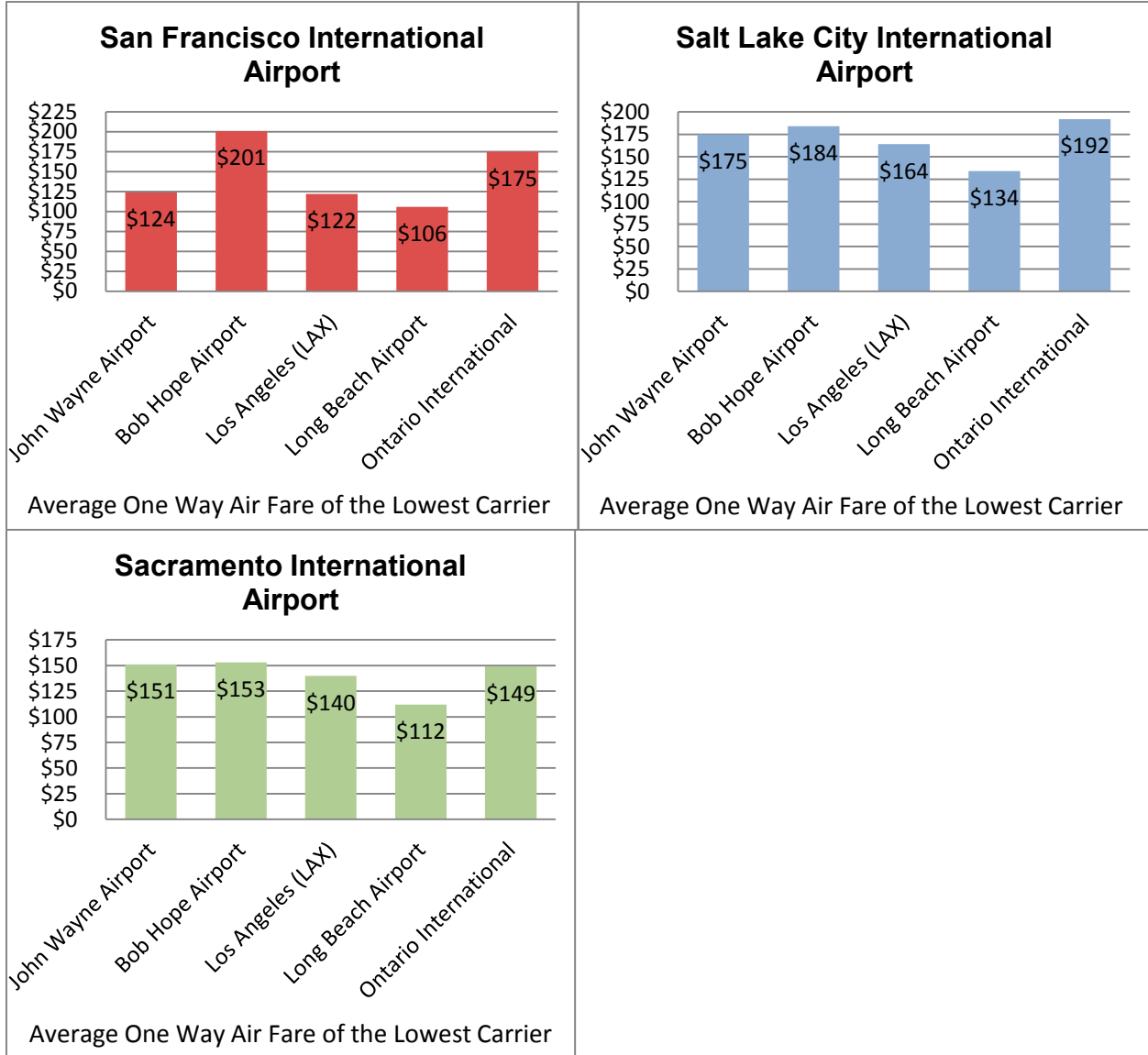
Market and Carrier One Way Fare Information Per Day										
Airport Code	Distance Miles	Passengers	Overall Average Fare	Largest Carrier	Market Share Largest Carrier	Average Fare Largest Carrier	Carrier With Lowest Fare	Market Share Lowest Carrier	Average Fare Lowest Carrier	
EWR	SNA	2,434	449	\$412	UA	84.4%	\$424	UA	84.4%	\$424
	BUR	2,444	34	\$272	UA	44.7%	\$271	WN	30.4%	\$256
	LAX	2,454	2,874	\$336	UA	62.7%	\$346	UA	62.7%	\$346
	LGB	2,444	11	\$261	US	75.0%	\$282	B6	19.2%	\$184
	ONT	2,409	90	\$258	UA	37.7%	\$250	WN	21.2%	\$230
IAH	SNA	1,346	356	\$307	UA	85.3%	\$310	UA	85.3%	\$310
	BUR	1,378	20	\$271	UA	55.7%	\$255	UA	55.7%	\$255
	LAX	1,379	1,371	\$270	UA	61.1%	\$312	NK	17.5%	\$127
	LGB	1,364	42	\$209	US	92.3%	\$208	US	92.3%	\$208
	ONT	1,334	122	\$306	UA	67.7%	\$310	US	23.5%	\$286
LAS	SNA	226	819	\$139	WN	80.7%	\$150	FL	19.2%	\$94
	BUR	223	1,150	\$128	WN	100.0%	\$128	WN	100.0%	\$128
	LAX	236	2,738	\$117	WN	46.4%	\$115	WN	46.4%	\$115
	LGB	231	654	\$96	B6	100.0%	\$96	B6	100.0%	\$96
	ONT	197	404	\$122	WN	100.0%	\$122	WN	100.0%	\$122
MSP	SNA	1,522	291	\$310	DL	61.7%	\$350	US	12.9%	\$267
	BUR	1,523	39	\$276	WN	53.2%	\$256	WN	53.2%	\$256
	LAX	1,535	1,334	\$247	DL	49.6%	\$297	NK	11.7%	\$117
	LGB	1,529	12	\$297	US	72.2%	\$286	US	72.2%	\$286
	ONT	1,494	87	\$271	WN	43.5%	\$249	WN	43.5%	\$249
OAK	SNA	371	1,405	\$144	WN	99.0%	\$144	WN	99.0%	\$144
	BUR	325	2,007	\$137	WN	99.7%	\$137	WN	99.7%	\$137
	LAX	337	1,869	\$127	WN	83.5%	\$129	DL	15.3%	\$117
	LGB	353	597	\$107	B6	100.0%	\$107	B6	100.0%	\$107
	ONT	362	1,108	\$129	WN	99.5%	\$129	WN	99.5%	\$129
ORD	SNA	1,726	842	\$275	AA	51.1%	\$260	AA	51.1%	\$260
	BUR	1,734	27	\$276	UA	47.4%	\$249	UA	47.4%	\$249
	LAX	1,745	3,494	\$246	AA	37.3%	\$248	NK	10.3%	\$143
	LGB	1,735	22	\$253	US	70.4%	\$251	DL	20.7%	\$240
	ONT	1,700	106	\$253	US	40.0%	\$241	UA	40.0%	\$241
PDX	SNA	859	628	\$165	AS	68.9%	\$169	WN	20.9%	\$155
	BUR	817	428	\$162	AS	56.7%	\$169	WN	38.1%	\$152
	LAX	834	1,233	\$164	AS	52.6%	\$164	WN	15.6%	\$146
	LGB	846	662	\$127	B6	88.6%	\$127	B6	88.6%	\$127
	ONT	838	420	\$163	AS	49.8%	\$165	WN	44.4%	\$159
PHX	SNA	338	1,233	\$148	WN	68.2%	\$154	US	31.4%	\$136
	BUR	369	909	\$138	WN	79.3%	\$138	WN	79.3%	\$138
	LAX	370	1,682	\$138	WN	56.3%	\$137	WN	56.3%	\$137
	LGB	355	226	\$119	US	98.8%	\$119	US	99.8%	\$119
	ONT	325	651	\$139	WN	73.5%	\$142	US	26.3%	\$132

Market and Carrier One Way Fare Information Per Day										
Airport Code	Distance Miles	Passengers	Overall Average Fare	Largest Carrier	Market Share Largest Carrier	Average Fare Largest Carrier	Carrier With Lowest Fare	Market Share Lowest Carrier	Average Fare Lowest Carrier	
SEA	SNA	978	1,185	\$183	AS	84.7%	\$184	AS	84.7%	\$184
	BUR	937	623	\$177	AS	80.6%	\$177	WN	14.7%	\$174
	LAX	954	2,981	\$161	AS	47.7%	\$161	VX	25.0%	\$157
	LGB	965	732	\$140	B6	67.9%	\$137	B6	67.9%	\$137
	ONT	956	657	\$164	AS	69.4%	\$164	WN	22.8%	\$160
SFO	SNA	372	1,900	\$126	WN	49.6%	\$124	WN	49.6%	\$124
	BUR	326	209	\$200	UA	92.7%	\$201	UA	92.7%	\$201
	LAX	337	5,401	\$125	VX	26.8%	\$129	WN	24.6%	\$122
	LGB	354	622	\$106	B6	97.6%	\$106	B6	97.7%	\$106
	ONT	363	171	\$174	UA	90.2%	\$175	OO	90.2%	\$175
SLC	SNA	588	424	\$191	DL	80.1%	\$193	WN	15.6%	\$175
	BUR	574	151	\$195	DL	65.4%	\$199	WN	29.6%	\$184
	LAX	590	1,172	\$174	DL	46.4%	\$183	WN	32.0%	\$164
	LGB	588	752	\$137	B6	61.8%	\$134	B6	61.8%	\$134
	ONT	558	179	\$206	DL	53.0%	\$217	WN	38.0%	\$192
SMF	SNA	404	1,142	\$152	WN	98.2%	\$151	WN	98.2%	\$151
	BUR	358	1,042	\$153	WN	99.4%	\$153	WN	99.4%	\$153
	LAX	373	1,221	\$150	WN	71.0%	\$149	DL	12.9%	\$140
	LGB	387	407	\$112	B6	99.4%	\$112	B6	99.4%	\$112
	ONT	390	1,018	\$149	WN	99.0%	\$149	WN	99.0%	\$149

Source: United States Department of Transportation’s Office of Aviation Analysis Air Transport Association Domestic Airfare Report 2013 4th Quarter









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