



Final Report





ORANGE COUNTY GRAND JURY

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June 28, 2019

Honorable Kirk Nakamura
Presiding Judge
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Nakamura:

On behalf of the 2018-2019 Orange County Grand Jury, I am pleased to present the Grand Jury's Final Report which is a compilation of the seven civil investigative reports completed during its term.

The diverse background and experience of the nineteen members of the Grand Jury led to both the excellent quality of the required analysis and the writing of each report. The Grand Jury conducted its investigations, including research, interviews of numerous relevant witnesses and review of voluminous documents with the highest level of professionalism and integrity. The Grand Jury consisted of critical thinkers who were diligent in ensuring that the reports were empirical, fact-based and free from bias to be able to support clear recommendations to the respective investigated agencies for improvement.

It has been an honor and privilege to serve as the Foreperson for this year's Grand Jury whose reports address a wide range of local government issues including two regarding the County jail; coordination of the County and cities' emergency notification systems; removal of the Internal Audit Department from the elected Auditor Controller; re-opening Irvine Lake; delays in developing a veterans cemetery in Orange County; and the urban forest in Orange County and its cities.

In addition to undertaking the extensive investigations, the Grand Jury conducted seven indictment hearings and three investigative hearings presented by the Orange County District Attorney and one indictment hearing presented by the California Attorney General. Further, the Grand Jury received and reviewed eighteen citizen complaints regarding various issues. Lastly, the Grand Jury attended one Inmate Death Review and two Coroner Case Reviews.

We have especially appreciated your support throughout the Grand Jury year. In addition, we must thank the following individuals who dedicated their time and counsel without which the Grand Jury's work could not have been accomplished:

- Honorable Erick Larsh, Assistant Presiding Judge, Superior Court of California, County of Orange
- Honorable Kimberly K. Menninger, Supervising Judge of the Central Felony Panel of the Superior Court of California, County of Orange
- Sharon Durbin, Senior Deputy County Counsel
- Jacqueline Guzman, Senior Deputy County Counsel
- Brett Brian, Senior Deputy District Attorney
- Denise Hernandez, Deputy District Attorney

The Grand Jury could not have accomplished its work without the most impressive expertise and willingness to guide the Grand Jury through the procedural process for communicating with the Court, District Attorney, County Counsel and the numerous county agencies to schedule tours, presentations and/or interviews. Thanks for their extraordinary professionalism go to:

- Theda Kaelin, Grand Jury Coordinator
- Joyce Mwangi, Legal Processing Specialist

Finally, the Grand Jury thanks you for this opportunity to serve the people of Orange County.

Respectfully submitted,



Birgit Sale, Foreperson
2018-2019 Orange County Grand Jury

BS:jm



Top Row from Left to Right: Mike Ernandes, Terri Elders, Larry Gebhardt, Judy Charm, Steve Sloan, Judith Stamper, Stephen Balloch, Birgit Sale, Gene Siegel, Erin Newman, Giri Athreya, Janet Pearce, Larry “Klem” Klementowski

Front Row from Left to Right: Doug Gillen, Rick Flower, Rick Beckley, John Saliture, Tim Ogata, Steve Randall

(Front and rear cover photographs by the 2018 – 2019 Grand Jury)

2018-2019 Grand Jury Reports

Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts

An investigation into the reasons the Irvine Lake has remained closed to water recreation since March, 2016. The report identifies the relevant government agencies and dynamics and possible ways to accelerate the re-opening of the lake for recreational activities.

“Your Call May Be Recorded”

A detailed investigation into allegations that the Orange County Sheriff’s Department recorded and accessed privileged inmate telephone communications with their legal counsel and shared the information with others.

“The Silent Killer” Hypertension in Orange County’s Intake and Release Center

An investigation into the Correctional Health Services’ current policy of not taking vital signs on all inmates being booked into the Intake and Release Center and whether this policy puts inmates at risk for cardiovascular related illnesses and/or death.

If It Ain’t Broke, Don’t Fix It

An investigation into the impact of the removal of the Internal Audit Department from the elected Auditor Controller and reduction of the department’s budget by the Board of Supervisors on the efficiency and effectiveness of County auditing processes.

Emergency Public Information - Should I Stay or Should I Go?

An examination of how emergency information is gathered, coordinated and disseminated to the public when multiple jurisdictions in Orange County are involved. Shortcomings are identified and improvements are recommended.

Orange County’s Urban Forest

A comprehensive review of the urban forest of Orange County cities and unincorporated areas and appropriate recommendations for better health, improved environment and energy savings for all its residents.

Home At Last: Honoring Our Veterans With A Veterans Cemetery In Orange County

The investigation identifies the participants and provides historic background related to efforts to locate a veterans cemetery in Orange County, with the potential for accelerating its development.

Re-Opening Irvine Lake
A Win-Win for Taxpayers and Outdoor
Enthusiasts



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SUMMARY

The Grand Jury has determined the cause of the closure of Irvine Lake to the public in 2016, and why it remains closed. As of the end of 2018, it has remained closed; however, in 2019 there is reason for optimism on multiple fronts. This report from the Grand Jury intends to provide useful background for interested residents of Orange County as to the specific interests and driving factors of the three public agencies involved. This report also will provide some insight on the sequence of legal issues to be resolved. The Grand Jury intends to provide a possible road map to a successful resolution of the outstanding issues among the parties.

Irvine Lake is the largest fresh water body in Orange County. Since 1941, the lake has provided the residents of Orange County with a unique opportunity for a variety of recreational activities. In 2014, The Irvine Company made public its intention to transfer certain land parcels it owned surrounding Irvine Lake to Orange County in perpetuity for the benefit of its residents. The land transfer triggered a series of negotiations among, primarily, Orange County Parks, Serrano Water District and Irvine Ranch Water District, seeking agreements on certain matters to move the action forward. Those negotiations stalled and in March 2016, Irvine Lake was closed to the public for fishing, boating and other water recreation. This closure has and continues to result in lost revenues for Orange County taxpayers in addition to lost recreation for its residents.

Finally, there is good reason to believe that Irvine Lake and the property transferred to Orange County by The Irvine Company will once again provide residents with a unique recreational experience. Further, the involvement of the Orange County Parks in the future of Irvine Lake has the potential to make the recreational land and water experiences at the Irvine Lake area property better and more varied than ever before.

REASON FOR THE STUDY

The three public agencies involved in the future operations of Irvine Lake have not announced a plan for its reopening for recreation use since its closure in 2016. The Grand Jury examined the reasons that the lake remains closed.

Irvine Lake has provided recreation opportunities to the residents of Orange County since 1941. In 2014, The Irvine Company (TIC) agreed to dedicate 2,500 acres surrounding Irvine Lake to the residents of Orange County to enjoy as permanent open space. This dedication required an agreement between the two water districts actively involved in the management of Irvine Lake regarding access to Irvine Lake and future recreation rights: Serrano Water District (SWD) and Irvine Ranch Water District (IRWD). Orange County Parks (OC Parks) would be the governmental agency responsible for restoring and maintaining the newly dedicated public land, and in consideration would receive TIC's interest in water recreation rights at Irvine Lake, plus additional adjacent land parcels (see Appendix, Exhibit 1); therefore, OC Parks would need to be a party to any new agreement(s).

The three primary parties (SWD, IRWD and OC Parks) began negotiations in 2014 but by early 2016 had failed to make any real progress. This impasse resulted in a termination in March 2016 of the existing agreement between TIC and SWD with respect to recreation rights. Irvine Lake has remained closed to the public for water recreation through the balance of 2016 until the present.

Given the historic importance of Irvine Lake for water recreation to Orange County residents, the continued lack of progress in the negotiations between the relevant government agencies, and a general lack of understanding of the underlying issues by the residents of Orange County, the 2018-2019 Orange County Grand Jury (Grand Jury) elected to conduct an investigation, employing its particular powers to gather information, for the benefit of Orange County residents. The report will describe interagency dynamics that have resulted in the current impasse among SWD, IRWD and OC Parks with respect to the reopening of Irvine Lake. The Grand Jury will investigate methods for improving those dynamics to allow for the successful resolution of negotiations and reopening of Irvine Lake.

METHOD OF STUDY

The Grand Jury identified and interviewed key stakeholders involved in the negotiations. The interviews identified basic principles or restraints driving the negotiating parameters, such as the priority of providing safe water supplies over the need for recreation, the need to generate sufficient income to cover water infrastructure costs, and the need to obtain sufficient returns to maintain and improve land newly dedicated to the public. The Grand Jury reviewed information about past recreational services and solicited suggestions to expand recreational and revenue generating capabilities of the area.

Members of the Grand Jury toured Irvine Lake and all adjacent properties that are part of the negotiations and expected to be part of future OC Parks development plans. They reviewed the condition of existing improvements and issues affecting property access.

The Grand Jury reviewed multiple articles in local newspapers that provided coverage of the closing of Irvine Lake and limited coverage of the ongoing negotiations, plus material on the general background of the history of Irvine Lake and its status.

The Grand Jury reviewed existing development or redevelopment plans for the recreational facilities and services offered for Irvine Lake. These included estimates for associated costs and investments as well as expected future revenue streams. The Grand Jury reviewed existing agreements among relevant parties and their successors dating back to 1928, written communications between the parties, and limited historical financial operating information. The stakeholders also provided legal background and documentation as to the sequence that negotiations should follow to be successful.

BACKGROUND AND FACTS

Background History

Santiago Dam (also known as Santiago Creek Dam) is an earthen and rock filled dam across Santiago Creek within Orange County, forming Irvine Lake. The 136-foot earth dam and its reservoir primarily provide for water storage. The dam and reservoir secondarily provide recreational opportunities. It lies east of the city of Orange and north of Irvine. Irvine Lake is the largest body of fresh water entirely within Orange County.

Construction on the dam commenced in 1929 with a joint agreement by the Irvine Company and Serrano Irrigation District. After they graded the site they built the dam using dirt and rock excavated from the sides of the canyon. They completed the structure in 1931, and its reservoir, Irvine Lake, was filled by 1933. By the late 1930s, the lake had been stocked with fish. It was opened to the public for recreational use in 1941.

The dam's initial purpose was for, irrigation and municipal water use. With heavy suburban sprawl that has occurred since the 1960s, agriculture along lower Santiago Creek has been drastically reduced. Conversely, the need for water storage and distribution to urban users has increased. It is currently owned by the Irvine Ranch Water District and the Serrano Water District (the former Serrano Irrigation District). Today the dam marks the end of Santiago Creek. All the discharge is retained in the reservoir and downstream flow is limited to seepage and released storm water.¹

History of Water Recreation

The recreation rights to the waters of Irvine Lake were initially established under a February 6, 1928 settlement agreement between TIC, Carpenter Irrigation District and the Serrano Irrigation District, predecessor to SWD ("1928 Agreement"). The 1928 Agreement generally deals with the use of Irvine Lake as a reservoir by the parties. Over the decades, the parties to the 1928 Agreement changed as water and irrigation districts formed and dissolved. Subject to the 1928 Agreement, TIC retained 75% of the recreation rights on the water while SWD retained the remaining 25% of those rights.

Recreation rights to the water at Irvine Lake are limited by the 1928 Agreement. Such rights include fishing, hunting, boating and such other uses as will not pollute or interfere with the use of said waters by the parties, Irvine Lake functions first as a reservoir, and second as a recreational lake – and then only for recreational uses that are compatible with the functioning of

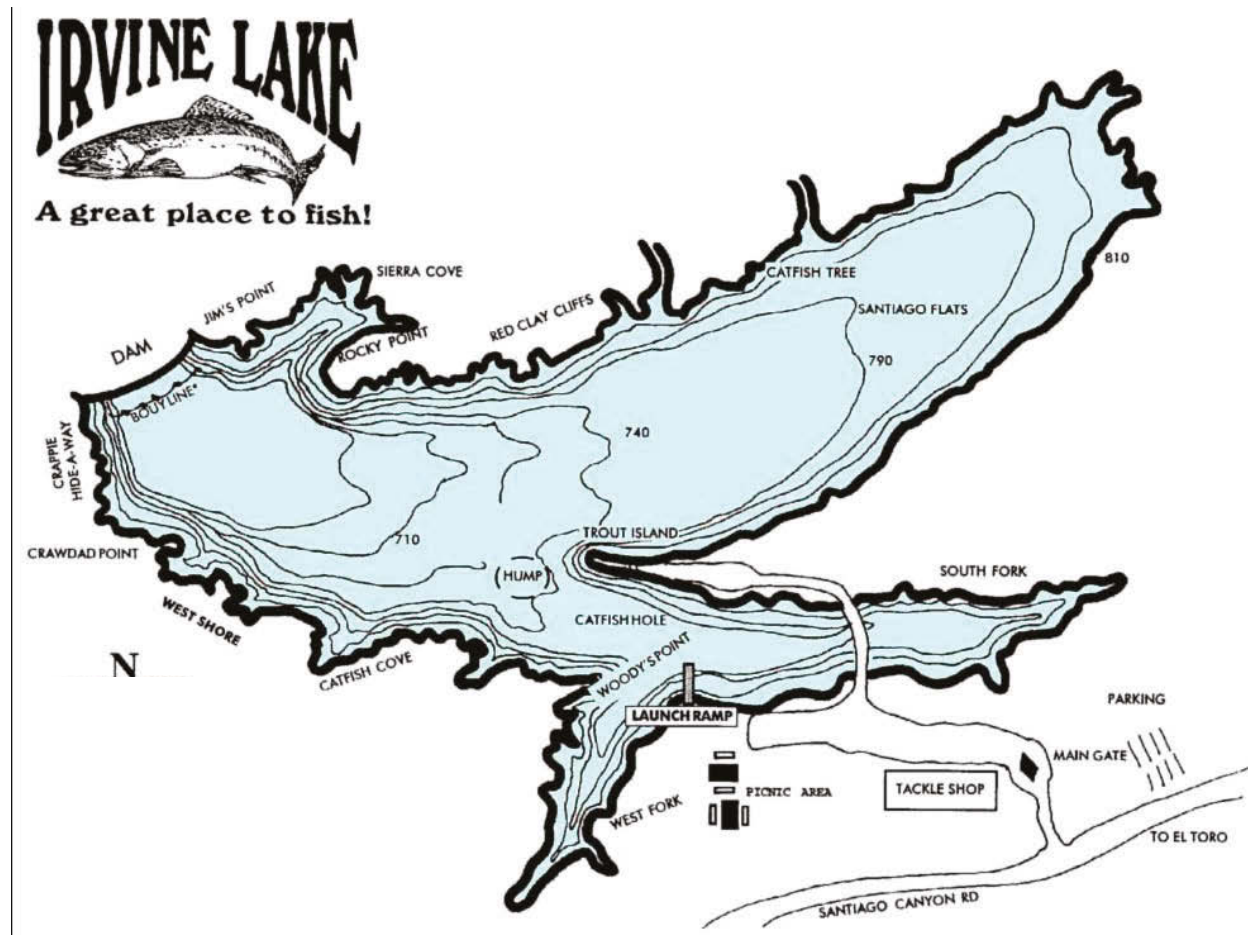
¹ Wikipedia, https://en.wikipedia.org/wiki/Santiago_Dam, Last Edited December 7, 2018 (Modified from the original), used, and available for reuse, pursuant to <https://creativecommons.org/licenses/by-sa/3.0/>.

the reservoir. Article Thirteen of the 1928 Agreement requires that, in order to open Irvine Lake to general public recreational use, the parties who share any interest must agree to satisfactory terms with one another.

Prior to 1993, recreational activities such as boating and fishing were facilitated by way of an informal agreement between the owners of recreation rights. A more formal agreement was drafted in 1993 between TIC and SWD (the two remaining parties with recreation rights). In addition, in 2011, TIC and SWD entered into a concurrent agreement in the form of a lease, wherein TIC leased to SWD and SWD Recreation Inc. (a wholly owned subsidiary) the land under the RV Storage facility, which provided SWD with an opportunity to operate and profit from the RV storage facility on TIC's land.

Although the types of recreational activities on the water were reduced over the years by SWD due to liability concerns (boater drownings occurred in 2012 and 2015), shoreline fishing remained open to the public until the termination of the lease and recreation rights agreement between TIC and SWD on March 31, 2016.

Figure 1



Source: Irvinelake.net

Involvement of Orange County Parks (OC Parks)

Prior to 2014, Orange County had no direct involvement with Irvine Lake or the surrounding property. In 2014, TIC made a donation of 2,500 acres of land to the County of Orange for park uses, including the areas on the Exhibit A Map (see Appendix) denoted as “East Orange I” and “East Orange II”. Orange County Parks Foundation, a nonprofit conservancy, holds the habitat conservation easements that govern these. In addition to the open space lands, TIC also transferred to Orange County fee title (unencumbered ownership) to the area shown on the map in orange and denoted as the “OC Parks Lease Parcel”. This parcel is a private leasehold that produces revenue to OC Parks and assists in offsetting OC Parks costs of open space management, habitat restoration, and public access improvements in lieu of a more traditional conservation endowment. The other revenue-generating parcel of land intended to offset OC Parks open space management costs, shown on the map in pink and denoted as “Irvine Company IOD (Irrevocable Offer of Dedication) to Orange County,” is the 29-acre Recreation Parcel at the entrance to the lake. It includes the RV storage facility, which TIC irrevocably offered to Orange County, but can be transferred only once certain conditions are met.

As to the recreation rights to the water, in conjunction with the 29-acre Recreation Parcel and related access roads, TIC did make an IOD to OC Parks for its 75% of the recreation rights. Effectively, the components that it offered to OC Parks can be accepted or declined at OC Parks unilateral discretion once certain conditions have been satisfied within a 90-year period. This report will address below each one of these conditions and their complexity. Only after all of these conditions are satisfied will OC Parks receive TIC’s 75% interest in the recreation rights and the Recreation Parcel. It also bears noting here that even if/when OC Parks does accept TIC’s 75% recreation rights, pursuant to the 1928 Agreement, SWD must still concur with terms of recreation management before it can permit any public recreation on Irvine Lake.

Memorandum of Understanding- 2003

Pursuant to a Memorandum of Understanding dated April 30, 2003 between TIC, IRWD and SWD, the parties to the MOU are obligated to exchange access easements for the land adjacent to the lake. This has not yet occurred. OC Parks is not a party to this MOU and therefore lacks any legal standing or bargaining power over this situation. Nevertheless, unless or until those easements are agreed upon and exchanged, OC Parks cannot obtain any recreation rights to the lake water.

Additionally, the 2003 MOU stipulates that TIC may not transfer its 75% of the recreation rights unless or until SWD and IRWD agree to that transfer. To date, SWD has signified its approval to the transfer through the initiation of negotiations over the recreation management agreement with OC Parks, but IRWD has withheld its approval pending completion of a successor agreement to the 2003 MOU.

In spite of multiple contacts by OC Parks to IRWD over the past few years, it appears to the Grand Jury that OC Parks has not yet received any information from IRWD regarding the terms of any successor agreement nor its expected completion and execution date. However, the Grand Jury has learned that the execution of a successor agreement to the 2003 MOU will likely occur in the first half of 2019.

Conditions Needed to Satisfy Irvine Company's IOD Transferring the 29 Acre Recreational Parcel and its 75% Interest in Recreation rights

Condition #1: Water Districts Must Accept Access Easements from The Irvine Company

IRWD and SWD must accept and record easements from TIC providing the water districts with access to the access road alongside Irvine Lake. TIC is obligated to offer the easements to satisfy the terms of the 2003 MOU. Likewise, IRWD and SWD must provide a reciprocal easement to TIC (or its successor) pursuant to the 2003 MOU and TIC must accept the easement.

Condition #2: Orange County Accepts Access Road Parcel

After Condition #1 is satisfied, Orange County must accept fee title to the Access Road Parcel within a certain period. (Currently, OC Parks has an easement over the Access Road Parcel, which provides access to the Oak Canyon Park/concessionaire lease parcel.)

Condition #3: IRWD Consents for Transfer of Recreation rights

IRWD must provide its consent for TIC to transfer its 75% recreation rights to OC Parks. SWD has already indicated its willingness to consent, assuming completion of a recreation management agreement or buyout with OC Parks. This item can take place at any time; however, the IOD considers IRWD's consent to be a condition precedent to Condition #4 below.

Condition #4: Orange County Accepts 29 Acre Recreation Parcel & Recreation Rights Transferred to Orange County (2 Options)

After Conditions #1-#3 are satisfied, OC Parks may accept the Recreation Parcel and is then eligible to receive TIC's 75% of the recreation rights to the water if:

1. SWD agrees to transfer its 25% of the recreation rights to OC Parks (buyout);
or
2. SWD and OC Parks enter into a management agreement for the recreation rights, which could include sharing of the profits generated from water-based recreation.

Even if these conditions are satisfied and OC Parks obtains the ability to use the water for public recreational activities, the geographic conditions at the lake may hinder OC Parks ability to do so. For example, the lakebed is much larger than the current body of water. Thus, OC Parks will still lack access over the lakebed to provide direct access to the water for recreational activities. At that point, OC Parks, IRWD, and SWD may need to negotiate additional agreements (*e.g.* license, permit, or easement) to grant OC Parks access to the dry lakebed for recreation-serving uses such as launch ramps for rental and/or private fishing boats, vehicle access, lakeshore fishing, etc.

Current Ownership and Control

The ownership, control, use, and rights to Irvine Lake and the surrounding area are complex. To facilitate the reader's understanding, please refer to attached map included as Appendix A from the OC Parks website, showing the various properties and the interests, summarized below:

1. TIC owns:
 - a. the 29-acre "Recreation Parcel" including the RV storage lot and the public entrance to Irvine Lake (shown in pink on the attached map);
 - b. the access road from Santiago Canyon Road to the back of the reservoir, including portions of Blue Diamond Haul Road (shown in yellow on the attached map); and
 - c. 75% of the recreation surface rights to the water of Irvine Lake
2. Orange County owns:
 - a. the Oak Canyon Park/Concessionaire lease parcel (shown in orange on the attached map);
 - b. easement rights over the access road to reach the Oak Canyon parcel; and
 - c. the majority of the open space surrounding Irvine Lake
3. SWD owns:
 - a. the lakebed and the water of Irvine Lake (including determining the permitted uses on the water) – owned jointly with IRWD
 - b. 25% of the recreation surface rights to the water of Irvine Lake
4. IRWD owns:
 - a. the lakebed and the water of Irvine Lake (including determining the permitted uses on the water) – owned jointly with SWD

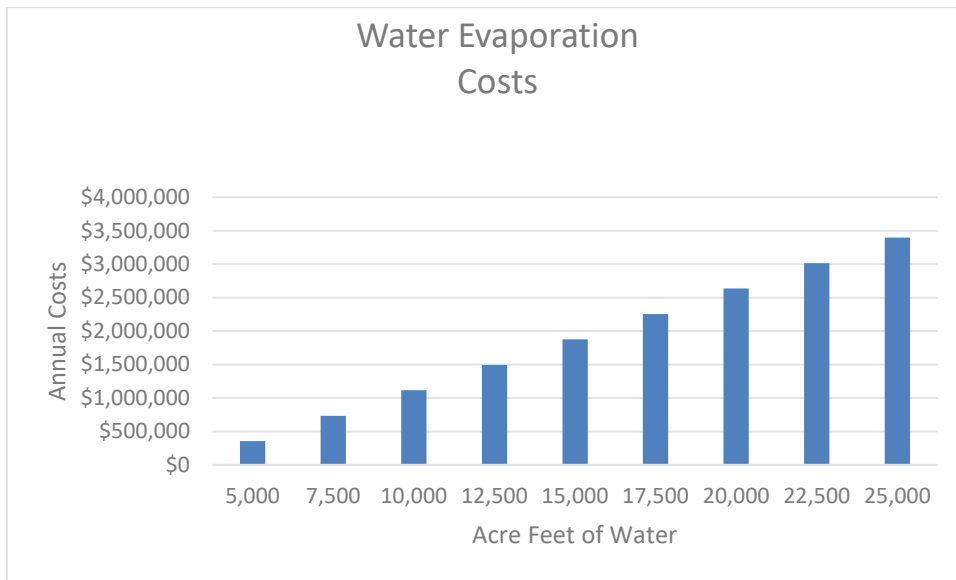
Although SWD owns only a minority share of the recreation rights to the water, the public may not exercise any recreation rights unless all parties agree to such uses per the controlling agreement. In other words, SWD may withhold permission and thereby prohibit TIC (or TIC's successor-in-interest) from offering public use of the recreation rights despite its majority share of the recreation rights.

The Impact of Water Levels at Irvine Lake

Irvine Lake experiences wide fluctuations in the water level as a storage facility for the water districts. SWD estimated the Irvine Lake surface area to be 2,700-acre feet as of January 2019. This water level reflects several years of drought and SWD considers it the minimum level at which to operate the outlet towers and other pump facilities. The water districts would need to purchase water from the Metropolitan Water District to raise the water level other than by precipitation runoff directly or from the upstream water flow from Santiago Creek. MWD imports water from the Colorado River and Central California Aqueduct. The MWD water does not greatly influence the watershed for the majority of Orange County (generally north of El

Toro) that receives roughly 80% of its water from the underlying aquifer. When purchasing the water for storage the water districts must account for the cost of the water lost to surface evaporation. This is relatively predictable, based on annual weather patterns, the cost of water and surface area exposed to evaporation. Those cost estimates for Irvine Lake by surface area exposed would be:

Graph 1:



Source: Data provided by Serrano Water District

As the chart indicates, the annual costs of water evaporation to the water districts is significant, particularly as the surface area approaches a maximum size for Irvine Lake of 25,000-acre feet. Even at lower lake levels of 10,000-acre feet (four times the current surface area), the annual cost would be close to \$1 million. In summary, the larger the surface area of the lake becomes, the more the evaporation and water replacement costs increase. Notably, the cost of water replacement varies by season. The price of purchase water goes down when water from natural precipitation is higher, and water is more plentiful. Conversely, during times when natural precipitation is scarce, water is costlier.

The nature of planning recreation around a man-made lake would be much easier if wide fluctuations in water level could be moderated. Involved entities consider maximum water levels so that permanent facility areas are not lost when water level increases. Additionally, they can improve access to the lake if water levels are predictable and do not fall below a certain level. They can manage this with floating and moveable dock systems and moveable structures. If they could maintain Irvine Lake at a minimum level, for example 10,000-acre feet, even in years when naturally occurring runoff would result in lower lake levels, recreational experiences would be easier to plan and more esthetically pleasing. At that level of water, the costs to the water districts, up to \$1 million, could occur in certain years or multiple years. Without a way to offset those

costs there would be little incentive for the water districts to maintain Irvine Lake at that higher water level.

At the current level of income generated from recreation surrounding Irvine Lake, accruing to either OC Parks or SWD, there is little ability to offset much increase in evaporation costs and still generate income for the primary purposes of covering water infrastructure costs or restoration and maintenance of new OC Parks' open space. However, this relationship could change if the entities expand recreation at Irvine Lake and recreation income increases. In the future, to reduce Orange County's need to purchase water from outside sources, the water districts may seek to expand water storage capacity at various reservoirs, including Irvine Lake. This could also be a source of cost offset.

Lack of Formal Planning by Local Government Agencies for Irvine Lake

Since 1928, TIC has managed recreation around Irvine Lake, with SWD's role increasing gradually over time. Both entities, by nature and mission, primarily focus on their core businesses of real estate development (TIC) and water delivery (SWD). In 1993, when TIC felt recreation was not receiving appropriate attention it entered into an agreement with SWD to increase the focus on viable water-based recreation. The size of Irvine Lake and its location in an increasingly urbanized area contributed to the success of selected recreation.

As part of its investigation, the Grand Jury requested from all three local government agencies any planning documents or feasibility assessments conducted for Irvine Lake and found that no planning reports or studies exist. Given the recent TIC land donation and the new and anticipated role of OC Parks going forward, the lack of planning or feasibility studies for an asset of this size and significance within Orange County is inconsistent with OC Parks' general practices.

Future planning activities and documents typically would involve public focus groups and interviews with interested stakeholders. Issues could include the types and location of land-based recreation given the limited land areas involved, access to the lake and connecting roads. Planners could identify locations for future expansion opportunities. Operational models for recreation other than direct management by OC Parks could include public/private partnership or leases that would reduce needed public investment and provide business opportunities for local business people. Restrictions governing permitted activities on or near the water, based on the need for preservation of water quality, would prohibit certain recreation. Likewise, concerns for public safety and operator liability related to past boating operations at Irvine Lake (speed boating, private boating, or boating rentals) will need to be considered.

Parameters of Negotiation

Intended Use of Revenues from Recreation Activities and Donated Land Parcels

SWD historically has applied all revenue from the water-based recreational activities to offset costs associated with the maintenance, repair and replacement of the dam and lake infrastructure. As co-owner of the land under Irvine Lake and the water rights, SWD shares the infrastructure costs with IRWD on a 25% (SWD)-75% (IRWD) basis. SWD is a small water district relative to IRWD with approximately 6,500 households served, compared to IRWD's 110,000+ households. SWD's customer base is relatively stable, consisting of a largely fully developed area around the cities of Villa Park and parts of Orange.

The water ratepayers of SWD and IRWD currently fund 100% of all dam maintenance costs. In addition, two large, necessary capital projects appear on the near horizon. Nobody has yet estimated the cost of these projects, but they have the potential to be quite high. By way of example only, to cover a potential one-time capital investment of \$50 million on a shared 25%-75% basis roughly would translate to \$1,900 for every SWD ratepayer and \$340 for every IRWD ratepayer. Therefore, finding an alternative way to fund capital projects may prove more critical for SWD.

OC Parks intends to use the revenue generated from water-based recreation plus the lease income from the two land-based parcels that TIC intends to transfer to OC Parks to assist in offsetting OC Parks' costs of habitat restoration, open space management and public access improvements; this is in lieu of a more traditional conservation endowment. The initial rough estimate of the costs of habitat restoration, trail construction and maintenance, and improvements needed for public access is in the range of \$5 million. The estimate is for the roughly 2,500 acres identified on Exhibit 1 as OC Parks East Orange I and II.

Historic Operation of Recreation at Irvine Lake and its Impact on Negotiations

Since recreation first opened to the public in 1941, the recreational activities at Irvine Lake have consisted of water-based and land-based activities

The definition of water-based recreational activities in Section 4 of the 1993 Recreation Rights Agreement between TIC and SWD, reads as follows:

“TIC and SID (SWD) agree that the Recreation Rights give them jointly through the Manager the exclusive right to do the following things within the boundary of the Reservoir (the “Recreational Activities”):

- A. The right to use, permit the public to use or grant concessions for the public to use the Reservoir and all boats and related equipment, piers, floats, boat landings, buildings, structures and other improvements located within the Reservoir for:

- a. Fishing and other uses incidental to fishing, including the rental, repair and use of fishing boats, and the rental or sale of fishing tackle, bait and other equipment and supplies;
 - b. Boating and other uses incidental to boating, including the rental, use and sale of boats and all boating accessories and equipment and the use and sale of fuel and supplies;
 - c. Such other amusements and recreation activities as will not impair the use of the waters of the Reservoir by SID and IRWD; and
 - d. The right to stock the waters of the Reservoir with fish and maintain the same therein.
- B. The right to erect, place and maintain within the boundary of the Reservoir such buildings, structures, improvements and equipment as may be necessary or convenient for the uses and purposes herein specified, subject to the provisions hereof (the “Recreation Structures”)
- C. The right to sell food, refreshments, merchandise and other items to the public.
- D. The right to rent equipment and other items associated with the Recreational Activities to the public.”²

² Recreation Rights Agreement, Dated June 30, 1993, between Serrano Irrigation District and The Irvine Company

Land-based recreation has occurred on two land parcels adjacent to Irvine Lake and owned by TIC. The map included in Exhibit 1 identifies the two parcels where recreation has occurred, the orange and the pink parcel. A private concessionaire under a License Agreement (Concession Agreement) in place since 1993, has managed the recreation on the orange parcel. The concessionaire is responsible for constructing and maintaining improvements to conduct its business, providing insurance and indemnifying TIC against all liability associated with the operations. Permitted uses are generally defined as private corporate events, car clubs, some limited concert events, scout jamborees, carnival rides, day camping and picnic areas. Overnight camping and most motor sports are prohibited. Activities added over the years include mountain bike courses, “mud racing,” various sports events, radio controlled aircraft and drone flying. The orange parcel was transferred to OC Parks in 2015. The Concession Agreement remains on holdover status, pending a longer-term agreement with OC Parks.

The pink parcel includes the general public entrance to Irvine Lake, improvements related to fishing and boat rental (both currently closed), and a paved, secured RV and boat storage area. In 2011, TIC entered into a lease with SWD to operate the RV and boat storage area, in addition to its responsibilities for operating “water-based” recreation. That lease was terminated in 2016, along with the Recreation Rights Agreement. TIC continues to operate the RV and boat storage, pending transfer to OC Parks.

Historic Operating Revenues and Profits from Recreation at Irvine Lake

Review of lease and management documents, interviews with lessors and lessees, and a limited review of accounting information, provide some general trends for recreation operations at Irvine Lake. The Concession Agreement has a minimum rent of \$120,000 annually, plus a share of gross revenues. Total annual income generated in recent years was in the estimated range of \$350,000-\$400,000. The Grand Jury has learned annual revenue from the RV and boat storage area is estimated to be in the range of \$375,000-\$400,000. TIC has recently expanded the storage area and anticipates continued strong demand for this type of storage; therefore, revenues could possibly increase. Many have described the location of the storage area near the main entrance to Irvine Lake as an eyesore. Overall master planning might entail relocating the storage area, and reducing the size of the storage area may result. Nonetheless, the demand for such use is strong.

A review of limited accounting records for water-based recreation indicates income from fishing (including entrance fees), boating rental and equipment rentals, as well as food and other sales, generating a positive net income of an estimated \$125,000-\$350,000 annually. Net income from water-based recreation is shared between TIC (75%) and SWD (25%), until OC Parks fully takes over from TIC (and becomes the 75% shareholder) and unless a purchase of SWD’s interest occurs. A general decline in net income from water-based recreation during the period from 2011-2016 was a result of declining boat and fishing revenues following two separate boating accidents

and drownings in 2012 and 2015. These resulted in increased insurance costs for the operator and resulted in a suspension of boating on Irvine Lake in 2015.

If boating and fishing could be restored to past levels, it would appear, based on prior history, that the water-based along with the two land-based recreation operations would produce net income in roughly the historical amounts. However, future income could be substantially different, based on OC Parks' involvement, new capital investments, and limited comparable recreation sites in an increasingly urbanized Orange County.

Chronology of Negotiations

Orange County became aware in 2014 of TIC's plans to transfer the 2,500 acres of open space. In 2015 OC Parks first approached SWD regarding its interest in purchasing SWD's 25% interest in the water-based recreation rights. SWD initially indicated an interest in this buyout in exchange for a shorter term no fee (no rent) operation of the RV Storage parcel which it had been operating for TIC and some unspecified ongoing participation in a percentage of other recreational income at Irvine Lake.

In September of 2015, TIC notified SWD of its intent to terminate both the Recreation Rights Agreement and the RV Storage lease effective March 31, 2016. SWD requested a six-month extension to the RV Storage lease to allow time to negotiate an agreement with OC Parks to continue to manage the RV Storage operation. In early 2016, OC Parks offered a buyout based on a two year no fee lease of the RV Storage with a market rate lease thereafter. In February of 2016, SWD revised its offer to sell its water-based recreation rights, and instead offered an unusual lease-like arrangement for those rights in return for a minimum annual payment of \$400,000, or a no fee long-term lease for the RV Storage area. TIC soon thereafter denied SWD's request for an extension of the RV Storage lease, basing its decision on the two parties (SWD and OC Parks) being too far apart on terms.

After February 2016, there were no more written counteroffers from either OC Parks or SWD regarding SWD's recreation rights. The Grand Jury learned that OC Parks did request financial operation information on the water-based recreation in order to evaluate the last offer made by SWD. The Grand Jury has determined that OC Parks has yet to receive this information.

As OC Parks consummated the transfer of the orange-colored Recreation Parcel, it investigated the conditions needed to achieve the remaining transfer of the IOD parcel and the recreation rights. It became clear that the negotiation of recreation rights with SWD could not occur prior to satisfying the IOD conditions, which in turn requires a modification or successor document to the 2003 MOU.

OC Parks is not party to the 2003 MOU document and cannot directly influence negotiations. The primary parties are the two water districts and TIC. Neither of the water districts has provided a progress report to OC Parks as to how those negotiations are progressing or what, if any, contract points are critical. The Grand Jury has learned that there is some level of confidence that the

MOU agreement could be signed within the first half of 2019. Only following that agreement could all the conditions of the IOD be satisfied.

The last documented communication between OC Parks and SWD regarding recreation rights occurred in the summer of 2017. OC Parks offered to enter into a short-term agreement to permit shore fishing at Irvine Lake. All costs and liability would be borne by OC Parks. OC Parks would share with SWD any net income generated. OC Parks agreed to allow some fishing at Irvine Lake while negotiations continued. SWD did not want to consider a short-term arrangement.

Negotiation Observations

OC Parks is concerned about offering relatively certain land-based income targeted for public land restoration without knowing what it is getting in return. The only source of funding to restore and maintain for public benefit the 2,500 acres of open land surrounding Irvine Lake would be the income generated from the property and recreation rights transferred by TIC.

Negotiations have been delayed due to the need to revise the 2003 MOU as well as resolving the easement and other rights. This needs to occur prior to finalizing the final transfer of the rights included in TIC's IOD. The primary focus of both water districts is the delivery of water and maintaining the water delivery systems, not recreation.

SWD's initial negotiation strategy appears to seek a price premium to buy out its recreation rights. This strategy is common when negotiations involved fractional or shared ownership. The current agreements do not contain provisions to resolve buy-sell disagreements involving fractional ownership.

Given OC Parks' financial constraints, OC Parks cannot proceed in the absence of financial information regarding expected operating profits from water-based recreation. A continued impasse on the water-based recreation rights will deny both parties its share of potential income, and more importantly continue the delay of the reopening of water recreation at Irvine Lake to the public.

OC Parks does have the option of pursuing a separation of the IOD terms with TIC to allow for the settlement of all issues within the IOD other than the transfer of its 75% interest in recreation rights. This would settle the required access easements and allow OC Parks to take over ownership and management of the RV Storage parcel.

If SWD and OC Parks cannot agree on a buyout figure, they could enter into a management agreement to allow for continued water recreation and a split of net income on a negotiated basis. This would allow OC Parks to begin overall recreation planning at Irvine Lake making water recreation available to the public. A lease of SWD's recreation rights on terms other than in proportion to its current ownership interest may not make economic sense, particularly in the absence of compelling financial information.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2018-2019 Grand Jury requires (or as noted, requests) responses from each agency or special district 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, titled “Re-Opening Irvine Lake- A Win-Win for Taxpayers and Outdoor Enthusiasts,” the 2018-2019 Orange County Grand Jury has arrived at seven principal Findings:

F1. In the past SWD has used revenue from its recreation rights as one of its sources to offset costs for maintenance and replacement of capital investments in water infrastructure.

F2. For OC Parks the revenue from rights and property assigned by TIC will be the source to cover costs associated with the restoration, maintenance and repairs of the newly- dedicated open space.

F3. Without sufficient historical financial information from SWD, OC Parks cannot project future financial opportunities at Irvine Lake.

F4. Minimal effort to engage one another, a lack of creative proposals and slow responsiveness between OC Parks and the water districts have allowed negotiations to stall.

F5. Although not a party to any recreation rights, IRWD does have a right of approval over decisions affecting water use rights and water quality. Therefore, settling easement rights issues in a successor document to the 2003 Memorandum of Understanding (MOU) among SWD, IRWD and TIC is required prior to concluding negotiations on recreation rights. Parties expect to complete this in the first half of 2019.

F6. SWD, OC Parks and IRWD acknowledge that to maximize recreational opportunities a more stable Irvine Lake water level is desirable.

F7. A master plan for recreational activities remains to be developed.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district 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 titled “Re-Opening Irvine Lake- A Win-Win for Taxpayers and Outdoor Enthusiasts,” the 2018-2019 Orange County Grand Jury makes six Recommendations:

R1. If an impasse still exists between SWD and OC Parks on basic terms of water-based recreation rights the parties should use a neutral outside resource such as solution focused good faith mediation by September 30, 2019, to achieve resolution. **(F1, F2, F3 & F6)**

R2. If an impasse still exists between SWD and OC Parks on basic terms of water-based recreation rights OC Parks should, by September 30, 2019, request from TIC a separation of those rights described in the IOD from the remaining road parcels, easements and Recreation Land Parcel and a transfer of all but the water recreation rights to OC Parks. **(F1, F2, F3 & F6)**

R3. By September 30, 2019, SWD should provide full financial disclosure of historical operating information for water-based recreational activity, at a minimum for the period 2011-2016, in sufficient detail to allow OC Parks to evaluate any recreation rights buyout offer or other specific management proposal. Absent such information, SWD and OC Parks should negotiate and present to their respective governing bodies a management agreement to continue operating water-based recreation at Irvine Lake and share revenue, expenses and net profits **(F3)**

R4. If by December 31, 2019 resolution has not been reached as to the reopening of Irvine Lake for water recreation, staff for SWD, IRWD, and OC Parks should post on their respective websites and submit to their governing body for discussion in a public meeting their perspective as to the obstacles to reopening the lake and what plan they have to resolve the issue. **(F4)**

R5. By December 31, 2019, SWD, IRWD and OC Parks should explore the economic feasibility of establishing and maintaining Irvine Lake at a minimum water level based on expected income and other potential cost offsets. **(F5 & F6)**

R6. By March 31, 2020, once recreation rights are determined, OC Parks should hold open public planning meetings to address possible uses and activities, and their location at Irvine Lake, that result in the development of a multi-year Recreational Master Plan. This planning would include examining other public/private models within Orange County and Southern California for covering future capital costs and minimizing any liability associated with boating. This also would include general cost benefit or financial feasibility analysis for the recreational uses under consideration. (F7)

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the findings and recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . .” §933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.*
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

(c) However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

Responses Required:

OC Parks responds to Findings 1-7 and Recommendations 1-6

SWD responds to Findings 1-6 and Recommendations 1-5

IRWD responds to Findings 4-6 Recommendation 4 and 5

Responses Requested:

TIC responds to Recommendation 2

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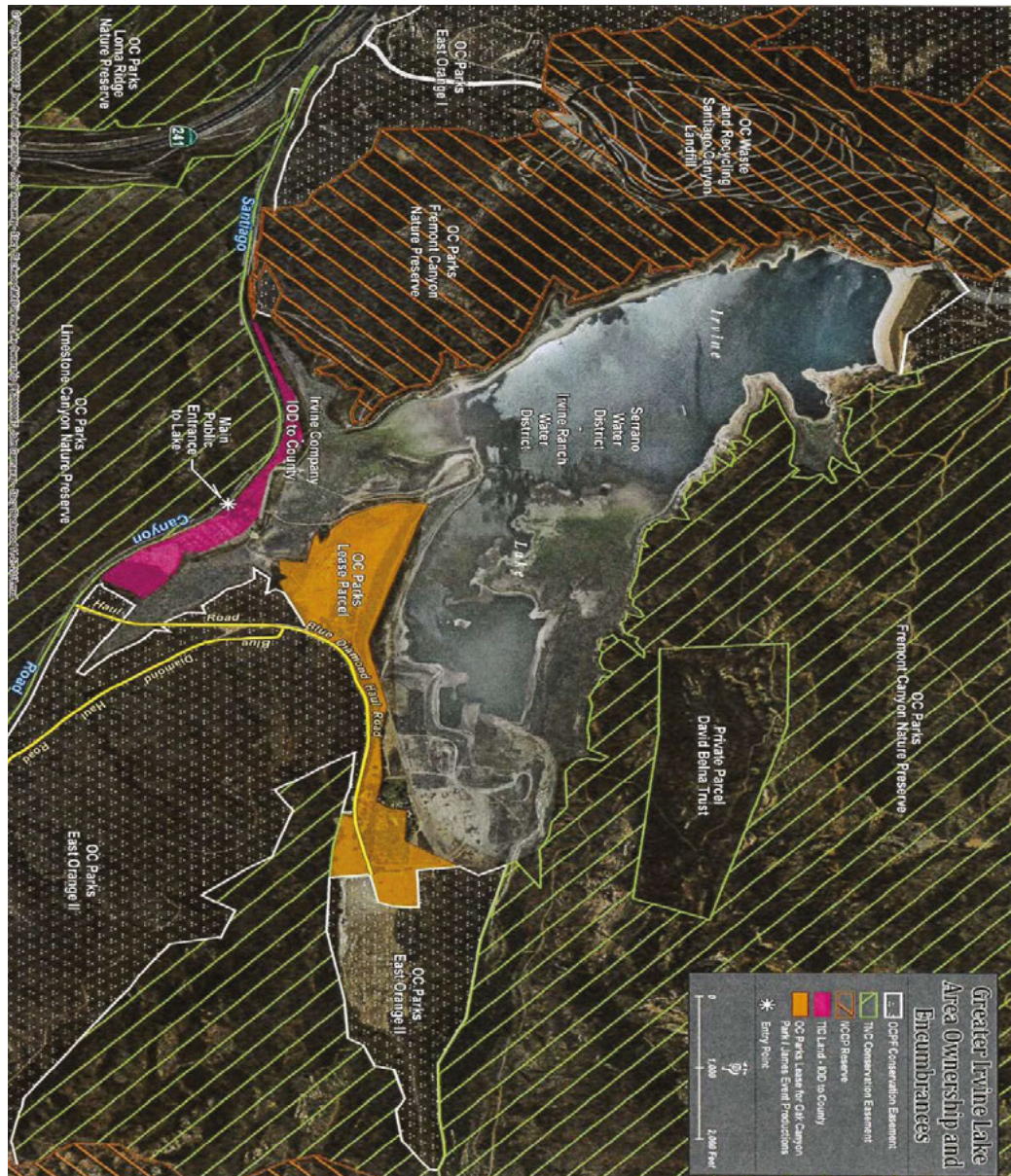
APPENDICES

Appendix A- Map of Greater Irvine Lake Area Ownership and Encumbrances

Appendix B – Current photos of Irvine Lake

Appendix C- Web link to photos of Irvine Lake prior to closure

Appendix A



Source: OCParks website

Appendix B - Current Water-based Recreation Conditions

Main Entrance to Irvine Lake



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury



Source: 2018-2019 Grand Jury

Temporary Building for Fishing and RV Management



Source: 2018-2019 Grand Jury

Appendix C- Web link to Photos of Past Recreation Activities

<https://www.google.com/search?q=irvine+lake+photos&tbm=isch&source=hp&sa=X&ved=2ahUKEwj8jJCe5ubhAhXCrJ4KHaaXCsUQsAR6BAgJEAE&biw=1600&bih=805>

“Your Call May Be Recorded”



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SUMMARY

The Orange County Sheriff’s Department contracts with an independent contractor to provide inmate telephone services to the Orange County Jails. The contracted telephone system tracks and records all telephone calls placed by inmates from the jail to an outside party and allows recorded calls to be accessed by a select group of investigators in the Custody Intelligence Unit who monitor and listen to calls as part of their work in controlling crime within and outside the jails. The Inmate Services Division of the Orange County Sheriff’s Department is the local system administrator.

This system has the ability to prevent certain telephone numbers from being accessed or recorded. For example, the system has a “Do Not Record” list that contains the telephone numbers of attorneys and other counselors. The Inmate Services Division manually enters telephone numbers to the Do Not Record list. System software then sorts calls for recording, or not recording, telephone calls based on this list.

In early 2015, the contractor introduced a new software system requiring transfer of all phone numbers on the Do Not Record list from the old to the new system. It appeared at the time that the conversion was successful and everything was in order. However, in June of 2018 a criminal defense attorney discovered that calls from his client to his attorney had been recorded. This led to the discovery that phone numbers on the Do Not Record list at the time of the conversion had not transferred and numerous telephone calls between inmates and their attorneys had been recorded. During evaluation of the problem, it was determined that several of the recorded calls had been accessed and information provided to the Orange County District Attorney.

The Orange County Grand Jury found that Orange County Sheriff’s Department personnel lacked sufficient systems knowledge and training on the inmate phone system and that there was no effective oversight function within the department. These factors contributed to some privileged calls being recorded. To date, the Orange County Grand Jury has found no evidence of improper use of recorded calls.

REASON FOR THE STUDY

It was alleged that the Orange County Sheriff’s Department (OCSD) personnel listened to privileged recordings of phone calls between inmates and their attorneys between January 2015 and June of 2018 and gave those recordings to the Orange County District Attorney’s (DA’s) office for use in prosecuting defendants. It was also alleged that there was a pattern of such behavior by the OCSD and the DA’s office. The Orange County Grand Jury (Grand Jury) selected this topic for further investigation to determine the facts and make findings and recommendations.

METHOD OF STUDY

Members of the Grand Jury toured all Orange County Jails, visiting many of the facilities more than once. The Grand Jury interviewed key personnel of all OCSD units affected by the inmate

telephone system, many several times, and visited the Custody Intelligence Unit (CIU) to observe the process for reviewing phone calls and protocol for admonitions to users of the phones. The Grand Jury listened to a new phone admonition, put in place after the discovery of the conversion failure that requires the receiver of the call to push a button acknowledging the call is being recorded. The investigation included reviewing over 1,000 pages of court documents, attending several court proceedings and reviewing subpoenaed documents. The Grand Jury interviewed key personnel from the OCSD, Public Defender’s Office, DA’s Office, private defense counsel, Office of Independent Review and the phone system contractor. The contract between the County and the contractor was also reviewed. Finally, the Grand Jury conducted an extensive review of items of correspondence, legal records and pertinent news articles. (See Appendix A.)

BACKGROUND AND FACTS

In the law of the United States, Attorney-Client privilege is a client’s right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and his attorney.¹ Attorney-Client privilege is one of the oldest recognized privileges for confidential communications.² The United States Supreme Court has stated that by assuring confidentiality the privilege encourages clients to make “full and frank” disclosures to their attorneys who are then better able to provide candid advice and effective representation.³ The OCSD has the obligation to protect these legal rights for inmates in its jail system.

Inmate telephone services in the Orange County Jail system are provided at all jail locations. Inmate phones can be used only for outgoing calls; no incoming calls are supported. Each inmate housing unit has phones available for use during set hours and signs on the wall next to the phones state “Your Call May Be Recorded”. (See Appendix B and C.) All calls are recorded unless they are *privileged* calls, such as those between an inmate and his attorney. To ensure the attorney-client privilege, the attorney’s phone number is placed on a Do Not Record (DNR) list. To have a number entered on the DNR list, the attorney must make a request to the OCSD, either through the OCSD website or in person. Recorded calls that are not on a DNR list can be accessed (listened to or downloaded) by OCSD investigators.

Inmate Services Division (ISD), a division of Custody Operations Command of the OCSD, is responsible for the day to day management of the inmate phone system. In addition to the inmate phone system, this division manages all other services to inmates, such as meals and commissary as well as educational, vocational, religious, recreational and re-entry transitional programs. Within the division there is one individual who performs a number of duties including entering phone numbers to the DNR list as requests are received. (See Appendix F.)

¹ See “Attorney-Client privilege”, Black’s Law Dictionary, Pg.1391 (10th ed. 2014)

² Swindler & Berlin v. United States, 524 U.S. 399, 403 (1998)

³ Upjohn Co. v. United States, 449 U.S. 383, 389 (1981)

Over 15 years ago, the OCSD selected the current contractor to provide inmate phone services to the Orange County jail system, including hardware, software, rewiring and technological upgrades. This contractor provides inmate phone services to a number of jail systems in the United States and is recognized as one of the two largest providers of these systems in the nation. Feedback from ISD administrative staff indicated that they had a good working relationship with the contractor who was seen as responsive and reliable. The contractor provided one onsite person to respond only to hardware issues.

In 2014, the contractor upgraded its software and in January 2015 the contractor completed a system conversion for the OCSD. The new system was more user friendly and gave access to more information than the one being replaced. There were no complaints or questions after the conversion was completed and all parties assumed the system worked properly. After the transition the contractor provided webinars on two different days in February 2015 for OCSD users of the system and, on one day in April 2015, provided a webinar for senior administrators. OCSD did not provide, or require the contractor to provide any additional training.

In late 2015, while testifying under oath, in court, a Deputy District Attorney stated that a Sheriff’s Investigator had written a report about privileged phone calls between an inmate and his attorney being recorded, however, no action was taken.

In June 2018, a defense attorney in the *Waring Case*⁴ discovered his client’s privileged phone conversations had been recorded. The matter was brought to the attention of the OCSD and, after review, it was discovered the attorney’s phone number was not on the DNR list. Further research discovered that 1,309 phone numbers had not been transferred to the new DNR list during the system upgrade in 2015. The OCSD requested that the contractor research the issue and provide an explanation. The contractor’s investigation concluded that the cause of the failure had been human error in that the individual responsible for the transfer had failed to properly load the privileged phone numbers onto the DNR list on the new system. The contractor reported these findings to the OCSD.

Prior to the January 2015 conversion the software system had maintained two privileged lists: a “private” list with 42 phone numbers and a DNR list with 1,309 numbers. (The reason for two separate lists on the old software is unknown but both held privileged phone numbers.) The upgraded software system combined these into one list of privileged DNR numbers. The “private” list of 42 numbers had been correctly transferred in 2015 but the DNR list of 1,309 numbers had not been transferred. (See Appendix G and H.) The OCSD discovered that a similar occurrence had happened with the same contractor in Florida in July of 2015, but this was not discovered by the OCSD until after the OCSD learned that 1,309 numbers on the old DNR list were not transferred onto the new list. A recheck by the contractor of all its conversions nationwide found several other instances of incomplete transfer, all tracking, according to the contractor, to the same employee.

⁴ People v. Joshua Michael Phillip Waring, Case #17WF2266 (Orange County Superior Court)

There were many inmate calls to the 1,309 numbers which should have been on the DNR list between January 2015 and July 2018. Not all the calls were completed calls (no answer/no connection) and some numbers had multiple calls. After discovering this situation, the contractor blocked access to all of the numbers in question and the numbers were placed on the DNR list by the OCSD.

Once the OCSD was aware of the issue, they took the following actions:

- Placed phone numbers missing from the DNR list back onto the DNR list.
- Made phone calls to the OC Bar Association and the OC Criminal Defense Bar Association and to each of their Directors, to explain the situation and make sure attorneys understood how to place their phone numbers on the DNR list.
- Telephoned the IT Director of the Public Defender’s office to make sure that office understood the process for their attorneys to be placed on the DNR list. Subsequently, the Sheriff received a list of phone numbers from the Public Defender’s office and reconciled those numbers with the DNR list.
- Checked all jail phones for proper signage and, where needed, updated the signs.
- Updated custody policy manuals for inmate phone rules.
- Formed an action team with representatives from all affected departments including the OCSD, County Counsel, ISD and the District Attorney to address the issue. This action team still meets on an ongoing basis.
- Changed the admonition heard by users of the phone system to leave no doubt that the call is being recorded and to direct attorneys to the link on the OCSD website to add their phone number to the DNR list. The new admonition requires users of the phone system to acknowledge the admonishment by pressing a number on the phone. (See Appendix E.)
- Put in place verification systems to ensure that all numbers on the DNR list are accurate.
- Briefed jail staff about the rules associated with DNR calls and ensured that only authorized staff have access to the inmate phone recording system.

In addition, the District Attorney provided written instructions to his staff on the procedure to follow if they discover a recorded phone conversation they are not authorized to possess.

The CIU is the unit authorized to access the inmate phone recording system. This unit is responsible for intelligence and investigation of crimes in the jail system. It is made up of 8 to 10 experienced investigators who review inmate phone calls to monitor criminal activity inside and outside of the jail. (A comparable unit in San Diego handles 500 fewer inmates and has a staff of 17.) Its objectives are to provide for the safety and security of inmates and staff as well as to aid other agencies. They rely on assault reports, videos and phone calls in gathering information. They also have computer access to a list of phone calls made by inmates and can listen to inmate telephone calls not on the DNR list.

After the discovery that some privileged phone calls had been accessed, the unit made a number of changes:

- The number of individuals with approval to access calls (listen to and/or download calls onto a CD) was reduced from 90 to 8 to 12, including investigators in the CIU and Inmate Services administration. (See Appendix D)
- If an investigator is reviewing a list of phone calls on his computer screen and sees a small “ear” icon next to a call, he knows that the call is privileged and cannot be accessed.
- If a call without an “ear” icon is accessed and determined to be privileged, the listener must immediately cease listening and check the phone number against three open sources to validate that the number belongs to an attorney. If so, the listener must block the call and notify his superior. The superior, in turn, must notify ISD and have the phone number added to the DNR list. Previously, if a call was determined to be privileged, it was simply blocked by the investigator. (See Appendix I.)
- When another law enforcement agency requests copies of an inmate’s recorded calls, the CIU looks at all calls made by that inmate and eliminates any calls that are privileged. The remaining calls made by that inmate are downloaded to a CD, which must be picked up in person by the requesting agency. The individual who receives the CD must sign a document that instructs him to carefully check the phone calls again to ensure that none of the calls on the CD are privileged.
- All calls downloaded to a CD by OCSD staff are documented.

On August 29, 2018, the Public Defender’s office filed an action with the OC Superior Court titled *People v. John Does 1-58*⁵ to determine the dimensions and impact of the issue. Due to the significance of the issue, the judge appointed two Special Masters⁶ to receive all the phone call data and determine exactly how many and what kind of calls were affected.

There is an exception to the regular inmate phone system for inmates who act as Pro-per⁷. The law allows a judge to grant an inmate’s request to serve as his own attorney; these inmates are referred to as Pro-per and they can represent themselves in court even if they are not attorneys. The judge allots the Pro-per a certain number of hours daily/weekly to make phone calls in preparation for their defense. However, the inmate does not call on the inmate phone system used by other inmates. The Pro-per is taken by a deputy to a separate county phone which is not able to record calls.

In the *Waring Case*⁸, the defendant requested dismissal of the charges against him because he had been a Pro-per during the time his phone calls were recorded. As there are no recordings on

⁵ *People v. John Does 1-58*, Case #M-17638 (Orange County Superior Court); Opening Docket text: Emergency order requesting this court; (1) appoint a special master for unlawfully recorded attorney-client phone calls (2) order OCDA, county counsel, and law enforcement to immediately cease accessing unlawfully recorded phone calls; and (3) order law enforcement to return hard copies of phone calls and destroy other copies

⁶ “A master (sometimes called a Special Master) is a court-appointed official who helps the court carry out a variety of special tasks in a specified case.” (The ‘Lectric Law Library)

⁷ Pro-se or Pro-per is Latin for self or “in one’s own behalf”. Litigants or parties representing themselves in court without the assistance of an attorney are known as pro se litigants. (US District Court, Southern District of New York)

⁸ *People v. Joshua Michael Phillip Waring*, Case #17WF2266 (Orange County Superior Court)

Pro-per phones, the calls were likely made from the inmate phone system. The Court did not approve his request.

During its investigation, the Grand Jury learned:

- CIU investigators had access to an 800 number for support of software or hardware issues. OCSA did not monitor the experience and method of use of this number by different OCSA agencies to ensure that OCSA staff received a consistent level of responsiveness. There did not appear to be sufficient support available within the OCSA.
- In interviewing private defense counsel and public defenders, the Grand Jury discovered that the majority of defense attorneys believed their calls would not be recorded, because they were attorneys, regardless of signage in the jails that clearly stated ‘calls may be recorded’ or admonitions that stated calls may be recorded. The majority were also unaware of the process to have their phone number added to the DNR list. The Grand Jury found that this was a pervasive issue and that the OCSA was not efficient in educating the legal community on the procedures to ensure privileged communications with their clients.
- OCSA administration provides limited system oversight and has access to limited system reports. There are no checks and balances in place to oversee the system and maintenance of the DNR list is limited to adding numbers with no purging of old numbers.
- There are features of the system that can aid management that are not being used. For example, the system has a feature called “Word Search” that gives users the ability to scan all recorded calls for key words. This system feature is not utilized by CIU staff, even though it would significantly increase efficiency for the CIU Investigators.
- The ability to automate features of the system has not been fully utilized. For example, as inmates are released from the jail system, their inmate data is not automatically updated across the system.
- OCSA does not currently require its telephone system contractor to provide onsite user level software support.
- Communication between OCSA units using/accessing the inmate phone system is inefficient. For example, if there is a problem with the system in the CIU, CIU staff makes a call to the contractor’s 800 number but sometimes waits up to several days for resolution. Inmate Services managers state they have resolution to service requests within hours.
- As of the date of this report, the Grand Jury could find no evidence of any adverse effect on any criminal cases because of the access.

Throughout its investigation, the Grand Jury found that all involved parties handled this situation professionally, with transparency and with good intentions. There was no evidence that recorded phone calls were systematically provided to the DA and representatives of the departments involved were forthcoming and responsive. This is a complicated issue and, to the OCSA’s and the County’s credit, they are tackling it head-on and may easily become leaders in the State and

the United States in finding the most desirable solution for providing legally privileged communications to inmates.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 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 titled “Your Call May Be Recorded” the 2018-2019 Grand Jury has arrived at eighteen principal Findings, as follows:

Pre-June 2018:

- F1.** There was minimal *centralized technical oversight* of the inmate phone recording system (the “Recording System”) within the OCSD prior to July 2018.
- F2.** Lack of OCSD verification of the contractor’s transfer of telephone numbers from the old to the new system allowed the contractor’s transfer error to survive.
- F3.** Most of the legal community believed none of their telephone conversations with inmate clients would be recorded.
- F4.** Available features of the contractor’s system were not being utilized by the OCSD to generate all available reports in order to support oversight.
- F5.** OCSD did not require an on-site systems engineer be provided by the contractor to resolve *technical issues* in a timely manner.
- F6.** There was no instruction in either the inmate orientation brochure or the inmate orientation video regarding inmate’s attorney-client privilege rights for telephone calls with their attorney.
- F7.** There was no internal “policy manual” for management of the inmate telephone system.

Post-June 2018:

- F8.** There is currently minimal *centralized technical oversight* of the inmate telephone system within the OCSD.
- F9.** Lack of OCSD verification of the contractor’s transfer of telephone numbers from the old to the new system is resulting in significant costs to the County of Orange.

F10. The OCSD does not provide periodic reminders to outside users (attorneys) of the Recording System regarding the method for placement of phone numbers on the DNR list.

F11. Available features of the current system are not being utilized by the OCSD to generate all available reports in order to support oversight.

F12. OCSD does not currently require its telephone system contractor to provide a systems engineer on site to resolve *technical issues*.

F13. The lack of *centralized technical oversight* of the Recording System by the OCSD has resulted in ineffective communication between the various OCSD units that use the system.

F14. The lack of *centralized technical oversight* of the Recording System by the OCSD causes a delay in resolving issues with the system.

F15. There is no instruction to inmates on either the inmate orientation brochure or the inmate orientation video regarding their attorney-client privilege rights for phone calls with their attorney.

F16. No evidence has been presented to the Grand Jury indicating that any defendant's rights to a fair and impartial trial have been improperly or adversely affected by the violation of their communication privilege with their legal counsel.

F17. The OCSD and the DA have been responsive and professional in handling the situation once the recorded inmate telephone calls were discovered in June 2018.

F18. As of the writing of this report, there has been no evidence of malicious intent by the OCSD or the DA regarding the use of any privileged telephone communications.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 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 titled “Your Call May Be Recorded” the 2018-2019 Grand Jury makes the following nine Recommendations:

R1. By September 30, 2019, the OCSD should create an onsite unit within the Inmate Services Division (OCSD/Inmate Phone System Oversight Management) to provide direct oversight of the inmate phone system. **(F1, F2, F7, F8, F9, F13, F14)**

R2. By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should assign:

A. One or more persons to:

handle all phone number input and deletion actions, produce lists for audit, complete the audits, produce lists for management, manage regular communications to internal and external users and provide periodic in person training to internal users, and

B. One or more:

systems engineers to handle all nonproprietary hardware, software and systems problems independently and other proprietary changes directly with the phone call Recording System contractor. **(F1, F2, F5, F7, F8, F12, F14)**

R3. By September 30, 2019, each OCSD unit that accesses the inmate phone system should designate a coordinator to interface directly with OCSD/Inmate Phone System Oversight Management. **(F13)**

R4. By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should develop a periodic auditing process to maintain current data and delete outdated information. **(F2, F8)**

R5. By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should acquire all available system features required to have complete control of user level software settings and report generation. **(F4, F11)**

R6. By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should develop and implement a method to automate input and deletion of information on lists. **(F1, F2, F8, F14)**

R7. By October 31, 2019 the OCSD should meet directly with the legal community annually to share information on methods for assuring privileged telephone communications and receive input on best practices. **(F3, F10)**

R8. By October 31, 2019 the OCSD should develop a plan for written periodic updates to the legal community on methods for assuring privileged communications (i.e. trade publications, social media, correspondence). **(F3, F10)**

R9. By October 30, 2019 the OCSD should prepare an updated inmate orientation brochure and video that include information on the attorney-client privilege rights during phone calls with their attorney. **(F6, F15)**

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the Findings and Recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the Findings and Recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the Findings and Recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all Responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices . . . ”

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the Response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.*
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

(c) However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

Findings:

Orange County Sheriff’s Department **F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16, F17, F18**

Orange County Board of Supervisors **F9, F11, F12**

Recommendations:

Orange County Sheriff’s Department **R1, R2, R3, R4, R5, R6, R7, R8, R9**

Orange County Board of Supervisors **R1, R2, R5**

REFERENCES

Acronyms

CIU	Custody Investigations Unit
DA	District Attorney
DNR	Do Not Record
ISD	Inmate Services Division
OCSD	Orange County Sheriff’s Department

Documents

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4. 2016-2017 Orange County Grand Jury Report –“The Myth of the Orange County Jailhouse Informant Program”.
5. Orange County Jail Inmate Orientation Booklet 2018.

Orange County Superior Court Cases

6. People v. John Does 1-58, Case #M-17638 (Orange County Superior Court).
7. People v. Joshua Michael Phillip Waring, Case #17WF2266 (Orange County Superior Court).
8. People v. Justin Weisz, Case #18WF0433, (Orange County Superior Court).

News Articles

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<https://patch.com/California/sanjuancapistrano>
10. Saavedra, Tony. “Phone Carrier That Improperly Recorded Orange County Jail Calls did The Same Thing In Florida”.
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11. Gerda, Nick. “Sheriff and DA Officials Knew For 2+ Years About Attorney-Client Recordings” Voice of Orange County. December 3, 2018.
<https://voiceofoc.org/2018/12/sheriff-officials-knew-in-2015-2016-and-2017-about-attorney-client-recordings/>
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<https://www.latimes.com/local/lanow/la-me-ln-oc-pivileged-phone-calls-20180817-story.html>
15. Langhorne, Daniel. Lawyer for son of ‘Real Housewives’ star asks judge to dismiss attempted murder charges. Feb 19, 2019.
<https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-josh-waring-hearing-20190219-story.html>
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<https://www.mercurynews.com/author/tony-saavedra/>
17. Ferner, Matt. “Confidential Inmate Calls With Lawyers Recorded Illegally In California Jail For Years”. 08/17/2018.
https://www.huffpost.com/entry/california-jail-recording-inmate-calls_n_5b771e73e4b0a5b1febb18eb
18. Harmonson, Todd. “Nearly 34,000 Orange County inmates’ calls to attorneys recorded, not the 1,079 originally reported”. OC Register. 11/9/2018.
<https://www.ocregister.com/2018/11/09/nearly-34000-orange-county-inmates-calls-to-attorneys-recorded-not-the-1079-originally-reported/>

APPENDIX

A: Tours and Interviews

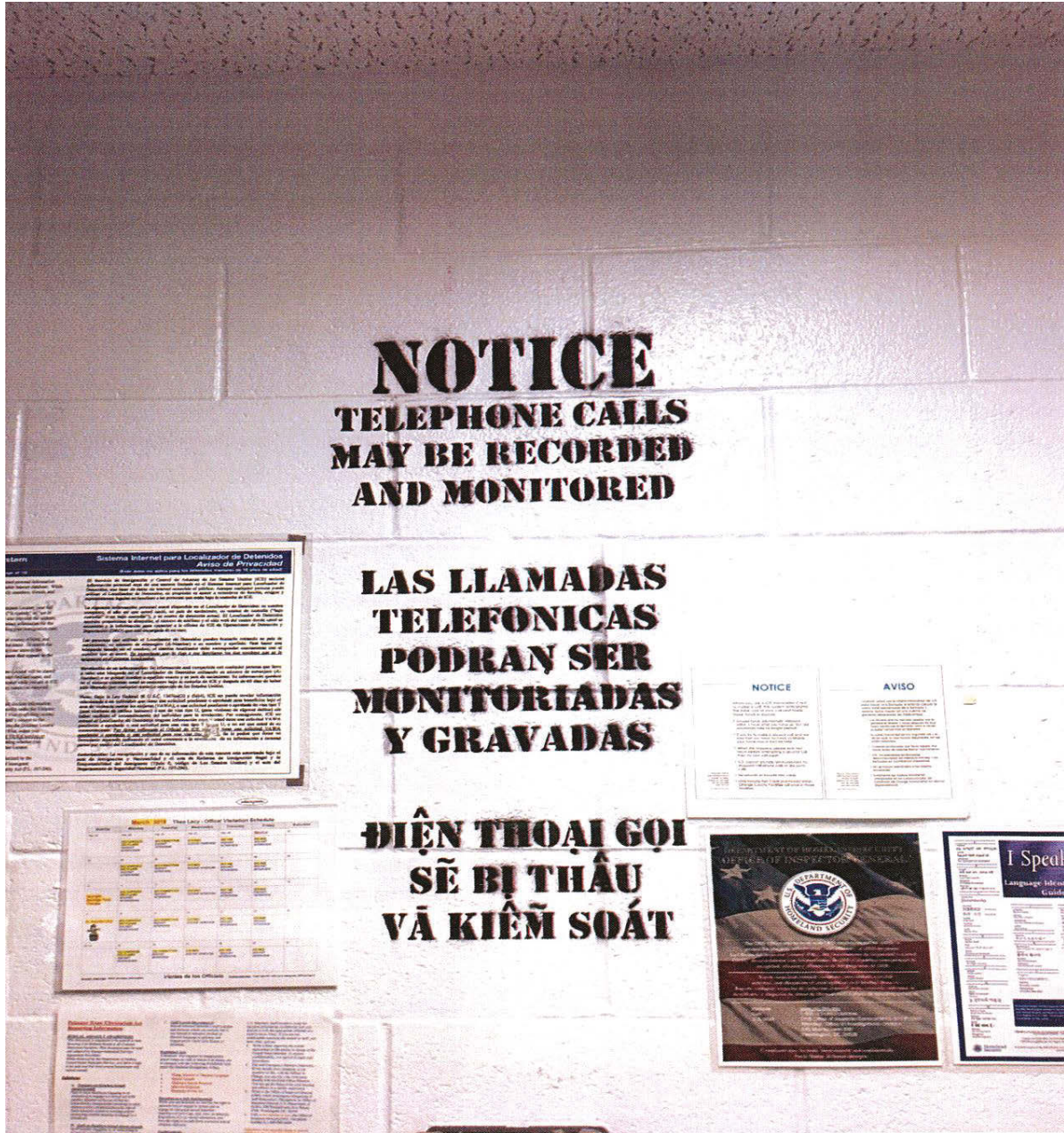
Tours

Orange County: Intake and Release Center at the Central Jail
Men’s Central Jail
Women’s Central Jail
Theo Lacy Facility
James A. Musick Facility
Criminal Intelligence Unit

Interviews

Key Personnel from: Orange County Sheriff’s Department
Public Defender’s Office
Private Defense Counsel
County Counsel
District Attorney
Office of Independent Review
Criminal Intelligence Unit
Contractor Providing Inmate Phone Services

B: Display of Admonishment on the Jail Wall



Provided by Orange County Sheriff's Department

C: A Picture of Inmates making calls at the OC jails



Source: Orange County Register, August 29, 2018

D: User Admonishment Document



USER ADMONISHMENT

636 (a) California Penal Code: Every person who, without permission from all parties to the conversation, eavesdrops on or records, by means of an electronic device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious adviser, or licensed physician, is guilty of a felony punishable by imprisonment pursuant to [subdivision \(h\) of Section 1170](#) .

18 United States Code, Section 2511 (1)(a) “Any person who intentionally intercepts, endeavors to intercept or procures any other person to intercept... any wire, oral or electronic communication” shall be fined and/or imprisoned for not more than 5 years. Law enforcement officers recording inmate calls are exempt from Section 2511(1)(a) if they receive the consent of either the sender or receiver of the telephone call prior to the recording and/or the monitoring of the call. (18 U.S.C. 2511(2)(c))

By signing below, you are acknowledging that you are aware of CPC 636(a) and 18 United States Code, Section 2511 (1)(a) pertaining to eavesdropping on or recording(s) a person in custody of a law enforcement agency. This admonishment is also provided to notify you of your responsibility to ensure that the target numbers you provide/search/monitor are not attorney, religious adviser or licensed physician phone numbers. You shall make open source searches of the phone number listed, prior to monitoring any call(s).

***In summary it is illegal and against department policy to listen to any inmate phone calls with his/her attorney, religious adviser or licensed physician without permission from all parties to the conversation. If you begin to listen to an inmate phone call and it appears that the phone call is with an attorney, religious adviser or licensed physician, you will immediately cease listening to the call and notify the Inmate Services Division to request the phone number be added to the “Do Not Record” list.**

NAME/PID: _____

ASSIGNED DIVISION/UNIT: _____

DATE/TIME: _____

Provided by Orange County Sheriff's Department

E: Inmate Telephone Prompt

Inmate Telephone – Prompt

For (Language) press (X); - I.e. English press 1, Spanish press 2 (There are total of 8 language options)

For (Call Type) press (X); - I.e. press 0 for collect, 1 for debit, 2 for net card (3 Transfer Funds)

Please enter your PIN number now;

Please enter the area code and phone number now;

Please hold;

This telephone call maybe monitored or recorded. The use of special calling features is not permitted during this call, to consent to the monitoring or recording of this call please press 1 after the tone;

Please wait while your call is being connected;

Please hold;

Hello, this is a (Call Type) call from (Inmate Name), an inmate at (Name of OCS D Facility), to accept this call press 0, to refuse this call hang up or press 1, to prevent calls from this facility press 9, for a rate quote press 8;

This call is being recorded and may be monitored. If you are an attorney and you intend to have legally privileged conversation with this inmate and do not consent to it being recorded, please hang up immediately and go to www.ocsd.org to arrange for private calls with a jail inmate. To accept this call and consent to your conversation being recorded and monitored press 1;

Thank you for using *the* Link.

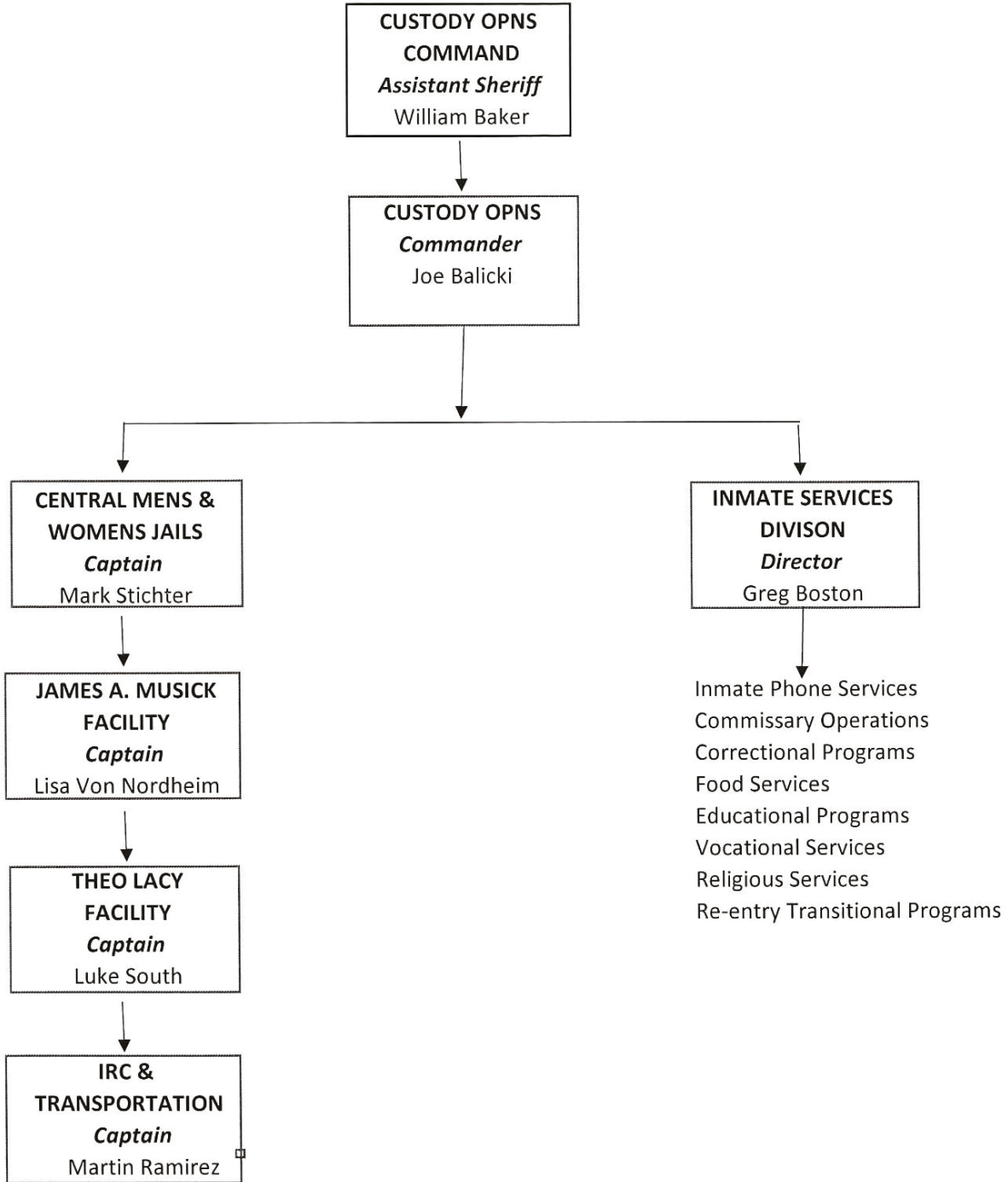
Languages

- English
- Spanish
- Vietnamese
- Cantonese
- Portuguese
- French
- Armenian
- Mandarin

Provided by Orange County Sheriff's Department

F: OCSD Custody Operations Command Organizational Chart

OCSD CUSTODY OPERATIONS COMMAND



Adapted from Orange County Sheriff's Department website

G: Events Timeline 1

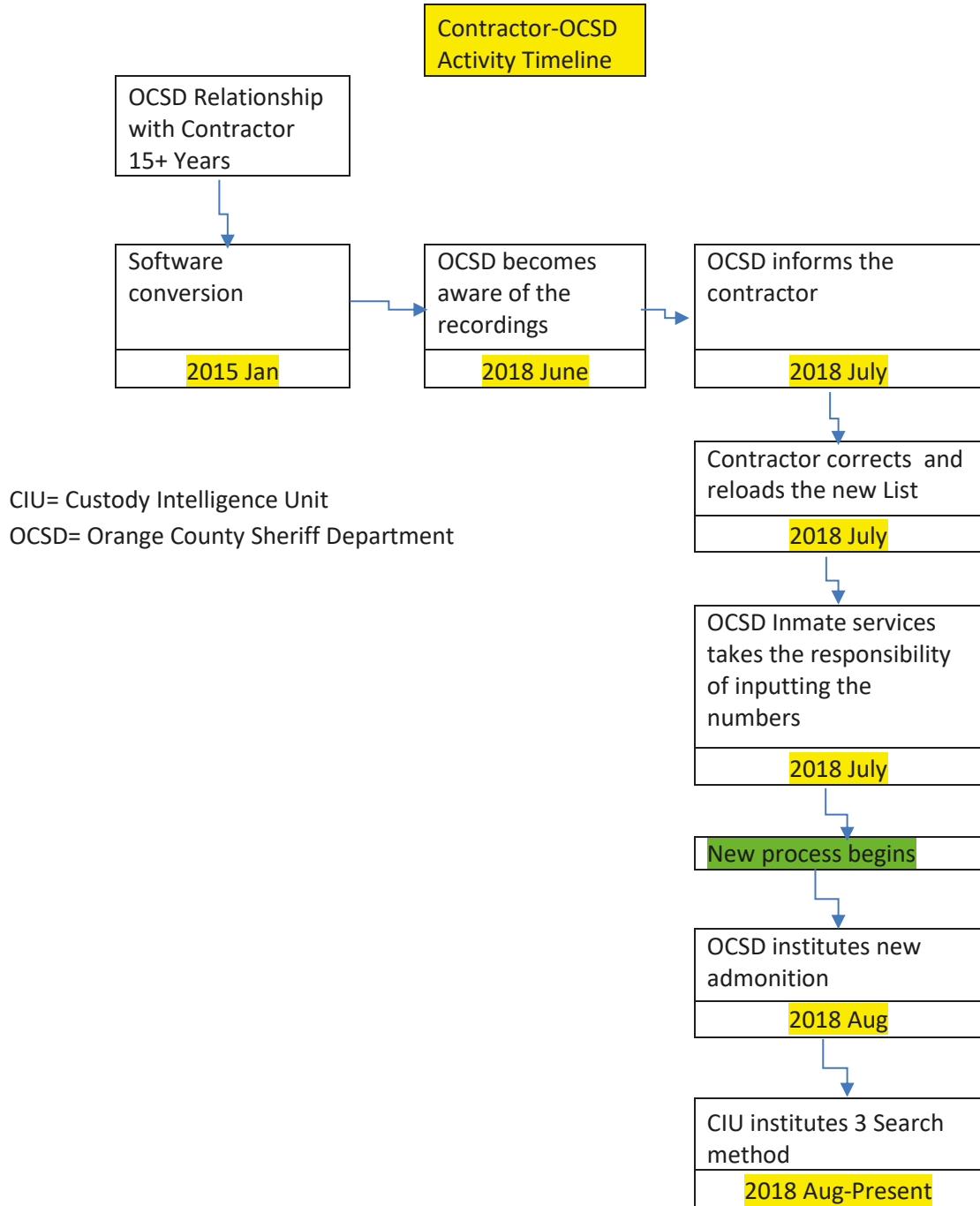
Phone System Lists -Pre Jan 2015				
Private Telephone Numbers N1	Do Not Record Numbers N2	CDR (Call Detail Record) N3	Accessed Numbers N4	Incomplete N5
List of numbers considered private	List of numbers not to be recorded	List and status of all calls made on the system	List of numbers listened to by OCSD	List of incomplete calls

Phone System Lists -Post Jan 2015			
Do Not Record Numbers N1 +N2	CDR (Call Detail Record) N3	Accessed Numbers N4	Incomplete N5
List of numbers not to be recorded	List and status of all calls made on the system	List of numbers listened to by OCSD	List of incomplete calls

Notes: During conversion to the new system N1 was transferred over correctly. N2 was not transferred due to a claimed human error. In the new system, both N1 and N2 are combined as one list. No changes to CDR, accessed or incomplete lists.

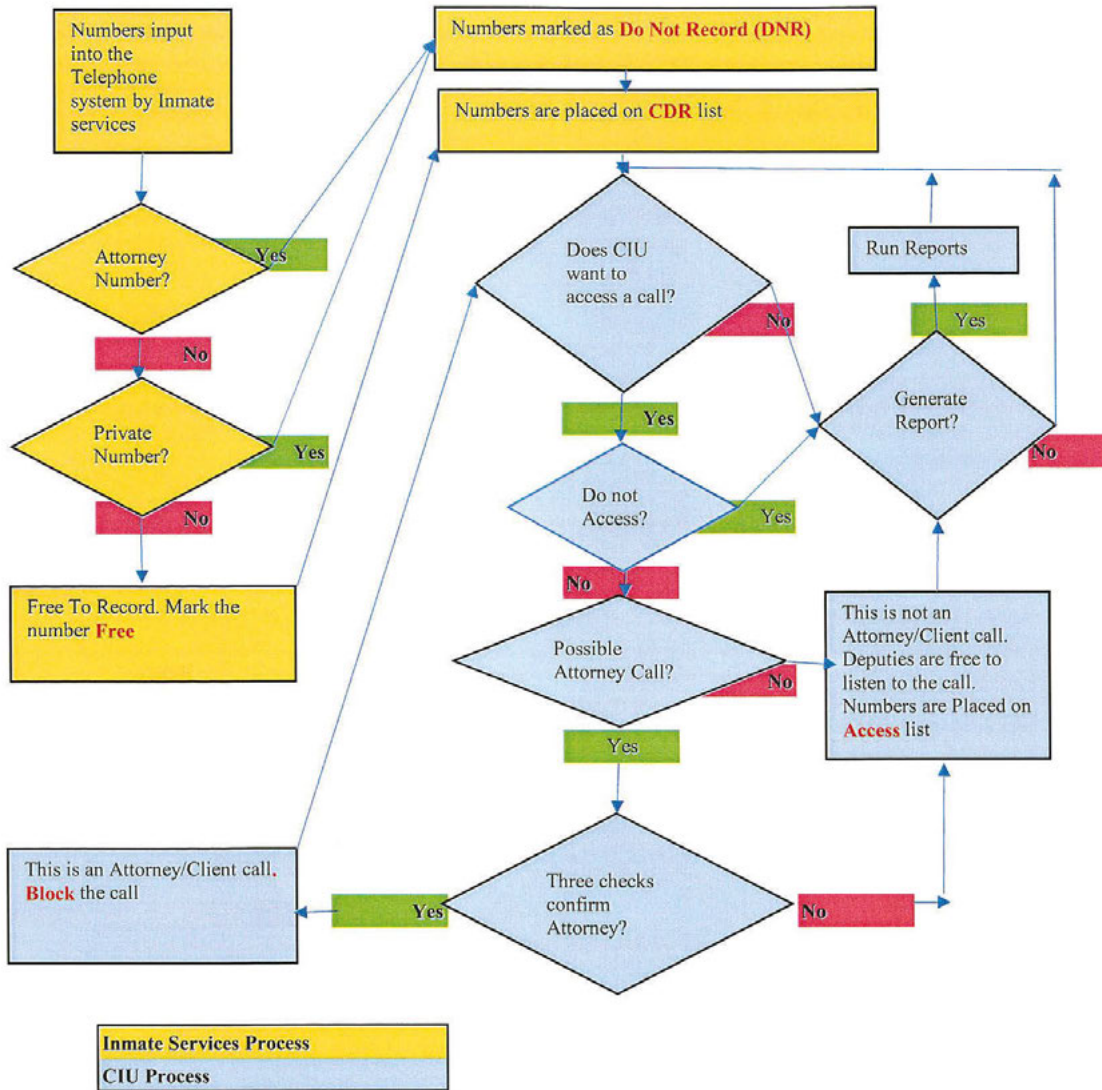
Created from multiple sources by Grand Jury during investigation.

H: Event Time Line 2



Created from multiple sources by Grand Jury during investigation.

I: System Software Flow



Created from multiple sources by Grand Jury during investigation



“The Silent Killer”
**Hypertension in Orange County’s Intake and
Release Center**



GRAND JURY 2018-2019

**“The Silent Killer”
Hypertension in Orange County’s Intake and Release Center**

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“The Silent Killer” Hypertension in Orange County’s Intake and Release Center

SUMMARY

Prior Grand Juries have issued reports concerning the health and welfare of Orange County’s jail inmates. From January 23, 2016 through May 2, 2018 there were 28 custodial deaths, 15 of which had evidence of a prior cardiovascular history. The current standard of medical care throughout the country includes measurement of vital signs every time an individual is seen at a doctor’s office, in a clinic or hospital. Vital signs include the measurement of pulse rate, respiratory rate, temperature, and blood pressure. Not all inmates being booked into jail in Orange County have this simple test performed. The simple taking of vital signs within the first 48 hours on all the inmates being booked into the Orange County Jail could advance the diagnosis and treatment of what is acknowledged to be the leading cause of death in the United States.

The Medical Triage Area at the Intake and Release Center is a high traffic area, averaging 150 inmates per day. Inmates are screened two at a time with no privacy. There is a screen located between the nurse and the cuffed inmate and the nurse does not have a full view of the inmate. The Orange County Sheriff’s Department and Correctional Health Services have been discussing improving this area. The proposed improvements include allowing for three screenings at a time, increasing inmate privacy, and improving safety for the nurses while allowing better access to the inmates. The Orange County Grand Jury recommends the Orange County Sheriff’s Department move forward with completing this much needed update.

REASON FOR THE STUDY

The Orange County Grand Jury (Grand Jury) attends Coroner Case Review hearings where the facts surrounding custodial deaths are evaluated prior to a death certificate being issued. During the first Coroner’s Review attended by the 2018-2019 Grand Jury, the Grand Jury learned that vital signs are only taken by Correctional Health Services (CHS) personnel if the inmate indicates a history of cardiovascular disease or if the prior jail medical history so indicates. CHS uses the “Receiving Screening” form at the Intake and Release Center (IRC) on all inmates being booked into the Orange County jail system. This tool includes a section for vital signs with a space to indicate an inmate’s refusal.

The community standard of care in the general population as well as in the majority of the correctional system is to obtain vital signs. The medical community has long accepted that vital signs can identify the presence of an acute medical problem, measure the extent of that illness, and be a marker of a chronic disease state. Performing vital signs on all inmates could protect the health of inmates entering the Orange County Jail system via IRC by reducing the risk of a cardiovascular incident due to undiagnosed hypertension. Besides saving lives, this could help reduce the cost to the Orange County taxpayer of having to send inmates to an outside hospital for treatment while at the same time providing potential savings by reducing prospective civil litigation.

“The Silent Killer”
Hypertension in Orange County’s Intake and Release Center

METHOD OF STUDY

The Grand Jury reviewed available information regarding the importance of monitoring vital signs in the population in general and specifically in the criminal justice community. It obtained information from California Correctional Health Care Services (CCHCS), National Commission on Correctional Health Care (NCCHC), and Immigration and Customs Enforcement (ICE) as to routine procedures for intake screenings of all inmates. It gathered statistics regarding custodial deaths from the Orange County Coroner’s office including the inmate’s name, date of death, and cause of death. It reviewed these custodial deaths occurring between January 23, 2016 and May 2, 2018, specifically searching for inmates who had a history of cardiovascular disease as a cause of death or a contributing factor. It issued a subpoena due to Health Insurance Portability and Accountability Act (HIPAA) protections, to obtain specific deceased inmates’ “Receiving Screening” forms and their Medication Administration Records from CHS, which were then examined thoroughly.

The Grand Jury reviewed Grand Jury reports from prior years, particularly the 2017-2018 report, “Preventable Deaths in Orange County Jails”. Grand Jury members attended an In-Custody Death Review in September 2018, as well as a Coroner Case Review in October 2018. It conducted interviews with representatives of Correctional Health Services, the Orange County District Attorney’s office and the Orange County Sheriff’s Department. The Grand Jury analyzed the health screening area at the IRC with a focus on inmate privacy and appropriate/safe access to inmates. It collected additional information from newspaper articles, websites and government reports.

“The Silent Killer”

Hypertension in Orange County’s Intake and Release Center

BACKGROUND AND FACTS

Figure 1: Blood Pressure Analysis



Source: From “UCSD A Practical Guide to Medicine”

Used with permission

High Blood Pressure

In 2016, according to the Centers for Disease Control and Prevention (CDC), approximately one in three adults in the United States had high blood pressure. Of these, only about half had their blood pressure under control. High blood pressure increases the risk of heart disease and stroke. There are 28.1 million adults diagnosed with heart disease. One in three of these are ages 35 to 64. Eighty percent of premature heart disease and strokes are preventable.

According to a University of California at San Diego report, vital signs can identify an acute medical problem. They are a means of rapidly determining the extent of an illness, how the body is coping with the stress of that illness, and are an indication of the status of a chronic disease.

**“The Silent Killer”
Hypertension in Orange County’s Intake and Release Center**

Table 1: Blood Pressure Levels

BLOOD PRESSURE CATEGORY	SYSTOLIC mm Hg (upper number)		DIASTOLIC mm Hg (lower number)
Normal	Less than 120	and	Less than 80
Elevated	120-129	and	Less than 80
High Blood Pressure (Hypertension) Stage 1	130-139	or	80-89
High Blood Pressure (Hypertension) Stage 2	140 or higher	or	90 or higher
Hypertensive Crisis (consult a doctor immediately)	Higher than 180	and/or	Higher than 120

Source: American Heart Association

Used with permission

Correctional Health Standards

The CHS website states it provides health care at “a community standard of care”¹. CHS’ definition of “community” is the correctional community. The Grand Jury learned that correctional health standards vary but most include a vital signs screening.

- The Georgia Department of Corrections health policy requires the completion of vital signs, a TB test, and medication review on the day the inmate is being booked.
- San Quentin’s Receiving & Release facility checks all vital signs and does an eye test, as well as a chicken pox and TB screening. One of the most common illnesses it finds is hypertension.
- California Correctional Health Care Services (CCHCS), in its reception health care policy, urges an initial health screening comprised of an interview conducted by nursing staff that identifies immediate needs. This includes a complete set of vital signs, TB screening and verification of current medications.
- The Federal Bureau of Prisons recommends that inmates be screened for hypertension by health care providers during intake and periodic physical examinations, evaluations during sick call and chronic-care evaluations.

¹ Correctional Health Services website

“The Silent Killer” Hypertension in Orange County’s Intake and Release Center

Standards cited by CHS include those of California Code of Regulations (CCR) Title 15, ICE Performance Based National Detention Standards, and NCCHC. CCR Title 15 provides minimum standards for local detention facilities. It endorses screening all inmates at the time of intake. The screening should include medical and mental health problems, developmental disabilities and communicable diseases. The screening should be completed by licensed health personnel or trained facility staff. ICE standards include the initial medical, dental and mental health screening. It includes vital signs.

NCCHC

NCCHC is an accreditation agency which also offers education and recommendations to correctional health agencies. CHS is not an NCCHC-accredited agency although it purports to follow NCCHC guidelines. One of the guidelines addresses screenings to identify and intercede with any developing and/or urgent health needs. The goal is to identify potential emergency situations among the new inmates and ensure those inmates with preexisting conditions are assessed and receive continued treatment. This process includes certain key elements, but does not require vital signs be taken at the screening.

For correctional institutions accredited by NCCHC, there are two possible options following the screening. The first is a “Full Population Assessment” which is performed on all inmates no later than 14 days from booking. It is a hands-on evaluation which includes a review of the receiving screening, medical history, vital signs, height and weight. The second is an “Individual Assessment When Clinically Indicated”. If clinically indicated, vital signs are taken during the receiving screening and then again during the follow-up health assessment. The Orange County Jail system can house up to 958 ICE detainees who receive the “Full Population Assessment” as part of the ICE contract. *Note: according to a March 27, 2019 press release, the ICE contract has been terminated and will result in the transfer of the ICE detainees within 120 days.*

Every two years the Orange County Jail system undergoes inspections by the Board of State and Community Corrections, a state agency, which reviews the Receiving Screening for compliance with Title 15. However, it does not undergo the same scrutiny as hospitals which are accredited by “The Joint Commission” or another of the several accrediting agencies. Accreditation serves multiple purposes: strengthening patient safety, increasing community confidence, helping reduce the risk of error and providing direction in quality improvement efforts.

Orange County Correctional Health Services

For non-ICE bookings, if there is no medical history, either self-identified or from prior bookings, the inmates are told how to seek medical attention in the future. Vital signs are obtained only if an inmate seeks further medical care or possibly after being incarcerated for one year. After one year inmates must first submit a written request for an “annual health appraisal” at which time vital signs will be obtained, possibly for the first time.

“The Silent Killer” Hypertension in Orange County’s Intake and Release Center

For inmates who meet CHS criteria (those that self-report or have a prior history) blood pressure will be measured. CHS’ policy defines blood pressure levels requiring further action as readings greater than 160/110. These range from triage to evaluation to management. If the inmate’s blood pressure is less than 160/110 no follow-up would occur unless the inmate is prescribed medication. The Grand Jury could find no policy stating that inmates with blood pressure in the American Heart Association’s abnormal criteria range would be monitored further (Table 1).

CHS screens approximately 60,000 inmates each year at IRC. The current configuration at IRC consists of a high traffic area with unlocked doors. Currently there are two screening areas where the prisoners remain handcuffed. No privacy is afforded while disclosing medical and mental health history. This, in conjunction with the stress of being booked into jail, can negatively influence blood pressure. The OCSJ has discussed changing the configuration to allow for three screening areas, with increased privacy and the ability to uncuff one wrist for a calmer, quieter screening. Even ICE standards require screenings be performed with consideration of the inmate’s privacy. The Grand Jury has learned that this construction has been recommended for many years. It would require funding from the Orange County Sheriff’s Department which has not yet been authorized.

Medical staff wants to focus on continuity of care, however a variety of factors make that objective more difficult. Inmates who are repeat offenders often provide an alias or false name, making review of their past medical records impossible. Of the approximately 150 being booked per day, 20 to 80 give false information. Once the inmate is fingerprinted the records will be merged, but the screening has already been completed and might not be further reviewed. With the current policy, vital signs are taken only if the inmate admits to or has a documented history of hypertension or a heart-related illness. Inmates are older, sicker, and present more often with mental illness and substance abuse issues than in the past. These issues affect the overall health of inmates being screened in an outdated facility.

In 2018, 1,145 inmates were transferred out for hospital care. Of those, 137 had cardiovascular complaints, and 70 were admitted as inpatients. Since 2016, there have been 28 custodial deaths with 15 having a cardiovascular history as a cause or contributing factor in their death. The receiving screening document used for all inmates being booked at the IRC includes a space for vital signs. This section is completed only if the inmate reports a medical condition or has a prior history of cardiovascular disease. The inmates also have the right to refuse having their vital signs taken. From 1/1/2018 to 12/12/2018, of the 60,899 inmates screened, only nine have refused. The number of inmates who actually had vital signs taken is not available because of software limitations in the electronic medical records.

Custodial Death Reports

The Grand Jury reviewed 14 custodial deaths of inmates. Ages ranged from 30 to 69, with an average age of 55. All but three had vital signs taken upon booking. Six had elevated blood pressure and/or elevated pulse rates. Of the three who did not have screening vital signs

“The Silent Killer”
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completed, all had hypertensive heart disease as a contributing factor in their deaths, as determined at autopsy. All 14 had been medication compliant while in custody.

A review of the Custodial Death Reports revealed instances of inconsistency. Some descriptions of inmate deaths or medical histories were inconsistent with other records describing medical care provided to those inmates. Some of these inconsistencies would only be identified by trained medical professionals.

The Orange County Sheriff is also the Orange County Coroner. To avoid a potential conflict of interest, the Orange County District Attorney’s (OCDA) office conducts the custodial death reviews. An agreement was established between these two agencies in 2010 to accomplish this. There is no such agreement between the OCDA and CHS. CHS supplies information for these reviews but the OCDA, as part of its review, does not currently review reports for inconsistency and take corrective action if found. Corrective action could be reporting the inconsistencies to CHS management or, in particularly egregious situations, reporting the relevant CHS doctor, nurse practitioner or nurse to their respective licensing boards.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 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 titled “‘The Silent Killer’ Hypertension in Orange County’s Intake and Release Center” the 2018-2019 Orange County Grand Jury has arrived at nine principal Findings, as follows:

- F1.** Inmates being booked will often have abnormal vital signs due to the stress of being handcuffed, being booked into jail and potentially being under the influence of various substances.
- F2.** Vital signs are attempted only on inmates being booked who self-identify as having hypertension, a heart-related disorder or a prior medical history.
- F3.** Inmates have the right to refuse to disclose medical history as well as any medical interventions.
- F4.** With the increasing number of inmates, their often poor health status, and the potentially incomplete diagnosing of inmates, the county is opening itself up to potential liability lawsuits.
- F5.** Inmates are being transferred to outside hospitals for evaluation of chest pain and more than half are being admitted for care, increasing medical costs to Orange County taxpayers.
- F6.** CHS policy does not comply with generally accepted medical practices for monitoring and treating elevated blood pressure.

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F7. Electronic medical records currently in use by CHS provide no means to monitor how many and which inmates are having vital signs performed as a result of a nursing decision.

F8. Inconsistencies between the CHS reports and the reports of OCFA paramedics appear in the custodial death reports issued by the OCDA.

F9. The current physical configuration at IRC is not conducive to conducting health screenings.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 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 titled “‘The Silent Killer’ Hypertension in Orange County’s Intake and Release Center” the 2018-2019 Orange County Grand Jury makes the following six Recommendations:

R1. By September 30, 2019, CHS should obtain vital signs on every consenting inmate being booked into the OC Jail at the time of or within 48 hours of booking. **(F1, F2, F3, F4)**

R2. By December 31, 2019, CHS should evaluate the benefits of, and strongly consider becoming a NCCHC accredited facility to further protect the health of the inmates of Orange County. **(F1, F2, F3, F4, F5)**

R3. By September 30, 2019, CHS should establish a standardized policy for inmates who present with abnormal blood pressure readings below 160/110. **(F6)**

R4. By December 31, 2019, CHS should monitor completion of vital signs by altering the “Receiving Screening Form” to allow a data sort encompassing: vital signs refused, vital signs not attempted and vital signs completed. **(F7)**

R5. By September 30, 2019, OCDA should establish a protocol for reviewing all medical records for medical inconsistencies when investigating custodial deaths, engaging medically trained assistance as needed, and taking appropriate corrective action to address identified inconsistencies, including referral to the appropriate state licensing board as necessary. **(F8)**

R6. By December 31, 2019, OCSD should reconfigure the health screening area at IRC to allow for more privacy, increased safety for the nurses conducting the screening and improved access to the inmates. **(F9)**

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RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . . ”

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

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

(c) However, 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 authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.”

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

Responses Required:

Findings:

Orange County Board of Supervisors:	F1, F2, F3, F4, F5, F6, F7
Orange County District Attorney	F8
Orange County Sheriff-Coroner	F9

Recommendations:

Orange County Board of Supervisors:	R1, R2, R3, R4
Orange County District Attorney	R5
Orange County Sheriff-Coroner	R6

Responses Requested:

Findings:

Correctional Health Services	F1, F2, F3, F4, F5, F6, F7, F8, F9
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Recommendations:

Correctional Health Services	R1, R2, R3, R4, R5, R6
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If It Ain't Broke, Don't Fix It



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SUMMARY

After 34 years of having a consolidated Auditor Controller/Internal Audit department, Orange County was abruptly traumatized by bankruptcy in 1994. The County Treasurer and an external auditing firm were terminated and, under scrutiny of both state and federal inspectors, the Board of Supervisors removed the Internal Audit function from the Auditor Controller to gain support from Wall Street in issuing County bonds. From 1995 until 2015, Internal Audit was held as a separate function, directly reporting to the Board of Supervisors. California's 57 other counties all retained Internal Audit as a consolidated function within the Auditor Controller's office.

In 2015, Eric Woolery was the first elected Auditor Controller who had not held an appointed position in the County in the prior 20 years. He began his term with progressive ideas, but had inherited an office with outdated systems and procedures and had not undergone any major changes in years. He appealed to the Board of Supervisors to reinstate Internal Audit under his management and it was returned to the Auditor Controller after agreement that an Assembly Bill mandating statewide consolidation of the Auditor Controller and Internal Audit would be withdrawn in Sacramento.

Subsequently, Mr. Woolery's efforts regarding public outreach and questioning expenditures of County resources brought disapproval from the Board of Supervisors. During the 2018 election Mr. Woolery was reelected with an overwhelming 74% of the vote. Shortly after beginning his new term, at a regularly scheduled June 26, 2018 meeting of the Board of Supervisors, motions were made to remove the Internal Audit Department from the Auditor Controller, reduce the department's budget by \$1 million and remove Mr. Woolery as a voting member of the Audit Oversight Committee. These motions were approved by a 4 to 1 vote. Motions were also made to remove Mr. Woolery as Controller and remove several staff positions from the department. These motions did not pass. No discussion was held and no explanation was given for these significant organizational and financial changes.

The Grand Jury's research concludes that the parties involved were too polarized to resolve their differences; the costs to the County and the staff involved are not reasonable; the removal of the Internal Audit Department in 1994 was driven by a catastrophic event; and the removal of the Internal Audit Department in 2018 was not. Potter Stewart of the US Supreme Court summarized this well: *"Ethics is knowing the difference between what you have the right to do and doing what is right to do."*¹

REASON FOR THE STUDY

Of the 58 counties in the State of California, all but Orange County have an integrated Auditor Controller /Internal Audit Department. Prior to the County's 1994 bankruptcy, the Auditor Controller and Internal Audit departments were consolidated but during the 1994 County bankruptcy, the Board of Supervisors removed Internal Audit from the Auditor Controller.

¹ Potter Stewart Quotes. BrainyQuote.com, BrainyMedia Inc.,2019

The Internal Audit Department was returned to a newly elected Auditor Controller in 2015 but during this term, disputes arose between the Auditor Controller and the Board of Supervisors. After an election in which the current Auditor Controller won a second term with 74% of the public vote, the Orange County Board of Supervisors removed Internal Audit from the Auditor Controller and reduced the Auditor Controller's budget by \$1 million. Given the election mandate received by the Auditor Controller and the public awareness of this issue, the Orange County Grand Jury (Grand Jury) chose to investigate the circumstances. The Grand Jury's focus is on understanding the effectiveness and efficiency of both the integrated and separated structures of the office, and on the impact of its deviance from State norms.

METHOD OF STUDY

The Grand Jury interviewed 19 people, many more than once. (See Appendix D.) It sought advice from County Counsel and other qualified legal sources. It studied court cases, County Resolutions, State Legislation, news articles and other public documents, in addition to the history of the Auditor Controller and related offices.

BACKGROUND AND FACTS

The Background

When Orange County was incorporated in 1889, it took a number of years to establish the governmental structure. During the first 60+ years, it always had a County Auditor but on April 8, 1959 a County Resolution created the office of Auditor Controller which included Internal Audit. Elected Auditor Controllers were in place in the County for the subsequent 35 years. In 1984, Steven Lewis was appointed to finish the term of Victor Heim (the County's original "Taxpayer Watchdog") and was subsequently elected Auditor Controller, which he served as until 1996. A history of office holders is contained in Appendix A.

Catastrophe struck in 1994 when the County declared bankruptcy as a result of improper investments by the County Treasurer. The Treasurer admitted to criminal malfeasance of County Funds and was removed from office. This financial disaster brought unrelenting State and Federal attention. The County terminated their external auditing firm and Steven Lewis reached an agreement with the Board of Supervisors to move control of the Internal Audit Department from the Auditor Controller to the Board of Supervisors in order to keep his job. These efforts helped the County provide Wall Street with reassurance in facilitating a needed \$1billion bond issuance². The Board of Supervisors appointed David Sundstrom as Director of Internal Audit for the newly separated Independent Audit office. (*Internal Audit is to be differentiated from Performance Audit. See Appendix C for definitions.*) Steven Lewis, through his causal connection to the bankruptcy in failing to oversee the Treasurer's office, resigned in 1996 before completing his term.

² Orange County Register, Teri Sforza, Published 6-30-2017

Upon Lewis' resignation, the Board of Supervisors appointed David Sundstrom to complete Lewis' term as Auditor Controller and, in 1997, he was elected Auditor Controller and took office in 1998. Dr. Peter Hughes was appointed Director of the Internal Audit Department, filling the vacancy left by Sundstrom. In August of 1998, the Governor signed Assembly Bill 2523 authorizing the Orange County Board of Supervisors to assign various audits to a staff member (Director of Internal Audit) instead of the elected County Auditor Controller. This bill applied only to Orange County and became Government Code Section 26915. An Audit Oversight Committee was established in conjunction with the creation of the Internal Audit Department and served as an advisory committee to the Board of Supervisors.

In 2007, Sundstrom requested the Board of Supervisors return Internal Audit Department to the Auditor Controller. This request failed with a 2 to 2 vote by the Board of Supervisors, with one Supervisor absent. He continued to fill this elected position until his resignation in 2012, when an appointee filled the remaining two years of his term, performing a purported "ministerial"³ function through this short period. Combining the Internal Audit Department with the Auditor Controller regained momentum and on November 25, 2014, a request was placed on the agenda for the Board of Supervisors meeting. A vote of 3 to 2 rejected the combination. On February 25, 2015, Assemblyman Tom Daly introduced Assembly Bill 783, which would require all counties in California to have a combined Auditor Controller/Internal Audit function. When this Bill appeared to be on its way to statewide passage, Daly and Woolery were informed by the Board of Supervisors that the Internal Audit function would be returned to the Auditor Controller if Daly's Bill were withdrawn. Assemblyman Daly agreed to withdraw the Bill and, with a vote of 4 to 1 by the Board of Supervisors on August 4, 2015, Internal Audit was returned to the oversight of the Auditor Controller. (See Appendix B.)

From 1995 until 2015, Directors of Internal Audit (David Sundstrom, Dr. Peter Hughes and the interim appointee for Sundstrom) all began as appointees of the Board of Supervisors, with Sundstrom later being elected Auditor Controller. These appointees to Internal Audit gave the Board of Supervisors internal audit control and later gained its approval as elected Auditor Controllers. During this same 20-year period the other 57 counties in California continued with consolidated Auditor Controller/Internal Audit offices.

Currently

In 2014, Eric Woolery was elected Auditor Controller and came into office in 2015 with progressive ideas including dynamic public involvement, new processes and procedures and a more engaged staff structure. Branding for the Auditor Controller as a "taxpayer watchdog" was accompanied by adoption of a bulldog logo, symbolizing a guardian commitment to the highest

³"Ministerial describes an act or a function that conforms to an instruction or a prescribed procedure. It connotes obedience. A ministerial act or duty is a function performed without the use of judgement by the person performing the act or duty." The Free Dictionary

standard for truth, accessibility, and independence. Regular contact with the various City Councils in the County was instituted, “Watchdog” awards were given to individuals in the County who exhibited excellence in monitoring public money and town hall meetings were organized. (See Appendix E.)

These changes were major departures from the norm in the Auditor Controller’s office. The inherited Auditor Controller’s office had outdated systems and procedures and minimal staff oversight. Required data retention was done on paper and stored in file cabinets. Interviews with Human Resources, Internal Audit and Auditor Controller employees found staff structure was top heavy with limited new hires. During those interviews and interviews with Information Technology staff, the Grand Jury discovered that the new Auditor Controller began digitizing stored data, restructuring staff, reviewing systems and procedures and reaching out to the public.

In order to gain an organizational perspective of his department, Mr. Woolery commissioned a survey through The Values Institute (see References) on employee morale, trust in the organization and company values. This report was completed in January of 2018 and delivered to the Auditor Controller in the first half of that year. The report lists recommendations centered on improved communications, building relationships, coaching and mentoring. These recommendations have not been addressed yet due to a reduction in the Auditor Controller budget by the Board of Supervisors.

An additional step by the Auditor Controller was to put a “Community and Government Affairs” team in place consisting of government affairs, legislative, communications and executive aide positions. Through its research, the Grand Jury found that these functions are not uncommon in California county structures and exist to establish effective communication with the public, as well as to maintain involvement in State legislative actions affecting the County and the department. Through its research, the Grand Jury found that Auditor Controller departments in Los Angeles, San Luis Obispo, San Bernardino and San Diego Counties currently have staff serving on the Legislative Committee of the California State Association of County Auditors. Mr. Woolery’s public outreach was not well received by the Board of Supervisors, as previous Auditor Controllers performed routine duties and were rarely in the public view.

The Issues

Shortly after taking office, Woolery faced two significant issues:

1. Mailers sent by some members of the Board of Supervisors prior to the June and November elections of 2016 were viewed by the Auditor Controller as having campaign overtones and perhaps not suitable for reimbursement from public funds. These costs were ultimately authorized by the Auditor-Controller. Subsequently, the California legislature passed Senate Bill 45 prohibiting the use of public funds for mailers with a campaign overtone within 60 days of an election.

2. In February of 2015, a request was received for a large and unusual retroactive pension payment on behalf of a member of the Board of Supervisors. Requesting the retirement plan retroactively would require a significant payment by the County. Over a period of eight months, the Auditor Controller challenged the payment which involved Orange County Employees Retirement System, County Counsel and the Orange County District Attorney's office. He requested access to outside legal counsel to research the issue, but the request was tabled by the Board of Supervisors. During its investigation, the Grand Jury learned that the District Attorney's investigators searched the Auditor Controller offices for possible evidence of embezzlement. No embezzlement charges were ever filed. Because of input from several County agencies, the retirement payment was approved by Woolery's office. Subsequently, the California legislature passed Assembly Bill 3068 allowing use of external counsel by Auditor Controllers statewide effective January 2019.

Interviews with a number of County officials regarding the Auditor Controller's office raised the following issues:

- *The Auditor Controller used \$100,000 to produce videos describing the services of several County Agencies.* The Grand Jury investigation determined the cost was \$13,682.50.
- *The Auditor Controller withheld expense payments due to members of the Board of Supervisors.* Other than the issues related to mailers and the pension payment, the Grand Jury could find no evidence of failure to make payments.
- *Overtime payments to Orange County Sheriff's Department deputies were not paid in a timely fashion.* The Grand Jury learned that the Sheriff's Department is only partially on the electronic pay system. Twenty-five percent (approximately 1000 employees) have been converted to the electronic system. The Sheriff's Department is estimating completion for all employees by the Fall of 2019. Interviews with OCSA staff found that late payments of overtime pay (approximately 5% of all employees) can be attributed to timing issues within the Sheriff's Department and not the Auditor Controller's office.
- *The "Community and Government Relations" team was political, an overreach and not needed. It was felt that the Auditor Controller should have no involvement in State legislation or outreach to the public.* The Grand Jury's investigation found that most county Auditor Controllers in the State have similar structures, some smaller and some larger. Members of this team provide the vital function of managing the Auditor Controller's State legislative and County policy efforts, as well as obtaining intergovernmental cooperation with the 34 cities within the County. This group also serves as staff for the Countywide Oversight Board which oversees \$2.5 billion in the dissolution process of the 25 successor agencies to the Redevelopment Agencies. California Health and Safety codes require that Countywide Oversight Boards be staffed by the Auditor Controller or designee. The Grand Jury's research showed that counties

such as Riverside and San Diego have twice the staff of Orange County working on their oversight boards.

- *The branding of the Auditor Controller's office as a "watchdog" with a bulldog logo was not appropriate and was not approved by the County.* The Grand Jury's investigation discovered that no county approval was needed. Selection of the bulldog as a logo representing a watchdog is commonly used. In fact, the United States General Accountability Office (GAO) has a similar logo. (See Appendix E.) A civil grand jury is charged with being a watchdog over local government.
- *Internal audits were conducted with a "gotcha" attitude and not in the spirit of helping improve on the subject matter of the audits.* The Grand Jury's investigation revealed that of the forty-nine audits conducted in 2017-2018, surveys showed customers agreed overwhelmingly that the auditors were professional and courteous and their experience was positive. The surveys also indicated that audit customers would recommend the services of the auditors to their colleagues. The Grand Jury found nothing to suggest a "gotcha" attitude.
- *Placing Internal Audit under the direct management of the Auditor Controller does not provide transparency of audits.* The Grand Jury heard statements such as: 'how can Internal Audit audit the Auditor Controller?' 'A department can't audit itself.' 'There is no transparency if Internal Audit reports to the Auditor Controller.' The facts are:
 1. The Auditor Controller is audited by an outside CPA firm that is overseen by the Audit Oversight Committee as well as by the State Controller's office and the State Board of Equalization for compliance of state laws and regulations;
 2. The Internal Audit Department is audited by the Institute of Internal Auditors.

The Result

On June 5, 2018, Mr. Woolery was reelected to a second term as Auditor Controller by an overwhelming 74% of the vote. Three weeks later on June 26, 2018, at a regularly scheduled Board of Supervisor's meeting, motions were made to remove Internal Audit from the Auditor Controller and decrease the Auditor Controller budget by \$1 million. A previous majority vote to combine the functions had been made fewer than three years earlier. No other County departments received budget reductions. This \$1 million budget reduction effectively eliminated 12 staff positions and stopped development of an action plan on the earlier received Values Institute survey. There were no reasons given and no discussion. Both motions were approved by a vote of 4 to 1, making Orange County the only county of 58 in the State without an Internal Audit department reporting to the Auditor Controller and reversing the agreement made with the State Legislature. The Board of Supervisors passed a new Resolution removing Internal Audit from the Auditor Controller and repealing the April 8, 1959 Resolution.

At the same Board of Supervisor's meeting, a motion was also made to remove the Controller function from Mr. Woolery. This was defeated on a 3 to 2 vote. Had it succeeded, Orange County would have been aligned with Mariposa, Modoc and Sierra counties who each have populations under 20,000. One other proposal was presented which would have deleted 5 staff positions in the Auditor Controller's office: Director of Community & Government Relations, Legislative & Analytics Manager, Public Information Officer, Executive Communication Manager and Executive Assistant. This proposal was not successful.

Through numerous interviews with Human Resource, Internal Audit and Auditor Controller staff members, the Grand Jury learned of diminished morale in the Auditor Controller's office. Concerns included not understanding why Internal Audit was removed, a \$1 million reduction in budget, that the Controller function was considered for removal from Mr. Woolery and fear that other jobs within the Auditor Controller's office were in jeopardy.

The Board of Supervisors then removed the Auditor Controller as a voting member of the Audit Oversight Committee. The Audit Oversight Committee is charged with Internal Audit oversight and serves as an advisory committee to the Board of Supervisors. Original membership of the Audit Oversight Committee included the Chair and Vice-Chair of the Board of Supervisors, the Auditor Controller, the County Executive Officer, the Treasurer-Tax Collector (non-voting) and one member from the private sector. Current membership includes 5 members from the private sector, the County Executive Officer, the Chair and Vice-Chair of the Board. The Auditor Controller and the Treasurer-Tax Collector also sit on the Audit Oversight Committee but are non-voting members.

Separation of Internal Audit from the Auditor Controller did not come without a cost. The Grand Jury learned through public records, Human Resources and the CEO's office that the newly hired Internal Audit Director will receive a salary 11.5% higher per year than the Auditor Controller. The Internal Auditor manages 14 people; the Auditor Controller manages 433 people (of which 15 positions remain open due to lack of budget). New computers, printers and other equipment for Internal Audit cost \$167,000; labor and other incidental costs have not been recorded. The Grand Jury's investigation could find no noticeable improvements in efficiency or effectiveness.

Structural threat exists when an organization's placement within a government entity affects the audit organization's ability to perform work and objectively report results. An audit organization reporting directly to a Board of Supervisors may feel pressure to report to that Board's satisfaction.

Conclusions

There should be transparency and no conflict of interest in a combined Auditor Controller Internal Audit department if:

- oversight of the departments is conducted by external audit sources,
- the Institute of Internal Auditors and the Government Accountability Standards issued by the Comptroller of the United States are followed by licensed CPAs and,
- combined departments in the other 57 counties in California are combined and successful.

Nowhere in the Grand Jury's investigation did the Grand Jury find evidence of incompetence or lack of efficiency on the part of the Auditor Controller, nor could the Grand Jury find any positives created by separating the functions. The department had received little attention during the prior two years and now had a department head who chose an active and engaged role with outreach to the voters. Fresh perspectives bring opportunity to question the status quo but can be uncomfortable. New ideas softly presented may take longer and bring more consistent change but reasoned flexibility within the County's structure is an asset.

Contentious governance disrupts positive performance. The position of Auditor Controller is elected by the citizens. That position reports to the citizens and acts as an agent to the Board of Supervisors and the County. The elected Supervisor positions report to the citizens and act as their agent. It is expected by the electorate that independence of audits is maintained and that their agents work together transparently and productively.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district 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, titled "If It Ain't Broke, Don't Fix It", the 2018-2019 Orange County Grand Jury has arrived at seven principal Findings:

F1. The Auditor Controller's department identity as a "taxpayer watchdog", complete with a "bulldog logo", created an adversarial image for some members of the Board of Supervisors.

F2. The need for the Auditor Controller's "Community and Government Relations" team has been questioned by the Board of Supervisors.

F3. The Grand Jury has determined the Board of Supervisors had the right to take the action it did. However, independence, transparency and accountability may be flawed in a structure where people report to those that are being held accountable.

F4. The Grand Jury found no evidence of inefficiency in the Auditor Controller's office prior to realignment of the Internal Audit Department to the Board of Supervisors.

F5. Realignment of the Internal Audit Department from the Auditor Controller to the Board of Supervisors has reduced staff mobility and cross training and may have adversely affected morale.

F6. Fifty-seven counties in California have combined departments of the Auditor Controller and Internal Audit; Orange County is the only county to have separate Auditor Controller and Internal Audit Offices, raising a question of efficiency and effectiveness.

F7. Disagreements between the Board of Supervisors and the Auditor Controller's Office over Supervisor mailers and a controversial pension payment were argued in the public arena, creating public dismay as well as distrust between the departments.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district 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 titled "If It Ain't Broke, Don't Fix It", the 2018-2019 Orange County Grand Jury makes four Recommendations:

R1. By September 30, 2019, the Board of Supervisors should reevaluate the effect of the realignment on efficiency, effectiveness, staff and the public perception. **(F1, F2, F3, F4, F5, F6, F7)**

R2. By September 30, 2019, the Board of Supervisors should provide the public with an explanation for Orange County remaining unique among California's 58 counties. **(F6)**

R3. By September 30, 2019, the Board of Supervisors and County elected officials should discuss and resolve differing opinions in a constructive and professional manner, without airing disagreements in a public forum. **(F1, F2, F7)**

R4. By September 30, 2019, the Board of Supervisors should reevaluate their decision to remove \$1 million from the Auditor Controller's budget and reallocate some or all of those dollars back to the Auditor Controller in order to fully staff the department and complete an Action Plan based on the Values Institute work on morale. **(F3, F5)**

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of the Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices . . . “

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

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

(c) However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

Findings:

Orange County Board of Supervisors	F2, F3, F4, F5, F6, F7,
Auditor Controller	F1, F2, F5, F7

Recommendations:

Orange County Board of Supervisors	R1, R2, R3, R4
Auditor Controller	R3

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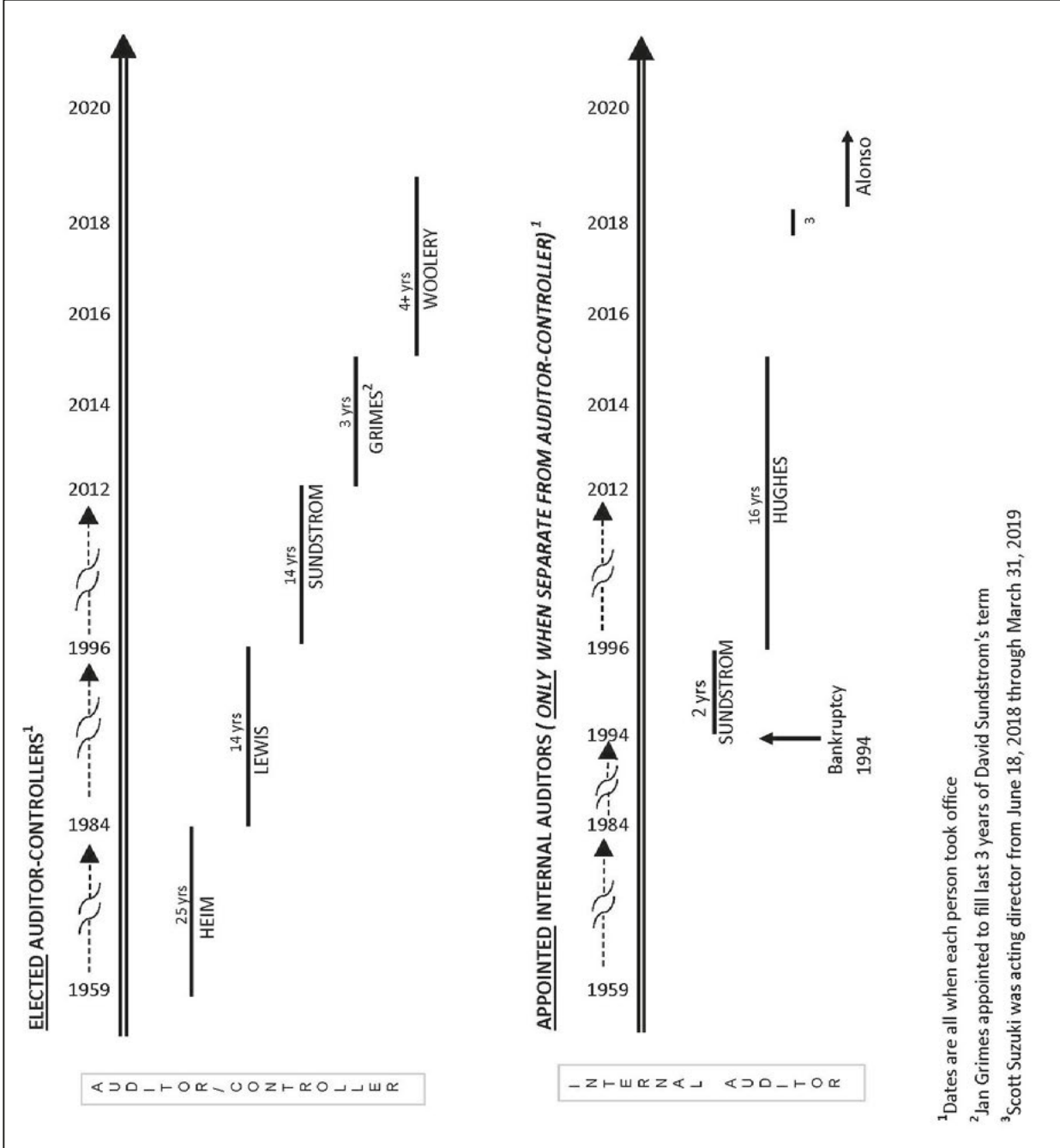
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APPENDICES

Appendix A



Source: Orange County 2018 – 2019 Grand Jury

Appendix B

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0069
(916) 319-2069
FAX (916) 319-2169
DISTRICT OFFICE
2400 EAST KATELLA AVENUE, SUITE 640
ANAHEIM, CA 92806
(714) 939-8469
FAX (714) 939-8986
E-MAIL
Assemblymember.Daly@assembly.ca.gov



COMMITTEES
CHAIR: INSURANCE
TRANSPORTATION
GOVERNMENTAL ORGANIZATION
APPROPRIATIONS
VETERANS AFFAIRS
JOINT COMMITTEE ON FAIRS,
ALLOCATIONS AND CLASSIFICATIONS

July 28, 2015

Frank Kim, Chief Executive Officer
County of Orange
333 West Santa Ana Blvd., Bldg. 10
Santa Ana, CA 92701

Dear Mr. Kim:

On the Board of Supervisors' August 4, 2015 agenda, you are recommending that the authority and staffing for Internal Audits be placed with the County's elected Auditor-Controller. When approved, this will resolve the good governance issue addressed by my Assembly Bill 783.

Following approval of your recommendation, I will ensure that Assembly Bill 783 is placed on the inactive file at the earliest opportunity.

Sincerely,

Tom Daly
State Assemblymember, 69th District

Serving the People of Santa Ana, Anaheim, Garden Grove and Orange

Printed on Recycled Paper

Appendix C: Definitions

Internal Audit: “...the mission of the Internal Audit Department is to provide highly reliable, independent, objective evaluations and business and financial services to the Board of Supervisors and County management to assist them with their important business and financial decisions, and to protect and safeguard the county’s resources and assets.”
Source: Wikipedia

Performance Audit: “...refers to an independent examination of a program, function, operation or the management systems and procedures of a governmental or non-profit entity to assess whether the entity is achieving economy, efficiency and effectiveness in the employment of available resources.”
Source: Wikipedia

Appendix D

Number of Persons Interviewed for this Report:

Supervisors	4
Citizen	1
Internal Auditors	2
Law Professor	1
Members of the Auditor Controller Staff	6
Human Resources	1
Information Technology	1
Public Defender	1
Los Angeles County Auditor	1
Total Persons Interviewed	18

Source: Orange County 2018-2019 Grand Jury

APPENDIX E



OC Auditor Controller Watchdog
Logo
Source: Auditor Controller website



DA Spitzer Receiving Watchdog Award
from A/C Woolery
Source: Auditor Controller website
Used by Permission



United States GAO Watchdog
Source: GAO Website, Watchdog Report
Permission: GAO Copyright and Terms of Use



Source: Franklin Center for Government &
Public Integrity. Watchdog.org.
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Watchdog.org is a project of the Franklin Center for Government & Public Integrity, a non-profit organization dedicated to the principles of transparency, accountability, and fiscal responsibility.

Emergency Public Information - Should I Stay or Should I Go?



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SUMMARY

Recent devastating fires in California highlight a need for fast and accurate emergency public information. Using the Canyon 2 and Holy fires as a backdrop, the 2018-2019 Orange County Grand Jury evaluated how emergency information is gathered, coordinated, and disseminated to the public when multiple jurisdictions in Orange County are involved.

The Orange County Grand Jury learned that various Orange County jurisdictions generally follow established state and national best practices in their management of emergencies. However, for some, communicating vital emergency information to the public when interagency coordination is essential has not been a priority. It also found that, with the exception of one jurisdiction, there are no written standardized protocols among studied jurisdictions for issuing alerts and warnings. Further, following such emergencies, the jurisdictions the Orange County Grand Jury studied do not actively seek feedback from residents that could help to shape public policy.

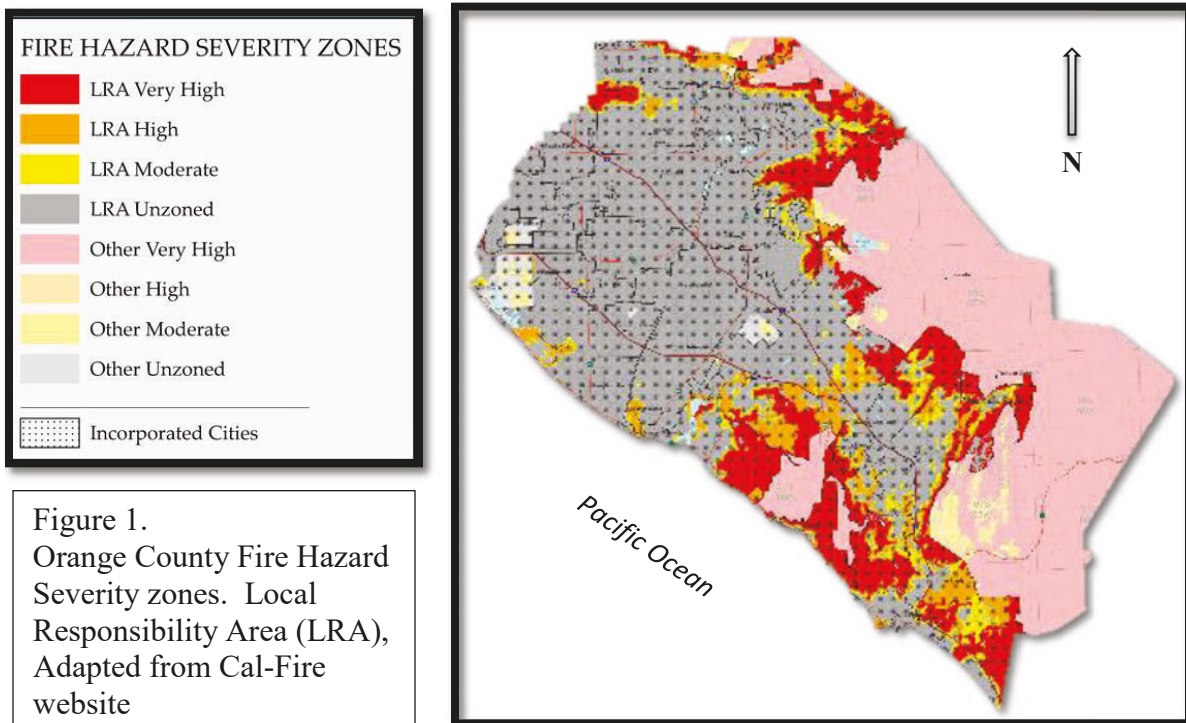
Among its recommendations, the Orange County Grand Jury calls for improved multiagency coordination of emergency public information and its rapid conveyance to the public. The Grand Jury also urges the adoption of updated hotline telephone technology capable of tracking caller metrics, plus the development of a formal standardized protocol for alerts and warnings. Because of difficulty with access to the County Emergency Operations Center during nearby wildland fires, authorities should adopt a procedure that will insure hotline operators and other workers are able to reach the facility even when surrounding public roads have been closed. Finally, the Orange County Grand Jury recommends the development of a system by which the County and cities shall obtain public feedback after an emergency on the effectiveness of their emergency public information strategy.

REASON FOR THE STUDY

Aware of Orange County's geographic vulnerabilities and the loss of life and property endured in recent northern California disasters, the Orange County Grand Jury (Grand Jury) decided to examine the state of this County's and its cities' Emergency Public Information (EPI) systems. It wanted to ensure that Orange County residents receive accurate information in the event of a fast-moving emergency event, particularly one that could impact multiple jurisdictions. Much of its examination centered on the handling of the Canyon 2 fire in the eastern section of the County because of its similarities to the northern California events.

The recent California wildfires that highlighted the pressing need for fast and accurate EPI included the Tubbs fire in Sonoma County in October 2017 and the Camp Fire in Butte County in November, 2018. In both cases, mass public alerting systems failed to alert sufficient numbers of residents in time.

The rising intensity and destructiveness of these fires are the result of a “perfect storm” of trends, including increasing periods of drought, housing sprawl into fire-prone areas and land management strategies that create an abundance of fuel in the form of dense forests and dry chaparral. Figure 1 shows Orange County’s wildfire vulnerabilities.



METHOD OF STUDY

The Grand Jury interviewed key personnel of the Orange County Sheriff’s Department Emergency Management Division (EMD)¹, Orange County Fire Authority (OCFA), and representatives from the cities of Anaheim, Huntington Beach, Laguna Beach, Mission Viejo, Orange, and Yorba Linda. Selected cities represented the diversity of Orange County in terms of physical location (i.e., north, central, south), size, topography, proximity to the ocean, and whether they have independent fire and law enforcement departments or contract with Orange County Sheriff’s Department (OCSD) and OCFA. The Grand Jury also interviewed Social

¹ See Appendix A for a list of acronyms and Appendix B for a glossary of terms.

Services Agency representatives who interface with the public during disasters and residents of Orange County who have been impacted by a large emergency affecting multiple jurisdictions.

The Grand Jury reviewed the emergency operations plans, crisis communication plans and after-action reports of various Orange County agencies, documents of the Federal Emergency Management Agency (FEMA), and state laws and regulations pertaining to emergency management and Alerts and Warnings. The Grand Jury also conducted onsite visits to the County Emergency Operations Center (EOC) and OCFA.

BACKGROUND AND FACTS

Fourteen of the 20 largest fires in California’s history have occurred in the last 15 years, and experts predict the destructiveness of wildland fires in the state will continue to grow. The Tubbs fire (October 8, 2017) burned more than 36,000 acres, destroyed more than 5,600 structures, several neighborhoods in Santa Rosa, and caused 22 fatalities. The Camp fire (November 8, 2018) burned more than 153,000 acres, destroyed more than 18,000 structures, and caused 86 fatalities. In both cases, mass notification systems failed to alert large numbers of people in time. Because of the lessons learned from a long history of devastating fires, California has invested numerous resources to developing a system to help ensure that during an emergency, public safety is protected. History demonstrates that this system is effective when it is followed. This system is described below.

The Standardized Emergency Management System and Emergency Public Information

Standardized Emergency Management System (SEMS)

SEMS, established in 1993, is required by California Government Code Section 8607(a) to manage emergencies that involve multiple jurisdictions and agencies in California. Its purpose is to improve coordination of state and local emergency response and to facilitate the flow of information, between and among agencies and the public.

SEMS has a functional structure that is expandable to meet the needs of incidents of any size or complexity. (Appendix C) SEMS enables personnel from all agencies to blend quickly, with common terminology, thereby allowing the agencies to function in an integrated fashion. Local governments must use SEMS in order to be eligible for state reimbursement of response-related personnel costs during disasters.

The Operational Area (OA) and the Emergency Operations Center (EOC)

SEMS utilizes the concepts of the OA and the EOC. The OA includes the County and all political subdivisions within the County. In Orange County there are 114 jurisdictions

encompassing all County departments and agencies, cities, special districts, non-governmental organizations (NGOs) and unincorporated areas.

An EOC is a facility where resources and information are managed and coordinated during emergencies. Orange County and every city within the County have EOCs as required by SEMS regulations. When an incident is confined to a single jurisdiction, such as a city, only that jurisdiction's EOC is activated. When an incident involves multiple jurisdictions or if a single jurisdiction requests help from the County, the County's EOC (OA EOC) is activated. (Appendix D) City EOCs still must maintain contact and coordinate with the OA EOC through a liaison officer. Hereafter, the OA EOC will be referred to as "EOC."

The Morphing of SEMS

The strength and utility of SEMS lie in its flexibility and uniformity across jurisdictions. Uniformity is threatened when jurisdictions modify SEMS protocols to fit the design of their own unique organizational needs, rather than adjusting their emergency response structure to fit the SEMS design. In 2010, The California Emergency Management Agency conducted a survey which revealed numerous instances of chaotic emergency response over the previous decade. Some agencies had drifted away from the standardized SEMS protocols, thereby no longer functioning in a collaborative, unified manner. Morphing into disparate emergency management protocols undermines SEMS, thus weakening an agency's ability to respond to large multijurisdictional emergencies.

The Grand Jury found that Orange County and the six cities it examined all have comprehensive Emergency Operations Plans that are structured around SEMS. This applies whether the city utilizes its own police and fire department or contracts with the OCSD and OCFA for these services. However, during the Canyon 2 fire there were signs that the involved jurisdictions had drifted from strict adherence to SEMS protocols. This will be discussed in later sections.

Emergency Public Information (EPI)

One of the key components of SEMS is EPI. EPI consists of the processes to develop, coordinate and disseminate information to the public and emergency management responders in a timely manner and accessible format. The primary responsibility for these activities falls to the Public Information Officer. The Joint Information System and the Joint Information Center are integral to the success of the Public Information Officer. Following is a description of each of their functions:

- Public Information Officer (PIO): The PIO is part of the emergency management staff and reports to the Director of Emergency Services (DES) at the EOC. PIOs obtain their information from field commander(s) near the emergency, the DES, responding agencies,

the media, calls from the public and elected officials, other agencies such as utilities and the National Weather Service. The DES is the approving authority for all emergency public messaging. (Appendix E) The Grand Jury learned that coordination of information among agencies is the most challenging part of the PIO's job. The PIO holds an important position in the SEMS hierarchy as the liaison between the incident commanders and the public, but no standardized, uniform training requirements for PIOs exist within Orange County. PIOs within Orange County come from disparate backgrounds, including administration, journalism, communications, public relations, law enforcement and fire suppression. A robust training and development program ensures that participants in an organization have consistent experience and knowledge, improving the efficiency and success of their mission. PIOs can earn a Public Information Officer Specialist Certificate through the California Specialized Training Institute, which provides FEMA-approved training courses for PIOs.

- Joint Information System (JIS): The JIS is the organizational structure by which PIOs perform their essential duties. It is designed to organize, integrate and coordinate information to ensure timely, accurate, accessible, and consistent messaging across multiple jurisdictions. This may include the private sector and NGOs. During multijurisdictional emergencies, a lead PIO is selected. This individual is tasked with coordinating EPI among the involved jurisdictions so that they speak with one voice.
- Joint Information Center (JIC): The JIC is a central physical or virtual location that supports the JIS and where public information is coordinated. A physical JIC should be established at one of many pre-determined sites, ideally close to the source of information, such as the EOC, and have all the technical capabilities required for the incident. When time or distance renders a physical JIC impractical, a virtual JIC may be used. In Orange County, WebEOC provides the platform by which a virtual JIC is established. (Appendix F)

Emergency Public Information Delivery Systems in Orange County

- AlertOC: AlertOC is Orange County's regional public mass notification system designed to send emergency alerts to Orange County residents. The public receives these messages via landlines, cell phones, email, and TTY/TDD devices for the deaf. Landline phone numbers are automatically pre-loaded into the AlertOC system. However, residents must voluntarily opt in to receive the alerts via cell phones and email. Cities can use the AlertOC mass notification system for free through the County.
- Wireless Emergency Alerts (WEA): WEA messages are public text messages sent by local authorized government officials through wireless carrier networks. The messages

pertain to severe weather warnings, threatening emergencies such as fires, AMBER Alerts, and Presidential Alerts during national emergencies. Every WEA-enabled cell phone within the alerted area will receive the alert, thus voluntarily opting in is not an issue. The four largest cell phone carriers, AT&T, Verizon, Sprint, and T-Mobile, as well as the majority of smaller carriers, are WEA-enabled. WEA messages currently have a maximum length of 90 characters, but this maximum will have been increased to 360 by May, 2019. The WEA system has been criticized for having poor geo-targeting capabilities because messages spillover into areas not affected by the disaster. This spillover is scheduled to be reduced to no more than a tenth of a mile by November, 2019.

- The Emergency Alert System (EAS): The EAS is a national warning system that replaced the Emergency Broadcast System and is jointly coordinated by FEMA, the Federal Communications Commission (FCC) and the National Oceanic and Atmospheric Administration. This system allows federal, state and local governments to communicate with the public over cable television, AM/FM radio and TV broadcast systems. Although most stations will broadcast EAS messages, in Orange County the primary broadcast station is 107.9 KWVE and will broadcast all EAS messages.
- Social Media: Facebook and Twitter are the primary social media sites used by the County and cities for the dissemination of EPI. Some cities report they also utilize Nextdoor. These sites are for dissemination of information only; questions posed by the public are typically not answered on these sites.
- Website Pages: The County and cities post EPI and press releases on their websites. Some jurisdictions use red scrolling banners displaying EPI on the home page of their website. A recent upgrade made to the County's Emergency Management webpage now make evacuation maps created by emergency officials from affected jurisdictions exportable to the webpage for public viewing. Additionally, AlertOC and WEA messages now can redirect the recipient to the Emergency Management Division's webpage. In 2018, the County implemented a new software program which enables residents and employees in unincorporated areas to type in their address to determine whether they are in the mandatory evacuation zone.
- Media Outlets: Currently, press releases go to KCAL, KTLA, FOX 11 and KABC television stations, but the decision as to whether or not to broadcast the information is voluntary and depends upon the size and scope of the emergency. These stations have a scrolling message for EPI.

- 211 Orange County: 211 is a telephone-based service set aside for the public by the FCC. It can be dialed 24 hours a day, seven days a week and live operators answer questions about available emergency County services. OCSD keeps the operators apprised of emergency public information so they are able to provide the most up-to-date information and instructions.
- Hotline: The EOC and affected cities set up hotlines during emergencies to answer questions from the public.
- Sirens: Sirens alert many people in a neighborhood to imminent danger. Sirens are especially useful in areas with poor cell phone service coverage and for fast-moving events occurring with little or no warning, such as tsunamis, but can be used for any emergency. Sirens are located in coastal cities such as Huntington Beach, Newport Beach, and Laguna Beach. Siren technology has come a long way since the air raid drills of the 1950s and 1960s. Modern sirens have several advantages over previous versions. Rather than emitting a single, mostly directional, blaring sound through mechanical means, they can emit live or pre-recorded messages with voice intelligibility that exceeds FEMA and U.S. Military guidelines for high-powered speaker array mass notification systems. In addition to speech clarity, modern sirens have other features which make them attractive to emergency managers, law enforcement, fire departments and the military. For example, they can focus broadcasts in a directional pattern or transmit in 360 degrees. They have a much larger coverage radius, are relatively lightweight, can be fixed or mobile, and can be battery as well as solar powered.
- Route Alerting and Door-to-Door Canvassing: Emergency officials, such as police, drive or walk through an affected area, alerting residents of the emergency and any actions they should take. Route alerting can be accomplished door-to-door or by public address system such as a loudspeaker mounted on a police car or fire engine. This is a slow process and depends on the availability of personnel.

Emergency Public Information Performance During Recent Orange County Emergencies

On October 9, 2017, at approximately 8:32 a.m., a westbound motorist on the 91 Freeway called 911 to report the presence of flames in Anaheim Hills; the Canyon 2 fire had begun. In all, 9,217 acres burned, 25 structures were destroyed and 55 more were damaged. No lives were lost but evacuations were mandated for portions of Anaheim Hills, Orange, North Tustin and Tustin Ranch.

According to a report on the initial response to the Canyon 2 Fire, OCFA dispatch breached normal protocol by having its closest station, a mile away from the scene, send a worker outside

to check for flames rather than immediately dispatching responders. At that early point in the fire only westbound motorists on the 91 Freeway could see flames. The worker reported high wind and dust, but no flames. By not following protocol, OCFA disregarded at least 10 subsequent 911 calls reporting fire. It wasn't until 70 minutes later, at 9:42 a.m., that OCFA responded appropriately.

While the delayed response to the fire forced authorities to play catch-up when it came to alerting the public, strict adherence to SEMS protocols and best practices would have helped minimize confusion and disorganization in such a challenging situation.

Lead Agency and Message Coordination

The Grand Jury learned that by agreement among involved PIOs, the City of Anaheim took the lead after the event became multijurisdictional. However, the City of Anaheim continued to disseminate emergency information relevant to only its own residents. Without coordinating with the other jurisdictions impacted by the fire, EPI could not be delivered with one voice, a process considered to be a best practice in SEMS.

Joint Information Center

There was an attempt by the City of Anaheim to set up a JIC from which EPI could be coordinated among jurisdictions and disseminated. Anaheim's three pre-selected sites were considered technologically inadequate to support the needs of this particular emergency. Subsequently, the City set up a JIC at Disneyland's media center, which had the necessary technological capabilities. However, many of the personnel required to staff the JIC could not get admitted to the facility, rendering it ineffective. The JIC was terminated and never reactivated at a viable alternate location. SEMS' best practices states that a JIC should be established at one of many pre-determined sites, ideally close to the source of information, such as the EOC, and have all the technical capabilities required for the incident. Pre-determining a technologically capable and accessible site may have prevented failure of the JIC.

Agency Representation

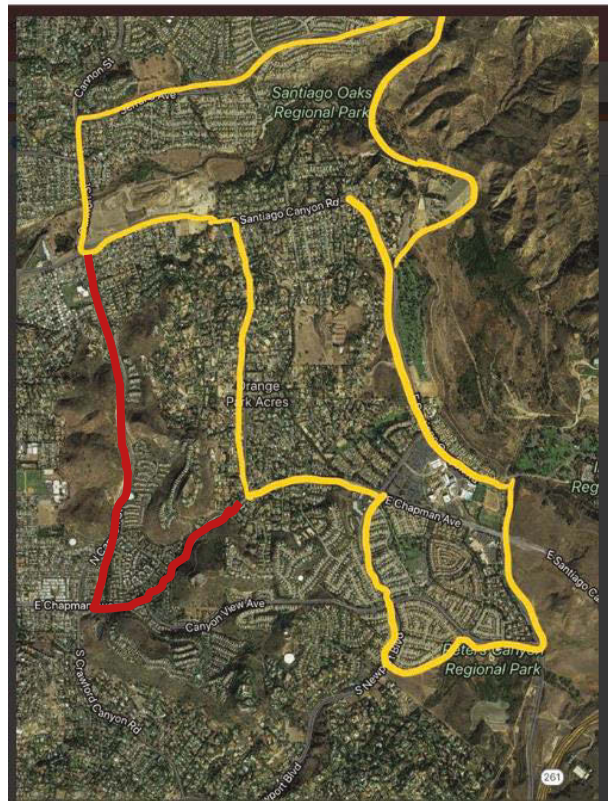
The Grand Jury learned that due to a shortage of emergency response personnel in the City of Orange, the City did not attempt to send any representative or a liaison to the JIC or to the County EOC. The public emergency PIOs for the City were assigned to their roles as emergency responders (Police and Fire) rather than as PIOs. City officials, authorized to issue alerts and warnings, were unfamiliar with the system and unable to log into the AlertOC to send out a mandatory evacuation notice. The City had to contact the County EOC to write and disseminate a message to the residents and businesses of the City of Orange, causing delays.

EOC and Message Coordination

Under SEMS, the County EOC is the hub of interagency coordination. However, during the Canyon 2 fire, conflicting information was disseminated by the County EOC. Figure 5 shows two dissimilar messages were sent approximately 20 minutes apart by the EOC and illustrates the problems that can arise when information is not checked for consistency. The instructions and the map are inconsistent, depicting two different mandatory evacuation areas in the City of Orange at roughly the same time. The AlertOC message was created by the Sheriff’s EOC Alerts and Warnings Unit and includes the red and yellow areas of the map in its message. The map (yellow area), previously tweeted by the city of Orange, was obsolete when retweeted by the Sheriff’s EOC Social Media Unit, approximately 20 minutes after the Alert OC message went out.

“A mandatory evacuation order has been issued for...All areas south of Santiago Canyon Rd., East of Cannon/Crawford Canyon and North of Tustin Ranch and west of Jamboree are under mandatory evacuation.”

Figure 5. AlertOC message sent out at 2:28 p.m. (above) and a map retweeted at 2:57 p.m. by the County EOC. Red area shows the discrepancy between AlertOC and social media. (Map source: City of Orange, used with permission.)



In a meeting of Orange Park Acres residents with leaders from the City of Orange after the Canyon 2 fire, the residents expressed the desire for the County and cities to establish a centralized location for evacuation orders. They felt that such a strategy would avoid the confusion that results from trying to piece together information from different sources.²

² Orange County Register, Jonathan Winslow, Published November 24, 2017.

AlertOC

AlertOC messages do not reach enough people because landlines are disappearing and not enough Orange County residents have signed up with AlertOC. To date, fewer than 20,000 residents, or approximately two percent of residents in the County, have signed up with AlertOC.

The Grand Jury learned that many residents impacted by the Holy Jim fire of August 2018 did not receive an anticipated AlertOC message. One of the reasons for this error was that the County's vendor for AlertOC was using mapping data which had not been updated since 2014. South Orange County has several newer neighborhoods and, when County officials manually selected the neighborhoods in the vendor's software, many newer addresses were left out.

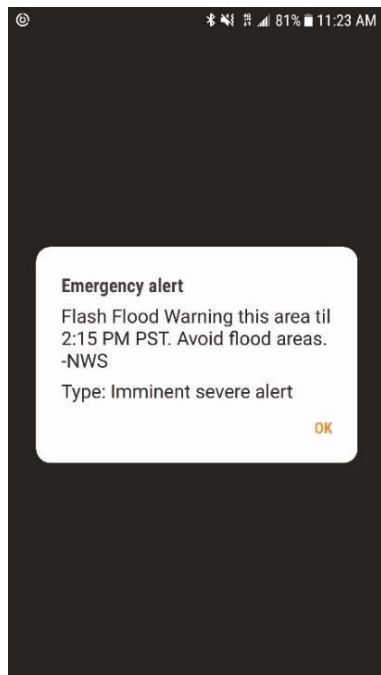
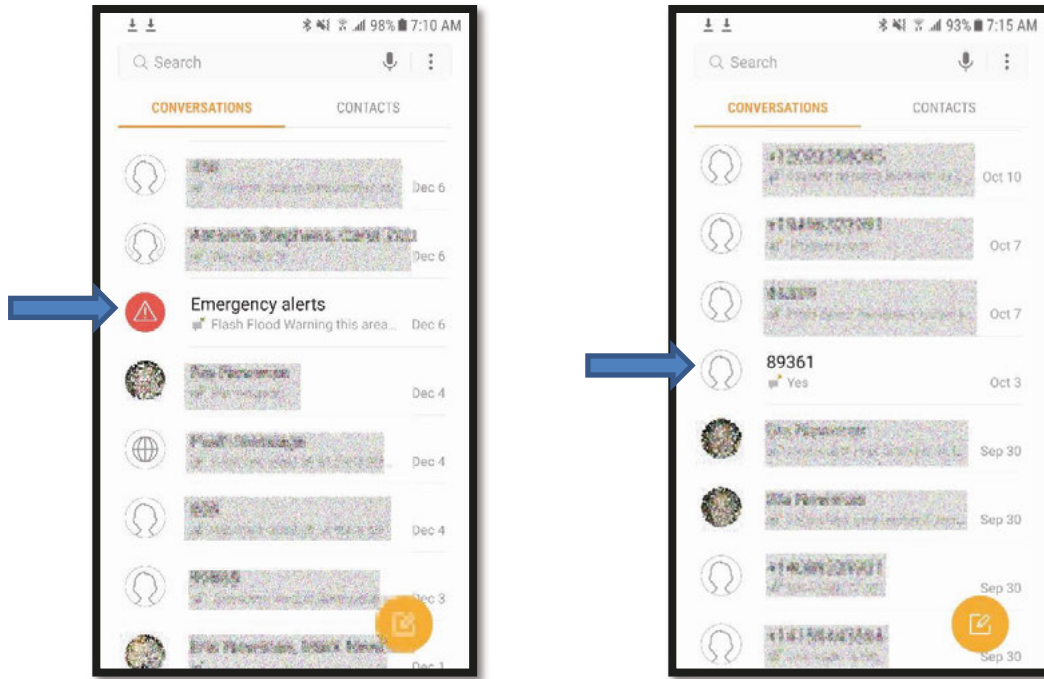
A recently passed California law has the potential for greatly increasing the number of Orange County residents enrolled in AlertOC. The death and destruction caused by recent fires in northern California prompted the creation of Senate Bill 821, which was signed into law on September 21, 2018. This legislation allows counties and cities to enter into agreements to access all contact information of resident account holders through public utility or agency records, for the sole purpose of enrolling California residents into the mass notification systems that serve their area.

WEA

WEA messages are text messages sent by local authorized government officials to the public through wireless carriers' networks.

AlertOC messages and WEA messages appear very different on various cell phone screens. Figure 6 shows how these two types of messages appeared on a cell phone screen during the Canyon 2 fire and the image below shows the added feature of WEA messages overlaying other applications on a typical mobile phone.

Emergency Public Information – Should I Stay or Should I Go?



AlertOC messages do not have the ability to overlay other applications or the home screen.

Figure 6. WEA (left) and AlertOC (right) messages in a list of text messages on a mobile phone, and how WEA messages overlay the home screen. Source: 2018-2019 Grand Jury.

There are some obvious differences between the WEA and AlertOC messages. The WEA message causes a cell phone to vibrate twice for a few seconds and overlays any current image or application screen on the phone. AlertOC messages enter the phone as an ordinary text message. The WEA messages contain a bright red ICON with a white exclamation point inside a white triangle, along with the words “Emergency Alerts” in the message title. The AlertOC message appears with no ICON and random numbers as the caller ID. The message resembles any number of junk text messages that plague most cell phone users today, which can cause the user to ignore an important message.

Sirens

On March 6, 2019, at 3:00 p.m., the City of Laguna Beach launched the County’s first simultaneous test of its WEA and Long Range Acoustic Device (LRAD®)³ siren systems. (Appendix E) The WEA message included a link to a survey whereby residents and visitors could provide feedback. One City emergency management official said the exercise was considered a success with a larger than expected response.

Using a combination of strategies to alert the public is especially beneficial when emergencies occur at night or in areas with unreliable mobile phone reception, such as in canyon areas. No one method of alerting the public reaches everyone, so authorities should use every means at their disposal to quickly reach the most residents.

Hotlines

Telephone hotlines provide an additional avenue by which EPI can be disseminated. During the Canyon 2 and Holy Jim fires, hotlines were activated by the County EOC. Eighty-five percent of the calls to the Sheriff’s Department’s hotline during the Canyon 2 fire pertained to evacuations.

Sources reported that there was a shortage of personnel working the hotline during the Canyon 2 fire. On the first day of the fire, when residents were trying to determine whether or not to evacuate their homes, fewer than half of available hotline phones were staffed because the expected number of hotline staff did not appear. The EOC is located in a high fire zone and was affected by the fire that day. Nearby road closures prevented hotline staff from reaching the EOC. There was no protocol allowing workers past the closures.

³ LRAD® Corporation developed the Long Range Acoustic Device in 2003, an acoustic hailing device used for long range communications in a variety of applications, including mass notification and non-lethal crowd control.

The County EOC hotline system is basic, lacking the sophistication of modern systems which can track caller metrics, such as wait times and missed calls. Without quantifiable caller metrics, hotline staffing decisions are based on relatively primitive metrics, such as observing how long the operator waits between phone calls. During the first day of the fire, some operators had no time between calls; as soon as they hung up from one call, they immediately picked up the next call without waiting for the phone to ring. There is no way to ascertain how many callers were unable to get through.

Hotline staff are required to enter caller information into a computer software program, including the subject matter of the call. The Grand Jury learned that hotline staff had not undergone recent training on the software, thus some operators hand-wrote notes on paper during the calls and entered the information into the software at the end of their shifts, decreasing efficiency and increasing the potential for reporting errors.

Other Problems Identified During Recent Emergencies

Standardized Emergency Management Vocabulary

Some Orange County emergency management representatives are frustrated by a lack of standardized emergency management vocabulary. They feel this causes confusion and decreases efficiency. For example, there is disagreement among Orange County jurisdictions regarding the use of “evacuation warning” versus “voluntary evacuation.” A lack of standardized vocabulary is one of the problems that SEMS seeks to solve.

No Interagency Coordination

During the Canyon 2 fire, a lack of interagency communication led to confusion about routes while mandatory evacuations already were underway. While interagency communication is not EPI per se, agencies must be in agreement regarding evacuations in order to avoid confusion and allow evacuations to proceed smoothly and quickly.

For example, the California Highway Patrol directed motorists to exit the 91 Freeway at Weir Canyon Road/Yorba Linda Blvd and the City of Anaheim also directed residents in Anaheim Hills to evacuate in the opposite direction via Weir Canyon Road/Yorba Linda Blvd. The large amount of cross traffic caused gridlock and could have negatively impacted the safety of motorists who were trying to leave the area. As another example of confusion, a school in the City of Orange sent evacuating students to Canyon High School in Anaheim Hills, which already had been evacuated. This caused delays in getting the students to a suitable shelter to await the arrival of their parents.

Feedback

The Grand Jury ascertained that neither the County nor cities systematically obtain feedback from residents after major emergencies, instead relying on town halls and resident complaints. A 2010 paper published by The Urban Institute Center on International Development and Governance stressed the importance of actively seeking feedback from recipients of public services. The authors noted that measuring residents' opinions on services they receive makes government agencies more accountable and helps to improve the effectiveness of their services. In fact, these surveys are often the only technique available to obtain accurate data for the outcomes of certain services. The report points out that focus groups, town hall meetings, and/or citizen complaints "do not provide public officials with data that are likely to be sufficiently representative of the population."⁴ According to the authors, some people may not know how to file a complaint and/or may not feel it would do any good to complain. Also, many people would likely be unable to attend a town hall meeting. The authors also point out that government organizations may be reluctant to obtain public feedback due to limited resources and time. However, costs can be reduced by using a variety of approaches such as the internet, robocalls and mail-in surveys. Costs also could be decreased by opting for a smaller sample size as long as a sufficient statistical confidence level can be maintained.

⁴ Nayyar-Stone, Ritu & Harry P. Stone, *Using Survey Information to Provide Evaluative Citizen Feedback for Public Service Decisions*. June 2010.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district 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, titled “Emergency Public Information-Should I Stay or Should I Go?”, the 2018-2019 Orange County Grand Jury has arrived at 11 principal Findings:

F1: Lack of coordination among the involved agencies caused Emergency Public Information sent out about evacuations during the Canyon 2 fire to be inconsistent, and confused residents.

F2: Some emergency management personnel, tasked with creating and disseminating Emergency Public Information, in a rapidly-evolving, multijurisdictional emergency did not fully understand their roles and responsibilities.

F3: No training standards for Public Information Officers exist and there are no formal written protocols for issuance of mass notification, including required training on the use of mass notification systems.

F4: The County’s vendor for the AlertOC mass notification system had not updated its GIS mapping software, so some residents in newer neighborhoods did not receive an AlertOC message during the Holy Jim fire.

F5: The lack of a standardized written protocol for Alerts and Warnings decreases the ability of the County and its Operational Area jurisdictions to speak with one voice when it comes to alerting the public during emergencies.

F6: The outdated hotline telephone technology at the County Emergency Operations Center cannot track caller metrics, so staffing decisions are made based on observing the length of time between incoming phone calls.

F7: During the Canyon 2 fire, procedures allowing some hotline workers to pass road closures were ineffective, which led to a shortage of operators during the first day of the fire.

F8: Some hotline operators are not current on the use of the software for logging incoming phone calls, thus decreasing their efficiency.

F9: The County and interviewed cities do not seek sufficient public feedback of the perceptions of effectiveness of the Emergency Public Information.

F10: The lack of standardized emergency management terminology among the various jurisdictions within Orange County causes delays and confusion in the dissemination of Emergency Public Information.

F11: Orange County jurisdictions and the California Highway Patrol lack a joint plan for evacuation routes, thus evacuations can be chaotic, creating increased potential for danger to residents.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 Grand Jury requires (or as noted, requests) Responses from each agency or special district 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 titled “Emergency Public Information-Should I Stay or Should I Go?”, the 2018-2019 Orange County Grand Jury makes 9 Recommendations:

R1: By September 30, 2019, the Board of Supervisors, should establish minimum standards/expectations for individual cities who voluntarily participate in centralized Emergency Public Information planning activities in order to protect public safety during multijurisdictional emergencies. (F1)

R2: By December 31, 2019, using the authority derived from **R1** (above), the Emergency Operations Center should establish specific minimum standards/expectations with regard to coordination and dissemination of Emergency Public Information that follow SEMS guidelines, by which committed cities must comply for multijurisdictional emergencies. (F1, F5, F10)

R3: By September 30, 2019, the County Emergency Operations Center, the six cities interviewed by the Grand Jury and Orange County Fire Authority should adopt a standardized written protocol for issuance of mass notifications and require training on their software systems, whether the WEA service, AlertOC or any other system is utilized. (F1, F2, F3, F4, F5)

R4: By September 30, 2019, the six cities interviewed by the Grand Jury should pre-select facilities with sufficient technical capability and of various sizes that are readily accessible to all authorized personnel for use as potential Joint Information Centers so they can be activated in a timely manner. (F1)

R5: By September 30, 2019, the County Emergency Operations Center should modernize its hotline telephone technology. (F6)

R6: By September 30, 2019, the County Emergency Operations Center should ensure hotline personnel maintain current training and are provided appropriate physical access during emergencies. (F7, F8)

R7: By September 30, 2019, The Orange County Sheriff’s Department and each interviewed city’s Emergency Management Division should adopt a proactive process by which residents impacted by an emergency can easily provide feedback regarding their experience with Emergency Public Information, such as by telephone, mail-in, and/or online surveys. (F9)

R8: By September 30, 2019, a task force, made up of representatives from all Operational Area jurisdictions, public safety Public Information Officers and state public safety professionals, such as California Highway Patrol, should be created to develop an emergency operations plan for large, wide-spread disasters. (F11)

R9: By September 30, 2019, the Orange County Sheriff’s Department should seek, at a minimum, semi-annual updates on AlertOC vendor software and concurrently request regular updates on its capabilities. (F4)

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . . ”

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the

responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the Governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

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

(c) However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

<u>Required Responses</u>	<u>Findings</u>	<u>Recommendations</u>
Board of Supervisors	F1, F5	R1, R2
OCSD	F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11	R2, R3, R4, R5, R6, R7, R8, R9
OCFA Board of Directors	F1, F3, F5, F9, F10, F11	R3, R7, R8
City Councils from:		
City of Anaheim	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8
City of Huntington Beach	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8
City of Laguna Beach	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8
City of Mission Viejo	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8
City of Orange	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8
City of Yorba Linda	F1, F2, F3, F5, F9, F10, F11	R2, R3, R4, R7, R8

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APPENDIX

Appendix A

List of Acronyms

DES	Director of Emergency Services
EAS	Emergency Alert System
EMD	Emergency Management Division
EOC	Emergency Operations Center
EPI	Emergency Public Information
FEMA	Federal Emergency Management Agency
ICS	Incident Command System
JIC	Joint Information Center
JIS	Joint Information System
LRAD®	Long Range Acoustic Device
NGO	Non-governmental organization
OA	Operational Area
OCFA	Orange County Fire Authority
OCSD	Orange County Sheriff's Department
OAC	Operational Area Coordinator
PIO	Public Information Officer
SEMS	State Emergency Management System
WEA	Wireless Emergency Alert

Appendix B

Glossary of Terms

Adapted from multiple sources and documents

After Action Report: A report covering response actions, application of SEMS, modifications to plans and procedures, training needs and recovery activities. After action reports are required under SEMS after any emergency which requires a declaration of an emergency. Reports are required within 90 days.

Command: The act of directing and/or controlling resources at an incident by virtue of explicit legal, agency or delegated authority. May also refer to the Incident Commander.

Cooperating Agency: An agency supplying assistance other than direct tactical, support functions, or resources to the incident control effort (e.g., American Red Cross, telephone company, other utilities, etc.).

Coordination: The process of systematically analyzing a situation, developing relevant information and informing appropriate command authority of viable alternatives for selection of the most effective combination of available resources to meet specific objectives. The coordination process (which can be either intra- or interagency) does not involve dispatch actions. However, personnel responsible for coordination may perform command or dispatch functions within the limits established by specific agency delegations, procedures, legal authority, etc. Multiagency or Interagency coordination is found at all SEMS levels.

Disaster: A sudden calamitous emergency event bringing great damage, loss or destruction, and threatens public safety.

Emergency: A condition of disaster or of extreme peril to the safety of persons and/or property caused by such conditions as air pollution, fire, flood, hazardous material incident, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestations or disease, earthquake, tsunami.

Emergency Management Director (Emergency Services Director): The individual within each political subdivision that has overall responsibility for jurisdiction emergency management. For cities and counties, this responsibility is commonly assigned by local ordinance.

Emergency Operations Center (EOC): A location from which centralized emergency management can be performed. EOC facilities are established by an agency or jurisdiction to coordinate the overall agency or jurisdictional response and support to an emergency.

Emergency Operations Plan: The plan developed at SEMS EOC levels which contains objectives, actions to be taken, assignments and supporting information for the next operational period.

Event: A planned, non-emergency activity. ICS can be used as the management system for a wide range of events, e.g., parades, concerts or sporting events.

Finance/Administration Section: One of the five primary functions found at all SEMS levels, which is responsible for all costs and financial considerations.

Incident: An occurrence or event, either caused by humans or by natural phenomena, that requires action by emergency response personnel to prevent or minimize loss of life or damage to property and/or natural resources.

Incident Commander: The individual responsible for the command of all functions at the field response level of an incident. Sets incident objectives and priorities.

Incident Command System (ICS): The nationally used standardized on-scene emergency management concept specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents without compromising the legal jurisdictional authority of individual agencies (e.g., cities). ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, with responsibility for the management of resources to effectively accomplish stated objectives pertinent to an incident.

Jurisdiction: The range or sphere of authority. Public agencies have jurisdiction at an incident related to their legal responsibilities and authority for incident mitigation. Jurisdictional authority at an incident can be political/geographical (e.g., special district, city, county, state or federal boundary lines), or functional (e.g., police department, health department, etc.).

Jurisdictional Agency: The agency having jurisdiction and responsibility for a specific geographical area or a mandated function.

Liaison Officer: A member of the Command Staff at the Field SEMS level responsible for coordinating with representatives from cooperating and assisting agencies. At SEMS EOC levels, the function may be done by a Coordinator and/or within a Section or Branch reporting directly to the EOC Director.

Local Government: Means local agencies per Article 3 of the SEMS regulations. The Government Code section 8680.2 defines local agencies as any city, city and county, county, school district or special district.

Logistics Section: One of the five primary functions found at all SEMS levels. The Section responsible for providing facilities, services and materials for the incident or at an EOC.

Master Mutual Aid Agreement: An agreement entered into by and between the State of California, its various departments and agencies and the various political subdivisions, municipal corporations, and public agencies of the State of California, to assist each other by providing resources during an emergency. Mutual Aid occurs when two or more parties agree to furnish

resources and facilities and to render services to each other to prevent and combat any type of disaster or emergency.

Multijurisdictional Incident: An incident requiring action from multiple agencies in which each agency has jurisdiction over certain aspects of the incident. In SEMS/ICS such an incident is managed under a Unified Command with representatives from involved agencies.

Public Information Officer: The individual at field or EOC level that has been delegated the authority to prepare public information releases and to interact with the media. Duties will vary depending upon the agency and SEMS level.

Section: The organization level with responsibility for a major functional area of the incident or at an EOC, e.g., Operations, Planning/Intelligence, Logistics and Administration/Finance.

Special District: A political subdivision within a specific geographic area established to provide a public service, such as water, sanitation or library services.

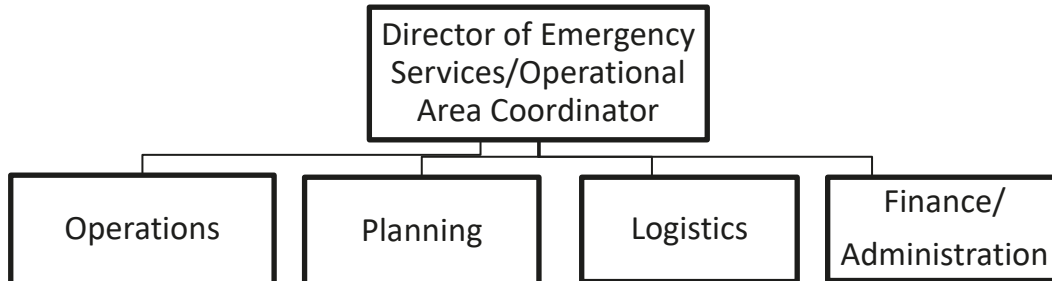
Standardized Emergency Management System (SEMS): A system required by California Government Code for managing response to multiagency and multijurisdictional emergencies in California. SEMS consists of five organizational levels which are activated as necessary: Field Response, Local Government, Operational Area, Region and State.

Strategy: The general plan or direction selected to accomplish incident or EOC objectives.

Task Force: A combination of single resources assembled for a particular tactical need with common communications and a leader.

Appendix C

State Emergency Management System Basic Functional Structure and Definition of Terms

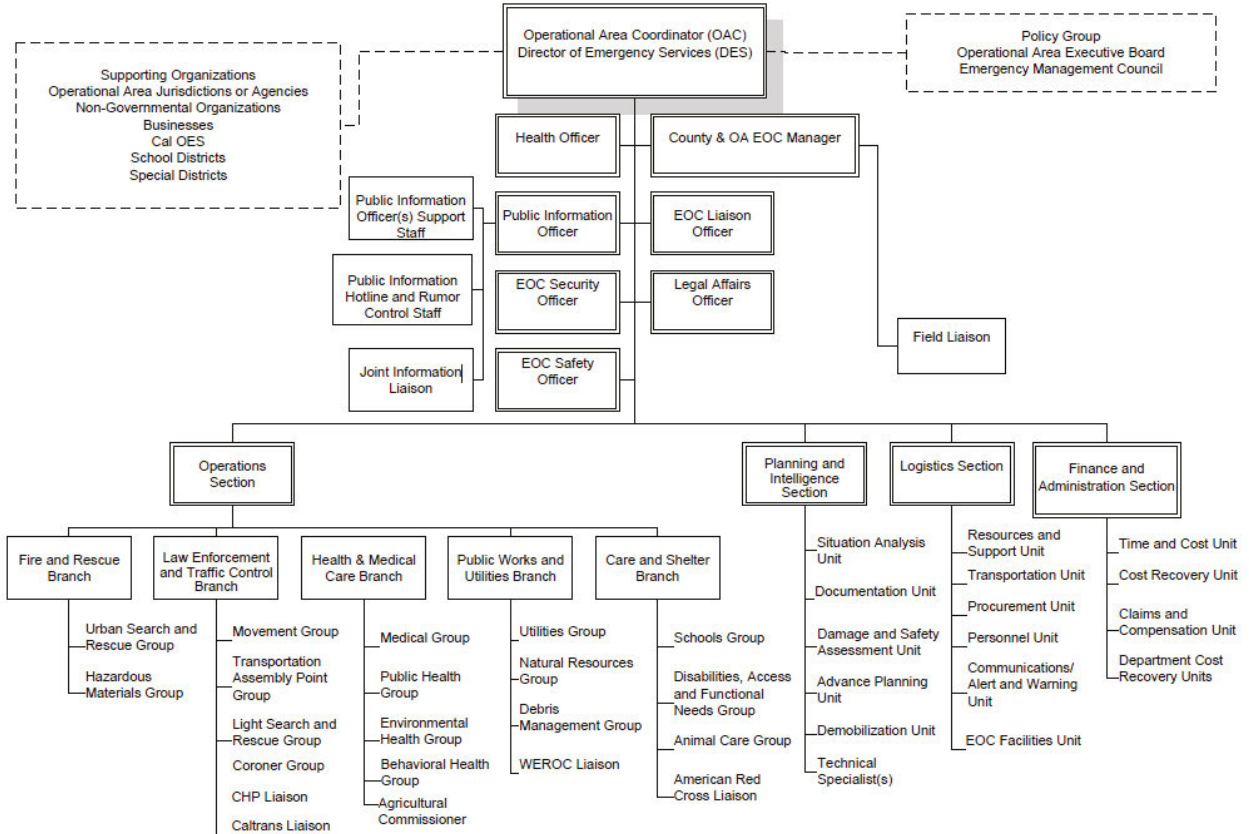


- **Director of Emergency Services (DES)/Operational Area Coordinator (OAC):** The DES directs the county’s emergency organization during times of emergency which impact the unincorporated areas of the county. DES sets incident objectives and priorities and has overall responsibility at the incident or event. *The incident is managed jointly by representatives from the involved agencies.* The OAC is responsible for ensuring direction, coordination, and communication of policy decisions, resource needs, and priorities among OA jurisdictions and between OA jurisdictions and the State.
- **Operations:** Conducts tactical operations to carry out the plan of commander at the field level near the incident. Develops the tactical assignments and organization and directs all tactical resources.
- **Planning:** Prepares and documents the plan to accomplish the incident objectives, collects and evaluates information, maintains resource status and maintains documentation for incident records.
- **Logistics:** Provides support, resources and all other services needed to meet the incident objectives.
- **Finance/Administration:** Monitors costs related to the incident. Provides accounting, procurement, time recording and cost analyses.

Source: Created from multiple publicly available documents by the 2018-2019 Orange County Grand Jury.

Appendix D

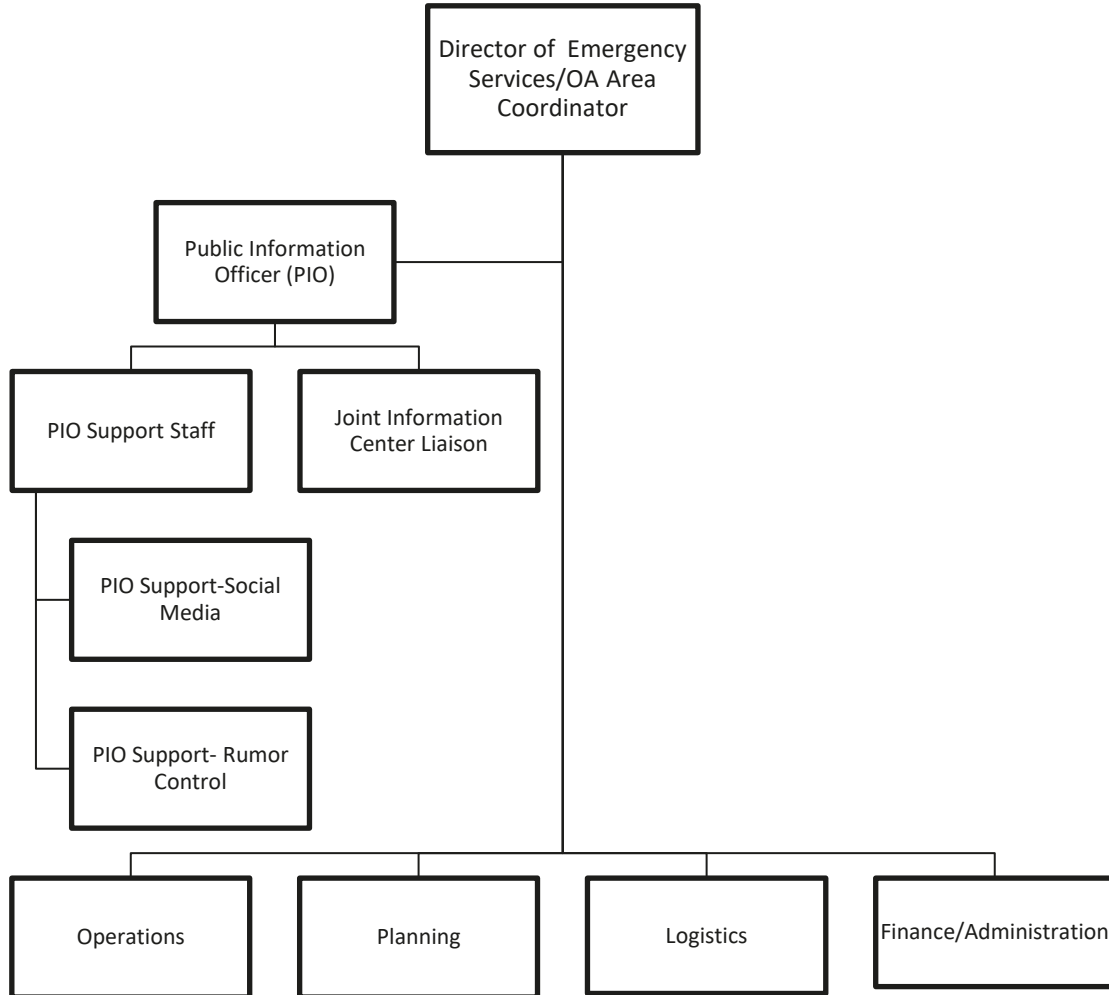
State Emergency Management System (SEMS) functional structure at the County level.



Adapted from Orange County Sheriff's Department Emergency Management Division.

Appendix E

SEMS Structure with expansion of management module to show PIO and PIO staff.

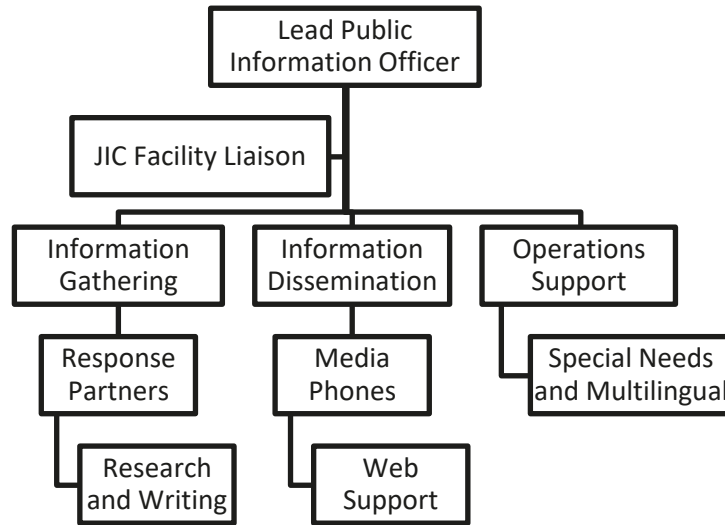


Source: Created from multiple publicly available documents by the 2018-2019 Orange County Grand Jury.

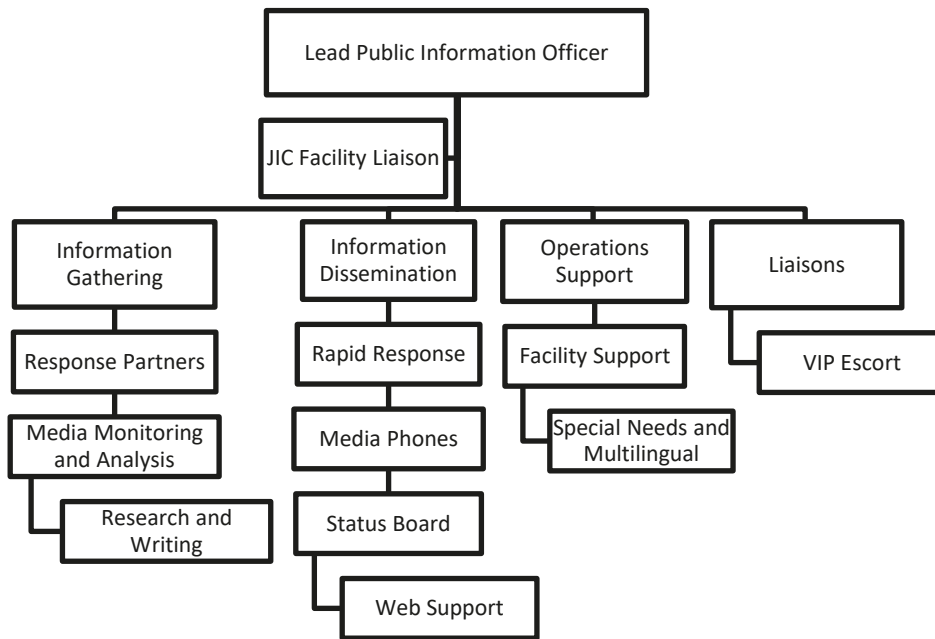
Appendix F, 1-3

Joint Information Center (JIC) organizational charts for progressively more complex emergencies.

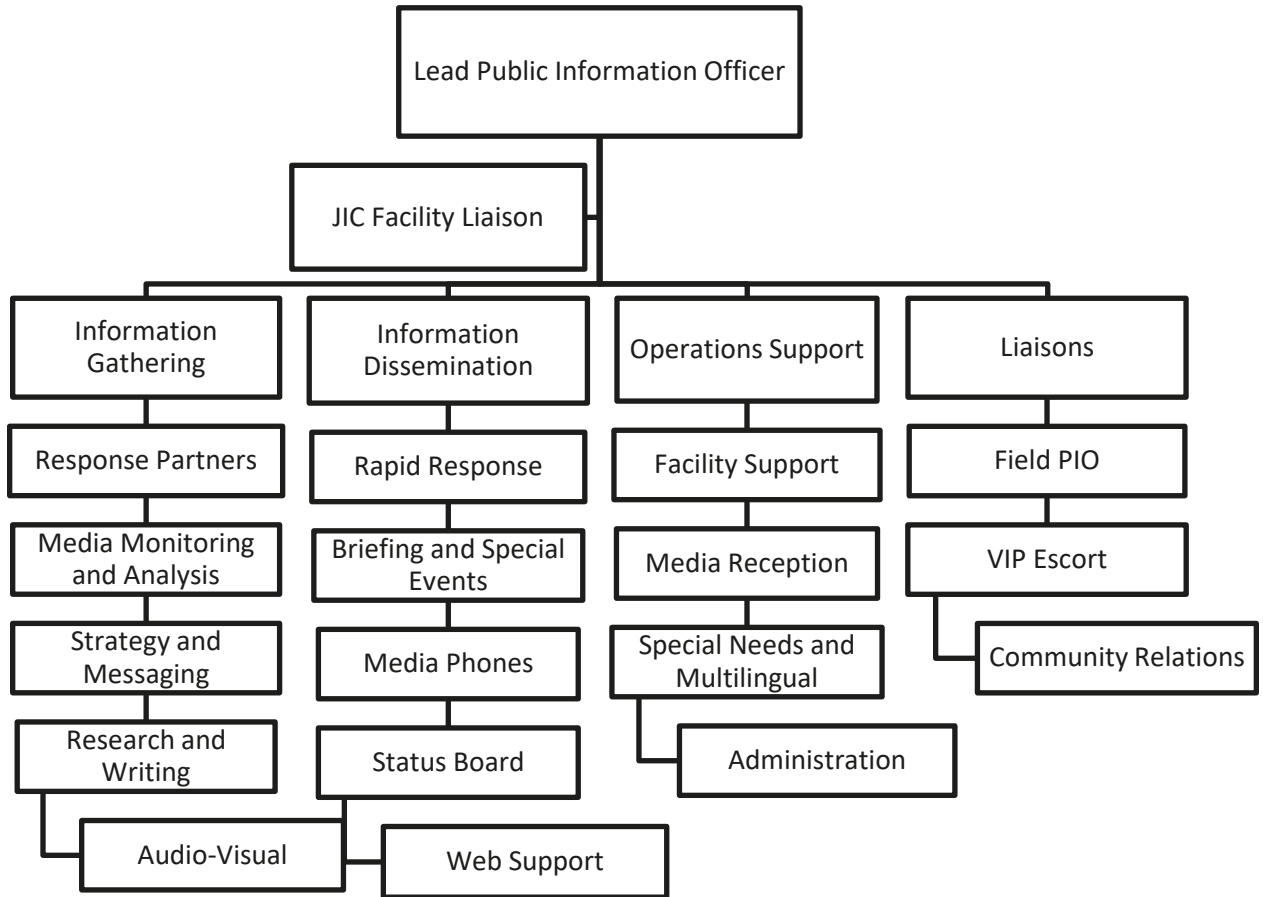
1. Initial Response or Local Incidents



2. Expanding Incidents



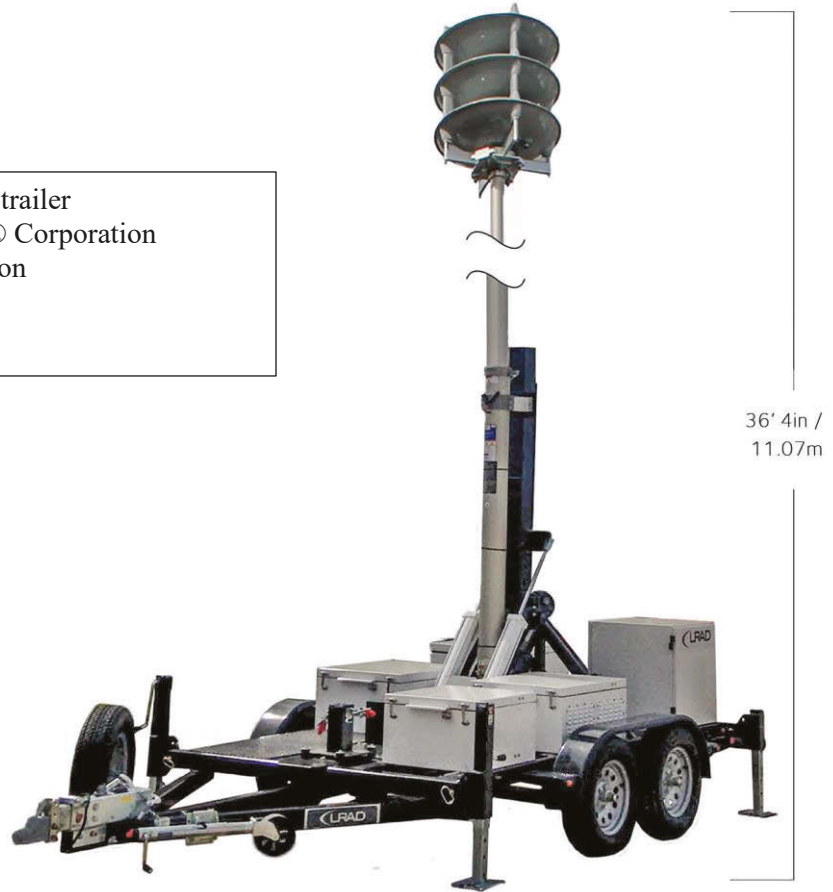
3. Large-scale Incidents



Source: Created from multiple publicly available documents by the 2018-2019 Orange County Grand Jury.

Appendix G

LRAD® 360 XT with trailer
Adapted from LRAD® Corporation
website, with permission





Orange County's Urban Forest



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SUMMARY

There is an old saying, “You can’t see the forest for the trees”. In some cities in Orange County, it could be said that you can’t see a forest for the lack of trees. Residents of Orange County live in an area where summer temperatures can rise above 100 degrees Fahrenheit. Large parking lots and blocks of concrete buildings create heat islands that keep releasing heat after sundown so night time temperatures are elevated. However, a canopy of well-maintained trees provides shade during the day, captures carbon dioxide, filters out dust and serves as a habitat for wildlife. Therefore, proper tree selection, care and management is critical for publicly owned and managed trees.

What is an urban forest and why is a healthy one important to the residents of a community? An urban forest is a collection of trees that grow within a community. The importance of a city’s urban forest has many dimensions: environmental impacts, economic issues and improvements to the neighborhoods. Often treated as mere enhancements to a community, trees need to be recognized as necessities and assets.

The public works departments are responsible for planting and maintaining city trees, but often tree services are among the first to suffer from budget reductions. Sometimes, due to budget constraints, a city may opt to cut back on its urban forestry program, adding to the misconception that trees are less important than other improvements.

The Orange County Grand Jury gathered information on the urban forestry programs of the County of Orange (for unincorporated areas) and all responding Orange County cities. Based on this information, the Orange County Grand Jury found significant differences in the urban forest programs of Orange County cities and selected the County of Orange and certain Orange County cities for further investigation. As a result of that investigation, the Orange County Grand Jury offers its Findings and makes the following major Recommendations:

- Each city should continue regularly scheduled tree inspections and maintenance cycles.
- Some Orange County cities identified in this report should implement an aggressive urban forest program.

REASON FOR THE STUDY

The Orange County Grand Jury (Grand Jury) observed that there was a great disparity between Orange County cities’ urban forests and wanted to study the reasons behind the disparity. Why is it that some cities in Orange County have a healthy and vibrant urban forest while others do not? Are there best practices in creating and maintaining a healthy urban forest and, if so, why aren’t these practices followed by every city?

The Grand Jury read a December 2018 report titled “First Step: Developing an Urban Forest Management Plan for the City of Los Angeles”¹ (First Step). The First Step report was prepared by an environmental consultant at the direction of a non-profit organization that works with cities and volunteer groups to improve the urban forest in Los Angeles. The introduction stated that the City of Los Angeles had not undertaken a comprehensive assessment of its urban forest for 25 years. The First Step report also found that Los Angeles did not have a sufficient budget, an inventory of urban trees, or technological infrastructure to direct its staff toward developing a sustainable urban forest.

The Grand Jury wondered whether the City of Los Angeles' history and the state of its urban forest could be relevant to Orange County. What could be learned from the First Step report that would be applicable to the cities of Orange County? Did Orange County cities have the same types of shortages in budgets, lack of governmental interest and tree inventories that the First Step uncovered? Could the Grand Jury suggest changes to the 34 cities in Orange County that would make our urban forest healthier and more beneficial to its residents?

Using the First Step report as a guide, the Grand Jury compiled a list of questions for staff members from each Orange County city and the unincorporated areas managed by the County of Orange. These included queries concerning:

- Allocated tree budget as a percentage of total city budget
- Total number of trees and their value in each city
- The use of private contractors to assist cities in managing their urban forest
- Cities' liability claims due to tree-related issues

METHOD OF STUDY

The urban forest consists of multiple categories of trees which include:

- Street Trees - Publicly owned and maintained trees (City or County) generally located along major and secondary arterials.
- Park Trees - Publically maintained (City, County or State) trees located in public parks and forest areas.
- Home Owners Association (HOA) Trees - Trees owned and maintained by a private HOA for the benefit of its common owners.
- Private Trees - Trees owned and maintained by private individuals.

¹ DUDEK. “First Step: Developing an Urban Forest Management Plan for the City of Los Angeles.” *City Plants*. December 2018

The Grand Jury elected to focus its research on street trees in accordance with the Grand Jury's role of investigating the efficiency of the operations of Orange County and its cities.

In order to gather facts and establish best practices, the Grand Jury conducted extensive internet research and reviewed professional literature pertaining to urban forestry practices and the contribution of city trees to the urban environment. In addition, the Grand Jury visited and consulted staff at a teaching arboretum at a local university and interviewed several Orange County arborists and tree experts to gather further information.

The Grand Jury used a variety of methods to gather information from the cities and County, including:

1. Mailed an initial request for statistical data to all Orange County cities and the County of Orange to ascertain their basic tree programs, budgets and contracting data.
2. Mailed a second request for statistical data to 15 selected cities for follow-up information.
3. Mailed a request for liability claim information to eight selected cities.
4. Conducted interviews with staff from nine selected cities and the County of Orange to expand and clarify the information obtained in steps 1-3 above.

Thirty-three cities responded to all requests for information. The City of Costa Mesa failed to respond to any requests.

The results were categorized into three groups based on the percentage of the city budget allocated to tree programs. The total city budget was obtained from publically available information. This information was used to evaluate whether a relationship existed between expenditure and liability claims.

To compare Orange County street tree programs, the Grand Jury developed a method to compare street tree programs among cities. The method of calculation was to divide the number of city owned street trees by its population and multiply by 100. The resulting number corresponds to the city's street trees per 100 residents. The number was used to rank the cities as High, Medium and Low, based on natural groupings (Appendix B).

The Grand Jury selected nine cities² and interviewed city officials from those cities as well as the County of Orange as the focus of this report. In addition, the Grand Jury has provided statistical

² City of Aliso Viejo was not included in the cities that formed the focus of this investigation as time restrictions prevented an interview with city staff.

information regarding trees and tree budgeting in other local cities in order to provide insight and context about tree planting and maintenance efforts of the investigated cities' surrounding communities (Appendix A).

BACKGROUND AND FACTS

Environment

In recent years, there has been increased recognition that trees are not only ornamental but also serve many important functions in a community. For example, trees naturally reduce air pollution by capturing carbon dioxide and releasing oxygen. In 2015, the United States Department of Agriculture (USDA) "The State of California's Street Trees" reported that 7.78 million metric tonnes of carbon dioxide emissions were stored in California's street trees and that these trees remove 567,748 tonnes of carbon dioxide emissions annually. Similarly, trees capture chemicals that can travel to streams, lakes and oceans, reducing water pollution. Trees also help capture storm water, thereby increasing the ground water level.

Trees help reduce heat islands and their negative environmental effects. A heat island is created when an unshaded paved area absorbs heat during the day and then releases it at night. These heat islands occur on the ground as well as in the atmosphere. Urban trees act as a heat buffer, making cities more resilient to weather and climatic conditions. Studies conducted by the National Aeronautics and Space Administration and the United States Environmental Protection Agency have concluded that the presence or absence of vegetation impacts the temperature in an area.

Health

Urban forests protect human and ecosystem health and safety. According to studies reported in "The Journal of Environmental Psychology", "Nature" magazine, and "Evergreen Research Ambassador Program", people suffering from stress, illness or trauma heal more quickly when they are exposed to trees. Trees that can be seen or images of the trees that can be projected in hospital rooms can be soothing. In order to maximize these health and safety benefits, cities must be attentive to and vigilant about their tree selection and maintenance.

Economics

Studies have demonstrated that a healthy urban forest brings economic gains to a city. The 2015 USDA study identified several benefits. Trees save 684 Gigawatt hours of electricity statewide annually³. The study also estimated that cities gain \$5.82 in benefits for every dollar spent on

³ 1 Gigawatt powers approximately 150 homes per year in California (U.S. Energy Information Administration)

trees and indicated that street trees have a positive effect on property values. In California, each tree on the street added an average of \$91.89 to the adjacent property.

According to the First Step study, when there is an attractive, cool, tree-shaded street, shoppers will spend more time and money in the area. Multiple sources indicate that mature trees can lower air conditioning costs by up to 56%, providing a financial incentive for businesses to locate to these sites.

Trees add beauty to neighborhoods. Residents prefer to live on tree-lined streets. Trees are an excellent way to keep yards green while conserving water, especially if the proper tree selection is made.

In spite of these benefits, many California cities do not consider the urban forest program to be as important as other public improvements such as streets, storm drains and city buildings. In general, city officials have made little effort to measure the financial impact of the local urban forest or the energy and water savings that trees generate.

The 2015 USDA study indicated that there were 9.1 million street trees in California in 2014 and noted that the tree density had declined by 30% since 1988.

Orange County

One of the issues facing Orange County cities is their liability for injuries or damage caused by street trees. Cities indicated they faced liabilities from tripping hazards, falling branches, and root intrusions. This raised a question of a relationship between the amount a city spent on street tree maintenance and the liability. The Grand Jury selected eight cities for further analysis: the four with the highest percentage of total budget allocated to street trees and the four with the lowest percentage. The eight cities were asked to provide information on liability claims dating back to 2014. However, the liability data received did not show any relationship between a city's street tree budget and related liability claims.

There are a number of factors that limit a city's ability to increase the number of its street trees. One of these is the lack of space under the city's control. Newer cities are largely made up of residential areas under the control of homeowner's associations. As a result, street trees owned by cities may be limited to arterial streets, medians and parks. Smaller cities, due to space restrictions such as lack of parkways, have fewer opportunities to add significant numbers of street trees. Some cities have not been successful at obtaining resident buy-in due to city ordinances that require homeowners to irrigate trees for the first two years.

Orange County cities have been dealing with a number of elements out of their control. Weather conditions, particularly the drought of the recent past, have led some cities to stop replacing dead or dying street trees to reduce water expenditures. Invasive pests, particularly the shot hole

borer, have decimated other stands of trees and, without good alternatives, the cities may not replace those street trees.

The University of California, Riverside (UCR) is conducting research that may assist cities in addressing some of these concerns. The research focuses on identifying tree species that are best suited for certain micro-climates, more drought tolerant and less susceptible to invasive pests.

The Grand Jury determined that, in general, city staff members believe their city councils have been supportive of the efforts to maintain their urban forest. General Funds provide most of the money for tree programs; however, several cities receive supplemental funds from special districts or grants. Urban forestry budgets in Orange County cities range from \$20,000 to over \$1.8 million and per capita spending ranges from \$1.26 to \$9.19. A comparison of cities spending shows differences of up to \$45.95 per tree (\$49.28 vs. \$3.33).

The Grand Jury further determined that the vast majority of Orange County cities believe their financial and staff resources are better managed by employing a small in-house maintenance crew and contracting for scheduled tree maintenance and services.

Management

When planting a new street tree, a city needs to consider two factors: tree selection and location. According to arborists, it is very important to consider a tree's root system during the selection process. Some trees have a very aggressive root system that is not noticed in the first couple of years but, as the tree matures, roots rise to the surface, lifting sidewalks, cracking retaining walls and invading sewer systems. While this type of tree may work quite well in a park setting with lots of open space around it, planting it in a residential area may not be the best choice. Certain species of trees can survive in small openings in sidewalks or curb areas, while others will die from lack of water. Soil needs to have enough depth for the root structure and should be free of obstructions blocking trees with a long tap root. Additionally, utility line exposures should be considered. If a tree grows into utility lines, severe trimming to keep the lines clear may be detrimental to the health of the tree. Tree sustainability should be considered when locating a new tree.

One of the recommendations of the First Step report is that a position such as a City Forest Officer be created to provide advice to the departments and citizens of the city. The duties of this position would include strategic planning and community outreach. Several Orange County city officials stated that they would welcome such a position in the County of Orange. These officials indicated that having access to the latest research and best practices in the field would be very helpful to their tree programs. They also noted that the position would be valuable in helping to educate the public and encourage citizens to become involved in their city's efforts to improve their urban forests and facilitate intra city communication regarding urban forest programs.

The following Findings, Recommendations and Commendation are based on information provided by the County of Orange and the nine cities that participated in the interviews:

- La Palma
- Laguna Beach
- Laguna Niguel
- Laguna Woods
- Mission Viejo
- Santa Ana
- Stanton
- Westminster
- Yorba Linda

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 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 titled “Orange County’s Urban Forest” the 2018-2019 Grand Jury has arrived at ten principal Findings, as follows:

F1. Cities identified in F10 have dedicated a portion of their general fund budget to an urban forest program; however, the allocated percentage varies widely among cities (See Appendix B).

F2. In order to efficiently manage financial and staff resources, Orange County cities identified in F10 utilize contract services for their tree maintenance and services. Some cities also maintain a small staff to supplement contract services.

F3. City councils for the cities identified in F10 are supportive of their urban forest programs and budget requests made by their respective city managers and public works departments.

F4. Cities interviewed for this report reported minimal financial liabilities from tripping hazards, root intrusions, and falling branches and trees.

F5. Cities identified in F10 have not been successful in ensuring that residents are aware of their city’s urban forest program.

F6. Environmental and economic benefits provided by urban forests have not been fully realized in Orange County cities identified in F10 and the unincorporated areas of Orange County.

F7. Cities identified in F10 do not coordinate their urban forest programs with each other.

F8. The County of Orange does not coordinate a cohesive urban forest program with its cities.

F9. The County of Orange does not have an allocated street tree budget for unincorporated areas (Appendix B).

F10. The following cities have significantly fewer public street trees per resident than other Orange County cities (Appendix B).

- La Palma
- Laguna Beach
- Laguna Niguel
- Laguna Woods
- Santa Ana
- Stanton
- Westminster
- Yorba Linda

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2018-2019 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 titled “Orange County’s Urban Forest” the 2018-2019 Grand Jury makes the following five Recommendations and one Commendation:

R1. By September 30, 2019, each city listed in F10 and the City of Mission Viejo should commit to continue regularly scheduled tree inspection and maintenance cycles to enhance public safety and to minimize future liabilities due to tree-related claims (**F4**).

R2. By September 30, 2019, Orange County cities listed in F10 should implement a program to coordinate with non-profit and volunteer organizations to improve residents’ awareness of the city’s urban forest benefits and promote active involvement with ongoing programs (**F5**).

R3. By September 30, 2019, Orange County cities listed in F10 should develop and implement policies and practices that will benefit their urban forests and explore ways to improve their street tree count (**F1, F6, F10**).

R4. By September 30, 2019, the County of Orange and each of the cities listed in F10 should individually, or through an MOU or other cooperative agreement with as many other Orange County cities as are willing to cooperate, hire or contract with an Urban Forest Coordinator to (**F7, F8**):

- Act as a resource to provide advice to the County and the cities and assist them with coordination among each other.
- Coordinate volunteer groups to participate in and enhance the County and each city's urban forest program.

R5. By September 30, 2019, the County of Orange should reevaluate allocating a street tree budget for unincorporated areas **(F9)**.

COMMENDATION

The City of Mission Viejo has an exceptional community involvement program that includes a city employee dedicated to coordinate volunteer organizations to assist with the urban forest program. The Grand Jury commends Mission Viejo.

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices . . . “

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) *The recommendation has been implemented, with a summary regarding the implemented action.*
- (2) *The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*
- (3) *The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) *The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*
- (c) *However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

Findings:

Orange County Board of Supervisors	F6, F8, F9
City Councils of the following cities: La Palma, Laguna Beach, Laguna Niguel Laguna Woods, Santa Ana, Stanton, Westminster, Yorba Linda	F1, F2, F3, F4, F5, F6, F7, F10
Mission Viejo	F4

Recommendations:

Orange County Board of Supervisors	R4, R5
City Councils of the following cities: La Palma, Laguna Beach, Laguna Niguel Laguna Woods, Santa Ana, Stanton, Westminster, Yorba Linda	R1, R2, R3
Mission Viejo	R1

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APPENDIX

A. Statistical Information obtained from all Orange County cities

STATISTICAL STREET TREE MAINTENANCE DATA and BUDGETING PER CITY

PAGE #1

CITIES Population	Forestry Budget Amount	Per Capita Amount	Number of Trees	Cost Per Tree Amount	Liability Exposure	Value of Street Trees
<i>Aliso Viejo 51,950</i>	\$25,000	\$0.48	500	\$50	Tripping	\$400K
<i>Anaheim 357,084</i>	\$1,086,426	\$3.04	79,989	\$13.58	Tripping, Limbs, Trees	\$186M
<i>Brea 44,890</i>	\$273,336	\$6.09	13,421	\$20.36	Tripping, Limbs, Trees	\$25M
<i>Buena Park 83,995</i>	\$189,000	\$2.25	17,144	\$11.02	Tripping, Limbs, Trees, Sewer Lines	\$26M
<i>County of Orange (Unincorporated) 129,278</i>	NRP	NRP	84,913	NRP	NRP	\$263M
<i>Costa Mesa 115,296</i>	NR	NR	NR	NR	NR	NR
<i>Cypress 49,978</i>	\$220,000	\$4.40	16,601	\$13.25	Tripping, Limbs, Trees	\$32M
<i>Dana Point 34,071</i>	\$600,000	\$1.76	12,886	\$46.56	Tripping, Limbs, Trees	\$32M
<i>Fountain Valley 56,920</i>	\$471,547	\$8.27	12,642	\$37.30	Tripping	NRP
<i>Fullerton 144,214</i>	\$1,183,170	\$8.20	43,110	\$27.44	Tripping, Limbs, Trees	\$107M
<i>Garden Grove 176,896</i>	\$1,461,771	\$2.66	29,658	\$49.29	Tripping, Limbs, Trees	\$65M
<i>Huntington Beach 202,648</i>	\$1,862,577	\$9.19	557,717	\$3.33	Tripping, Limbs, Trees	\$144M
<i>Irvine 276,176</i>	\$2,000,000	\$7.24	76,000	\$26.32	Tripping, Limbs, Trees	\$181M
<i>La Habra 62,850</i>	\$306,554	\$4.87	11,230	\$27.29	Tripping, Limbs, Trees	\$27M
<i>La Palma 15,948</i>	\$31,000	\$1.94	1,645	\$18.84	Tripping, Limbs, Trees	\$3.7M
<i>Laguna Beach 23,309</i>	\$330,400	\$14.15	2,843	\$116	Tripping, Limbs, Trees	\$10M
<i>Laguna Hills 31,818</i>	\$280,000	\$8.80	10,157	\$27.56	Occasional Claims	\$27M
<i>Laguna Niguel 65,377</i>	\$324,000	\$4.95	6,822	\$47.49	Branches Striking Vehicles	\$15M
<i>Laguna Woods 16,597</i>	\$26.29	\$1.58	500	\$33.40	Minimal Occurances	NRP
<i>Lake Forest 84,845</i>	\$419,800	\$4.95	16,000	\$26.24	Tripping, Limbs, Trees	NRP
<i>Los Alamitos 11,863</i>	\$55,000	\$4.63	2,790	\$19.71	Tripping, Limbs, Trees	\$7M

* NR = NO RESPONSE
*NRP = NOT REPORTED

Created by 2018-2019 Grand Jury.

Orange County's Urban Forest

STATISTICAL STREET TREE MAINTENANCE DATA and BUDGETING PER CITY

PAGE #2

CITIES Population	Forestry Budget Amount	Per Capita Amount	Number of Trees	Cost Per Tree Amount	Liability Exposure	Value of Street Trees
<i>Mission Viejo 95,987</i>	\$400,000	\$4.16	44,981	\$8.89	Periodic Claims	\$123M
<i>Newport Beach 87,182</i>	\$1,756,000	\$20.14	35,159	\$49.94	Tripping, Limbs, Trees	\$72M
<i>Orange 141,952</i>	\$725,000	\$5.10	26,500	\$27.35	Tripping, Limbs, Trees	\$58M
<i>Placentia 52,755</i>	\$170,000	\$3.22	15,119	\$11.24	Tripping, Limbs, Trees, Block Walls	\$22M
<i>Rancho Santa Margarita 49,329</i>	NRP	NRP	NRP	NRP	Tripping, Limbs, Trees	NRP
<i>San Clemente 65,543</i>	\$424,500	\$6.47	16,500	\$25.72	Periodic Claims	NRP
<i>San Juan Capistrano 36,759</i>	\$162,435	\$4.42	11,379	\$14.27	Tripping, Limbs, Trees	\$20M
<i>Santa Ana 338,247</i>	\$2,600,000	\$7.68	53,223	\$48.85	Tripping, Limbs, Trees	\$181M
<i>Seal Beach 25,984</i>	\$20,000	\$0.76	NRP	NRP	Tripping, Limbs, Trees	NRP
<i>Stanton 39,470</i>	\$30,000	\$1.77	3,690	\$18.97	Tripping, Limbs, Trees	\$511K
<i>Tustin 82,344</i>	\$750,000	\$9.10	19,988	\$37.52	Tripping, Limbs, Trees	\$52M
<i>Villa Park 5,951</i>	\$44,000	\$7.39	NRP	NRP	Not Reported	NRP
<i>Westminster 94,476</i>	\$170,000	\$1.80	9,255	\$18.37	Tripping, Limbs, Trees	\$17M
<i>Yorba Linda 69,121</i>	\$272,000	\$3.93	7,749	\$35.10	Tripping, Limbs, Trees	\$28M

* NR = NO RESPONSE

*NRP = NOT REPORTED

Created by 2018-2019 Grand Jury

B. Street Tree budget as a percentage of total budget and number of Street Trees per 100 residents for Orange County cities

Cities and Budget

City	% of Total City Budget Allocated For Street Trees
Dana Point	1.63
Laguna Hills	1.37
Garden Grove	1.31
Villa Park	1.29
Fullerton	1.27
Tustin	1.21
Santa Ana	0.98
Lake Forest	0.89
Newport Beach	0.82
Huntington Beach	0.82
Laguna Niguel	0.79
Yorba Linda	0.79
Cypress	0.77
La Habra	0.72
Irvine	0.7
Orange	0.65
San Clemente	0.6
Mission Viejo	0.59
San Juan Capistrano	0.58
Brea	0.53
Laguna Beach	0.52
Placentia	0.49
Laguna Woods	0.48
Fountain Valley	0.44
Los Alamitos	0.41
Anaheim	0.33
Stanton	0.32
Buena Park	0.28
Westminster	0.28
La Palma	0.21
Aliso Viejo	0.13
Seal Beach	0.05
Rancho Santa Margarita	NRP
County of Orange	NRP
Costa Mesa	NR

Cities and Tree Ratio per 100 Resident:

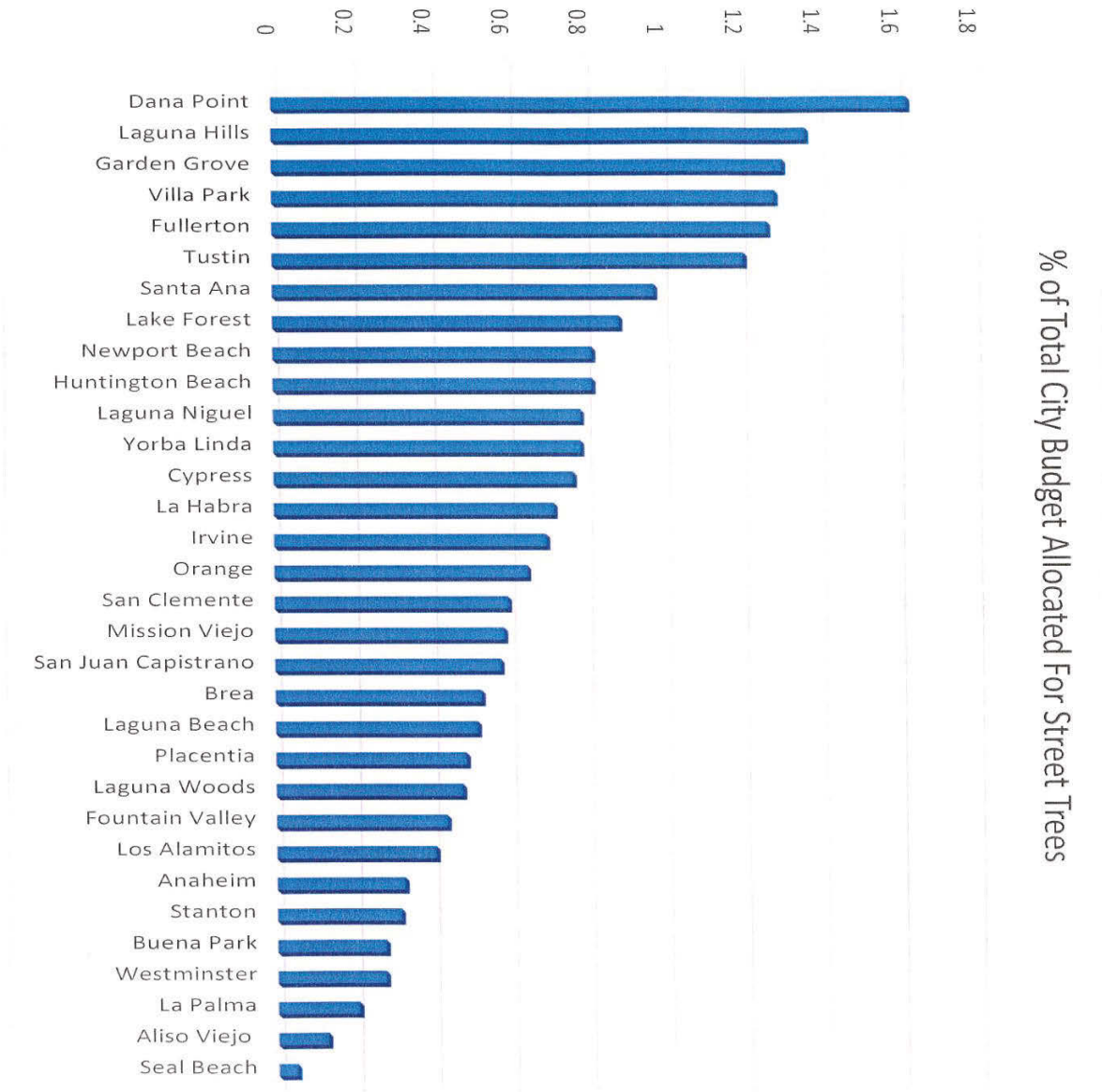
City	Street Tree to Residents Ratio (# of Street Trees to 100 Residents)
Mission Viejo	47
Newport Beach	40
Dana Point	37
Cypress	33
Laguna Hills	32
San Juan Capistrano	31
Los Alamitos	30
Brea	30
Fullerton	29
Placentia	28
Irvine	27
Huntington Beach	27
Tustin	24
San Clemente	24
Fountain Valley	22
Anaheim	22
Buena Park	20
Lake Forest	19
La Habra	18
Garden Grove	17
Orange	17
Santa Ana	15
Laguna Beach	12
Laguna Niguel	10
La Palma	10
Stanton	9
Westminster	8
Yorba Linda	6
Laguna Woods	3
Aliso Viejo	1
Seal Beach	NRP
Rancho Santa Margarita	NRP
Villa Park	NRP
County of Orange	NRP
Costa Mesa	NR

Legend

High	25 and Above
Medium	16 - 24
Low	Below 16
NRP	Not Reported
NR	No Response

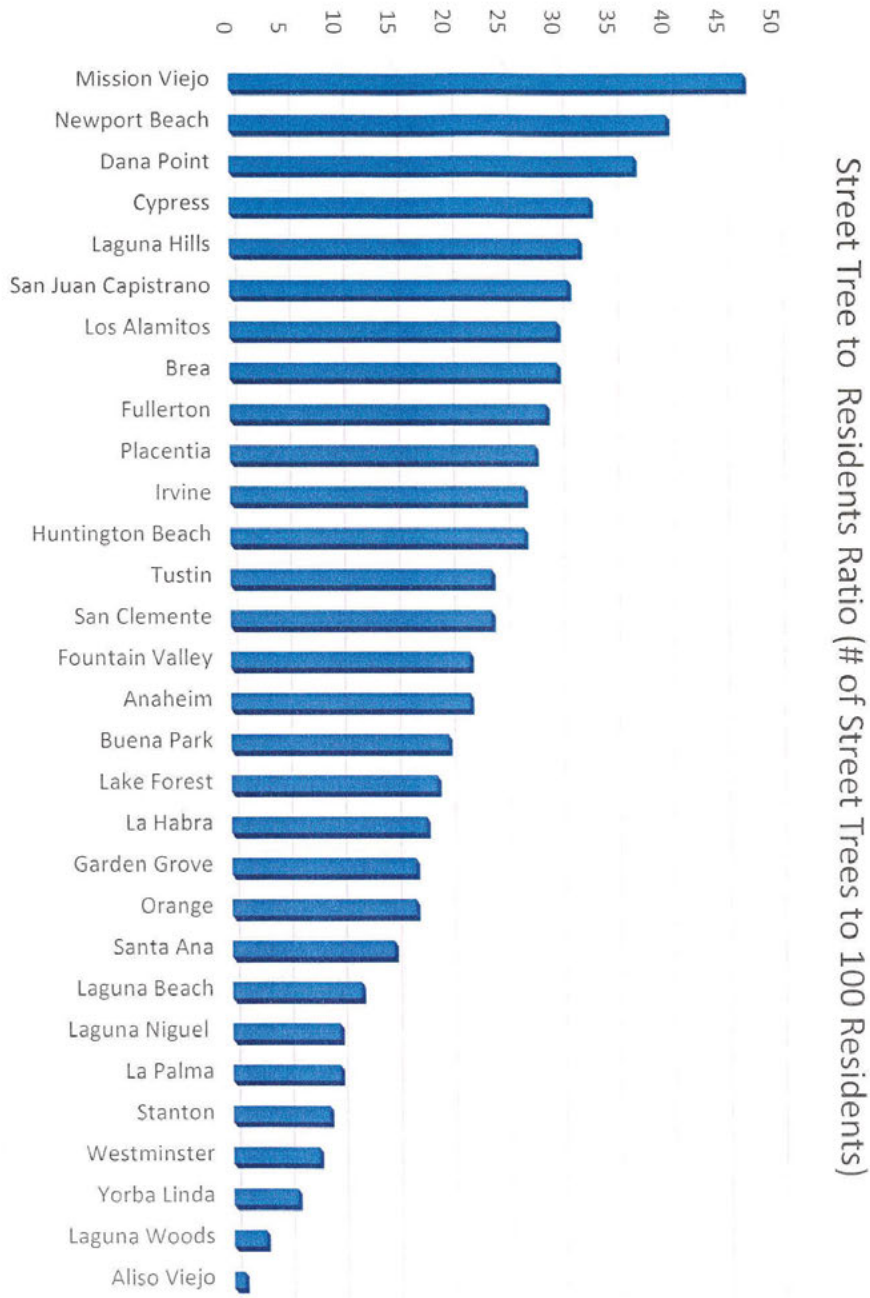
Created by 2018-2019 Grand Jury

C. Street Tree budget as a percentage of total budget for Orange County cities



Created by 2018-2019 Grand Jury

D. Number of Street Trees per 100 residents for Orange County cities



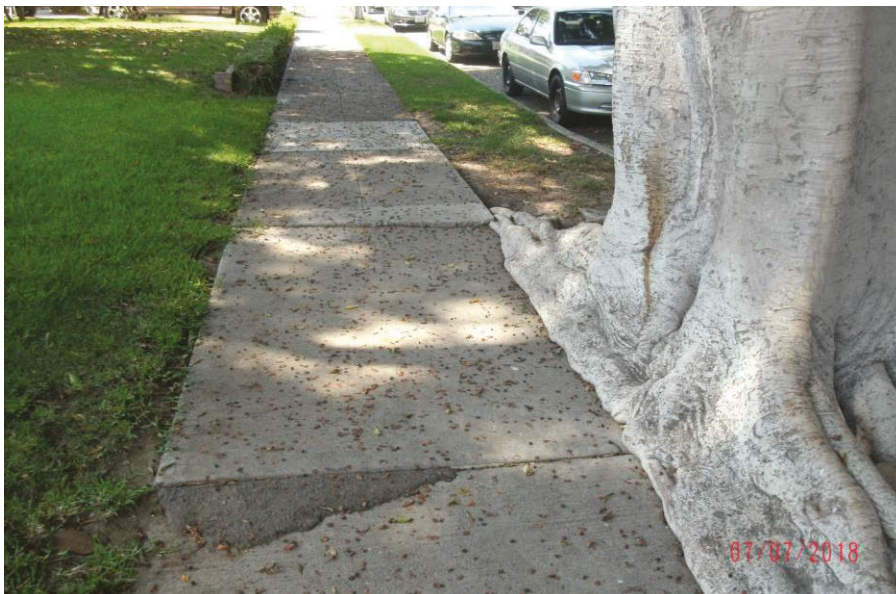
Created by 2018-2019 Grand Jury

E. Street Tree Photos

Street tree canopy



Tree with root intrusion and sidewalk damage



(Source: 2018-2019 Grand Jury)

F: Heat Island Photos

Examples of a heat island



(Source: 2018-2019 Grand Jury)



Home At Last: Honoring Our Veterans With A Veterans Cemetery In Orange County



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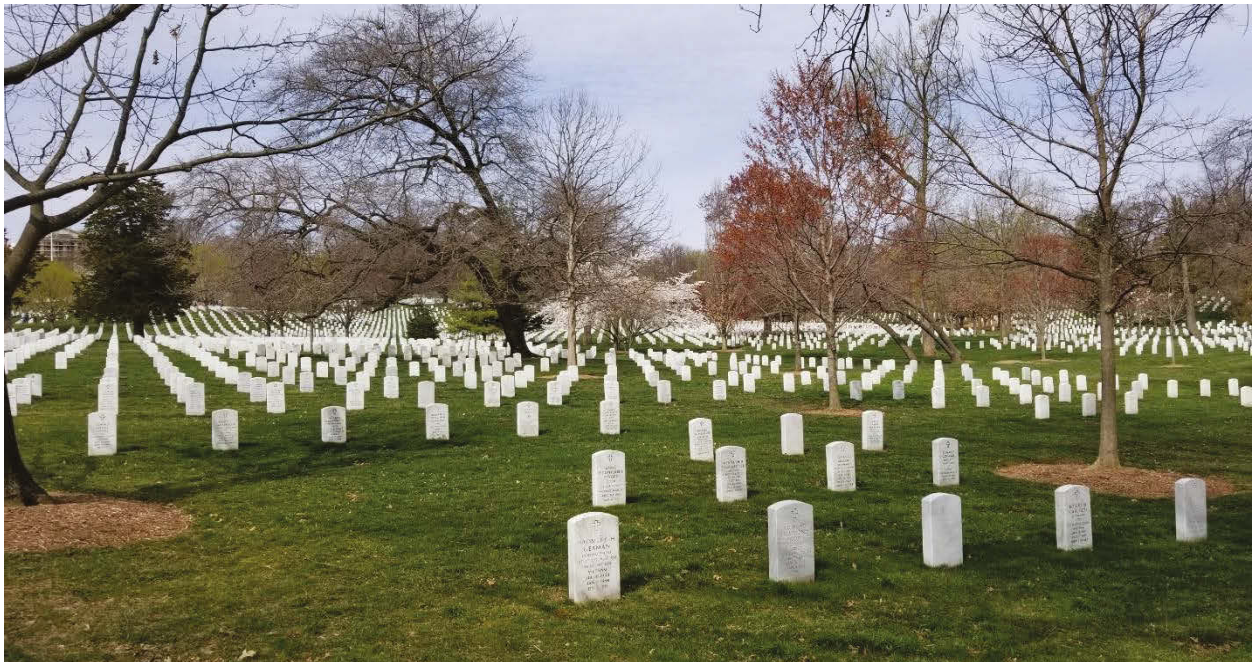
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SUMMARY

By population, Orange County is the sixth largest county in the United States and is the largest county in the State without a veterans cemetery. It is home to more than 115,000 veterans. In Southern California, the closest veterans cemeteries with burial spaces still available are in San Diego and Riverside counties. The legislative pursuit of a veterans cemetery in Orange County began with the January 2014 introduction and later passing of State Assembly Bill 1453. The California Department of Veterans Affairs was directed to work with Orange County governmental agencies to plan and develop a Southern California veterans cemetery at the City of Irvine's former Marine Corps Air Station El Toro. As of May 2019, two cities are under consideration for a State operated veterans cemetery in Orange County: Anaheim and Irvine.

The 2018-2019 Orange County Grand Jury investigated the historical background, issues and various factors that affect the timeliness, location and sustainability for a State Veterans Administration Cemetery in Orange County. A key finding of the research and interviews is that there is consensus and overwhelming support for a veterans cemetery in Orange County. The Orange County Grand Jury has identified four potential sites and summarized the relative strengths and weaknesses of each site. The Orange County Grand Jury recommends a process to resolve ongoing conflicts to overcome delays.

Photo of Arlington National Cemetery, Washington DC



Source: 2018-2019 Orange County Grand Jury

REASON FOR THE STUDY

Five years have elapsed since discussions began to open a State Veterans Administration Cemetery (veterans cemetery) in Orange County, the most populous county in the State without one. The closest cemetery for veterans, with space available, is Riverside National Cemetery. There is a growing interest in, and demand for, an Orange County veterans cemetery. The various sites currently being considered for an Orange County veterans cemetery are supported by veterans groups as well as other public and private organizations. Two potential veterans cemetery sites in the City of Irvine have been either previously or currently supported by the California State Legislature. California Veterans Administration (CalVet) has completed a comprehensive planning and analysis report (Owen Report) for one of the City of Irvine potential veterans cemetery sites.

Veterans groups and other Orange County residents have become frustrated that progress towards opening a veterans cemetery in Orange County has been hindered by political infighting. The continued lack of progress in the negotiation between the relevant entities and a lack of general understanding of the underlying issues by Orange County residents, prompted the 2018-2019 Orange County Grand Jury (Grand Jury) to conduct an investigation to gather information for the benefit of Orange County residents. This report will describe the dynamics that have resulted in the on going delay in establishing a veterans cemetery in Orange County.

METHOD OF STUDY

Extensive research was conducted that included reviewing confidential and publicly available reports and documents, media reports and articles and information gathered from numerous interviews. The Grand Jury interviewed, in person or by telephone, multiple State, County and city officials and private sector stakeholders that are interested in opening an Orange County veterans cemetery in a timely and financially responsible manner. The Grand Jury toured all four potential veterans cemetery sites.

BACKGROUND AND FACTS

At present, Orange County is the most populous county in the state without a veterans cemetery, with approximately 115,000 veterans in residence (See Reference 1). In 2014, discussions began among veterans groups and local officials about the possibility of locating a veterans cemetery in Orange County. Several veterans groups proposed locating a veterans cemetery on the former Marine Corps Air Station El Toro, in the City of Irvine. A portion of the former Marine Corps Air Station El Toro was designated as, and is being developed into, the Great Park. The Great Park has been designated for arts and recreation use and is currently under development. The Great Park area is owned by the City of Irvine along with some other parcels on the former

Marine Corps Air Station that are outside of the Great Park designated area. Other portions of the former Marine Corps Air Station are owned by selected developers. In 2018, a site in the City of Anaheim was identified as an additional option for a veterans cemetery..

Federal and State Veterans Administration Cemetery policies have specific criteria and standards that govern veterans cemetery planning, design and operations, including site location. According to national veterans administration cemetery specifications, a greater than 40 mile distance is required between national cemeteries. All four potential sites are within this distance, therefore the sites are not eligible for national designation. Presently, the two closest veterans cemeteries with burial space available are located in Riverside and San Diego counties.

This report focuses on a State designated veterans cemetery in Orange County. A brief history and the relative merits of the four potential sites are summarized below. **Amended and Restated Development Agreement (ARDA)**

Description and History

The portion of the former Marine Corps base which became known as the ARDA site, is adjacent to, but not part of the Great Park according to the Irvine City Council. The City provided the Grand Jury with a judgement in an Orange County Superior Court case that made the following finding: “*The city-owned ARDA-site is not in the Great Park*”.¹ Prior to 2010, it was owned by a developer. In that year, the developer and the City of Irvine entered into an agreement whereby the city was granted ownership of the ARDA site. In exchange, the developer received relief from certain city-imposed requirements and retained a right of first refusal to acquire and develop the site.

In early 2014, veterans organizations, the City of Irvine and the State of California began discussions about a possible veterans cemetery on the ARDA site. The City of Irvine pledged funds in support of developing the first phase of a veterans cemetery at ARDA. In 2017, the Irvine City Council reversed its position of support for the ARDA site and offered a “land swap” with the developer for the Strawberry Field/Bake Parkway site (see below). In 2018, the citizens of Irvine rejected that land swap by defeating the Measure B referendum by a 63 percent vote.

A comprehensive development plan (Owen Report) for a veterans cemetery on the ARDA site was completed in 2016. The plan called for a 125-acre veterans cemetery costing \$77 million with an initial phase completion date of 30 months from the start of the project. Two years later, that estimate was increased by approximately \$14 million. To date, this remains the only detailed comprehensive development plan with definitive cost estimates of any of the four

¹ Bill Sandlin, et.al. v. Molly McLaughlin, et.al. Orange County Superior Court case #30-2018-00975288-CU-WM-CJC

potential Orange County veterans cemetery sites: ARDA, Golf Course, Strawberry Field/Bake Parkway, Gypsum Canyon (91/241).

Distinctive Characteristics

Positive Aspects

- The ARDA site is the only proposed site to have a completed in-depth development plan with development costs sufficiently defined.
- Some veterans groups have indicated an interest in developing parts of the ARDA site as a veterans memorial, utilizing some existing buildings, the original control tower and portions of the former Marine Corps base runway.
- Use of this site for a cemetery would have no impact on Great Park development plans.

Negative Aspects

- Of the three proposed Irvine veterans cemetery sites, the ARDA site has the highest potential commercial land value for other purposes.
- The site has the highest cleanup cost projections, due to building and runway demolition and soil contamination.
- There is some resistance in the City of Irvine to the use of this site for a cemetery.

Strawberry Field/Bake Parkway

Description and History

The Strawberry Field/Bake Parkway site is on a portion of the former Marine Corps base and is not part of the Great Park. The site is adjacent to the Great Park, located near the north side of the junction of Interstates 5 and 405 in the City of Irvine. The parcel is owned by a local developer. The Irvine City Council proposed the Strawberry Field/Bake Parkway site as an alternative to the ARDA site. Later, after the Irvine City Council decided against the ARDA site, the State of California designated this site as a potential option (see Legislative History). In June 2018, Measure B, an exchange with the City of Irvine for the ARDA site, was rejected by the citizens of Irvine. The Grand Jury learned that some individuals misinterpreted this vote as a rejection of the Strawberry Field/Bake Parkway site as a veterans cemetery.

Distinctive Characteristics

Positive Aspects

- The site is currently recognized as the designated veterans cemetery site by the State of California (see Legislative History).
- The site potentially has the lowest development costs for use as a cemetery because of the anticipated low soil contamination.

Negative Aspects

- The site must be purchased from the private owner.
- A recent local initiative, Measure B, rejected the “land swap” involving this site and the ARDA site. The result implied to some that its use as a veterans cemetery is unacceptable to the majority of the voting citizens of the City of Irvine.
- No definitive cost estimates have been developed.
- California Assembly Bill (AB) 368, presently pending in the State Assembly Appropriations Committee, is changing the proposed site for the veterans cemetery back to the ARDA site rather than this site.

Golf Course

Description and History

This portion of the former Marine Corps base is part of the Great Park and has been designated as a potential golf course. In 2018, after the ARDA/Strawberry Field/Bake Parkway “land swap” was rejected by the citizens of Irvine, this site was offered as an alternate site for the cemetery by the Irvine City Council. To date, only cursory development cost estimates have been calculated by City of Irvine staff employees. Centrally located in the Great Park, this site’s use as a cemetery would have substantial impact on the current Great Park development plan.

Distinctive Characteristics

Positive Aspects

- The current Irvine City Council supports this site.
- Less building demolition will be required; however, soil contamination issues have not been formally evaluated.

Negative Aspects

- The selection of this site would disrupt the current Great Park plan. Use of this site for a cemetery would reduce the acreage of the Great Park designated for recreational use.
- No definitive cost estimates have been developed.
- The site has a 1,000 foot radius circle designated by the FAA for airline navigation purposes that cannot be used for anything else.
- To date, the California State legislature has not recognized this location as a possible veterans cemetery.

Gypsum Canyon (91/241)

Description and History

The Gypsum Canyon (91/241) site is located in the City of Anaheim near the southeast intersection of the California State Route 91 and California State Route 241 (toll road). As this site was donated to the County of Orange by a local land owner and developer, no land purchase is necessary. In 2018, the County charged the Orange County Cemetery District (OCCD) with the responsibility for developing it into a public cemetery. Approximately half of the acreage is currently stable enough to proceed with the initial phase; the other half will require some effort to stabilize the ground before use. The OCCD has been investigating the option of developing two distinct sections: a public cemetery and a veterans cemetery. In this case, some developmental and operational efficiencies may result from common management. Presently, the Anaheim City Council has not determined its official position in opposition to, or in support of, this site being used as a public and/or veterans cemetery.

Distinctive Characteristics

Positive Aspects

- This site offers a picturesque location with a view of open space and rolling hills.
- There is the possibility of a cooperative arrangement with the OCCD for the development, operation and maintenance of two distinct cemetery facilities (veterans and public) on the site, creating potential cost savings.

Negative Aspects

- This site has no relationship to or history with current or former military installations.
- This site location is not central to Orange County as it is located on the eastern perimeter.

- This site may have higher costs for infrastructure support (i.e., access and utilities).
- This site will require management of unstable land for future expansion phases.
- No cost estimates have been developed.

For more detailed information, see Appendix J.

Legislative History

January 2014: AB 1453 is introduced to create a State Veterans Administration Cemetery in Orange County.

July 2014: The Irvine City Council adopts City Council Resolution No. 14-92 by a 5-0 vote, which designates the 125-acre parcel known as the Amended and Restated Development Agreement (ARDA) site as the best site for a veterans cemetery.

January 2015: AB 1453 is signed into law. The legislation directs CalVet, in cooperation with Orange County, to develop plans and cost estimates to develop the veterans cemetery on the ARDA site. The legislation included \$5 million to be used for planning of phase one of a veterans cemetery. The report generated eventually becomes known as the Owen Report.

March-April 2016: A veterans group suggests the City of Irvine consider a “land swap” of the ARDA site for the Strawberry Field/Bake Parkway site owned by a developer. The developer would receive the ARDA site in return.

June 2017: The City of Irvine adopts Resolution No. 17-39 by a 3-2 vote, to identify the Strawberry Field/Bake Parkway as the preferred site for the veterans cemetery and authorizing the City to pursue the land swap. Senate Bill 96 follows, which includes amendments to Military and Veterans Code section 1410, changing the site for the veterans cemetery from the ARDA site to the Strawberry Field/Bake Parkway site. This is the current state of the law as it applies to a state operated veterans cemetery in Orange County as of the writing of this report.

June 2018: Measure B, which authorizes the needed zoning change for the land swap, is defeated by the citizens of Irvine. These election results and Senate Bill 96 create a conflict regarding the site location for a veterans cemetery.

February-April 2019: Assembly Bill 368 is introduced by Assembly member Quirk-Silva, then amended. The purpose of this bill is to amend Military and Veterans Code section 1410 to be consistent with Measure B, changing the proposed site for the veterans cemetery back to the ARDA site.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 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, titled “Home At Last: Honoring Our Veterans With A Veterans Cemetery In Orange County”, the 2018-2019 Orange County Grand Jury has arrived at eight principal findings:

F1: There is private and public sector significant interest in, and support for, establishing a veterans cemetery in Orange County.

F2: Although four sites are under consideration, to date, only two veterans cemetery locations in the City of Irvine have been recognized for potential funding by the State.

F3: In the City of Irvine, competing political and financial interests have caused delays in veterans cemetery site selection.

F4: Use of the ARDA property for a veterans cemetery will reduce potential tax income for the City of Irvine compared to other proposed sites.

F5: Site development cost estimates and site valuations identified to date vary widely.

F6: Completion of the veterans cemetery project will require multiple sources of funding; some funding has been available in the past.

F7: There is no known opposition to the use of the Gypsum Canyon (91/241) property as a veterans cemetery from the Anaheim City Council, Orange County veterans groups, or the OCCD.

F8: The City of Irvine and OCCD, at their City of Anaheim site, could both be interested in developing a veterans cemetery at their respective properties. The State and CalVet, however, will support only one veterans cemetery in Orange County.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2018-2019 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 titled “Home At Last: Honoring Our Veterans With A Veterans Cemetery in Orange County”, the 2018-2019 Orange County Grand Jury makes the following three Recommendations:

R1: By November 30, 2019, the Irvine City Council should decide which, if any, site within its borders to pursue for a veterans cemetery. Site selection efforts should validate the cost and valuation information. **(F1, F2, F3, F4, F5, F6)**

R2: By November 30, 2019, the OCCD, in coordination with the Orange County Board of Supervisors and the City of Anaheim, should decide whether to pursue developing both a public cemetery and veterans cemetery on the Gypsum Canyon (91/241) site. Site selection efforts should validate the cost and valuation information. **(F1, F6, F7)**

R3: By December 31, 2019, in the event that both the City of Irvine and OCCD seek to pursue a veterans cemetery, the Grand Jury recommends that a joint City of Irvine and OCCD Veterans Cemetery Selection Committee be established that includes a representative of the Board of Supervisors to determine which of the respective sites will be endorsed. **(F1, F5, F6, F8)**

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933(c)

“No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . .”

§933.05

“(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

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

(c) However, 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 authority. The response of the elected agency or department head shall address all 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 §933.05 are required from:

Responses Required:

Findings:

Orange County Board of Supervisors:	F1, F5, F6, F8
Orange County Cemetery District Board of Trustees	F1, F6, F7
City of Irvine, City Council	F1, F2, F3, F4, F5, F6

Recommendations:

Orange County Board of Supervisors:	R3
Orange County Cemetery District Board of Trustees	R2, R3
City of Irvine, City Council	R1, R3

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APPENDIX

A: Two Possible Veterans Cemetery Sites in the City of Irvine

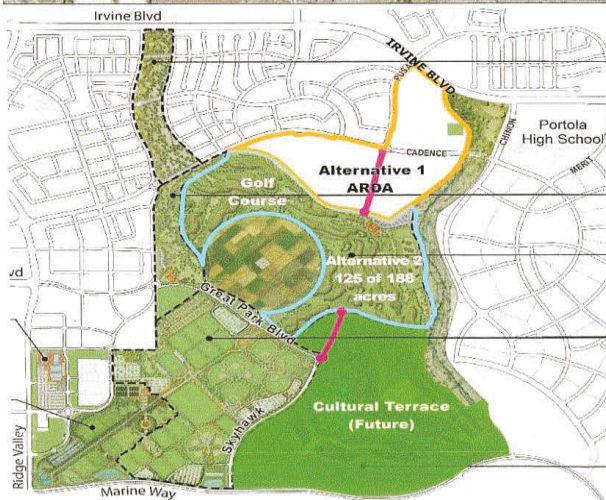
(Area “C” is the ARDA Site and Area “D” is the Golf Course site)

PROMISE AND BETRAYAL: The Essential History of the Great Park Veterans Cemetery Project, 2014-2019

APPENDIX A - MAPS



MAP 1: The 2010 award-winning Great Park Master Plan, pictured here, included a 200-acre Great Park Canyon [A] and stream emptying into a Lake [B]. Also pictured here is the original 125-acre Great Park Veterans Cemetery site [C] that, from 2014-2016, was planned, designed and approved by the City, State (CalVet) and the U.S. Dept. of Veterans Affairs.



MAP 2: This City-provided map shows the proposed location for the Veterans Cemetery (Alternative 2), replacing two-thirds of the proposed golf course that was to be developed by FivePoint.

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Source: “Irvine Community News & Views”

Used with Permission

B: Photo of Former El Toro Marine Air Station Structures on the ARDA site.



Source: 2018-2019 Grand Jury

C: Future Golf Course Property Site City of Irvine



Source 2018-2019 Grand Jury

D:

Future State Veterans Cemetery Strawberry Fields/Bake Parkway Site



Provided to the Grand Jury with permission by the City of Irvine

E: Conceptual Plan for a State Veterans Cemetery at Strawberry Field/Bake Parkway



CONCEPTUAL DESIGN PLAN

CONCEPT PLAN SUBJECT TO CHANGE

Provided to the Grand Jury with permission by the City of Irvine

F: Strawberry Field/Bake Parkway Site City of Irvine



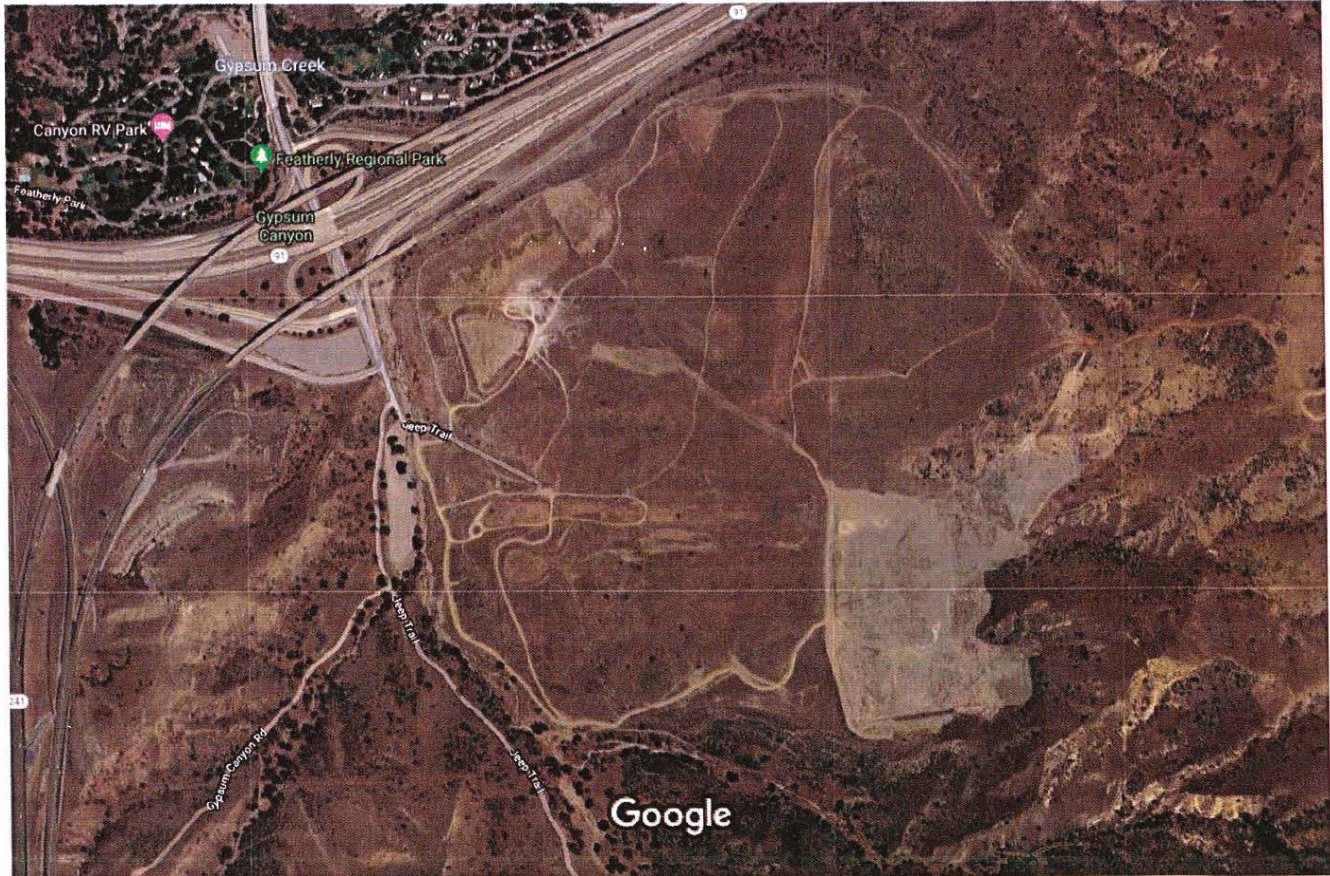
Source: 2018-2019 Grand Jury

G: Photo of Gypsum Canyon (91/241) Site in the City of Anaheim



Source: 2018-2019 Grand Jury

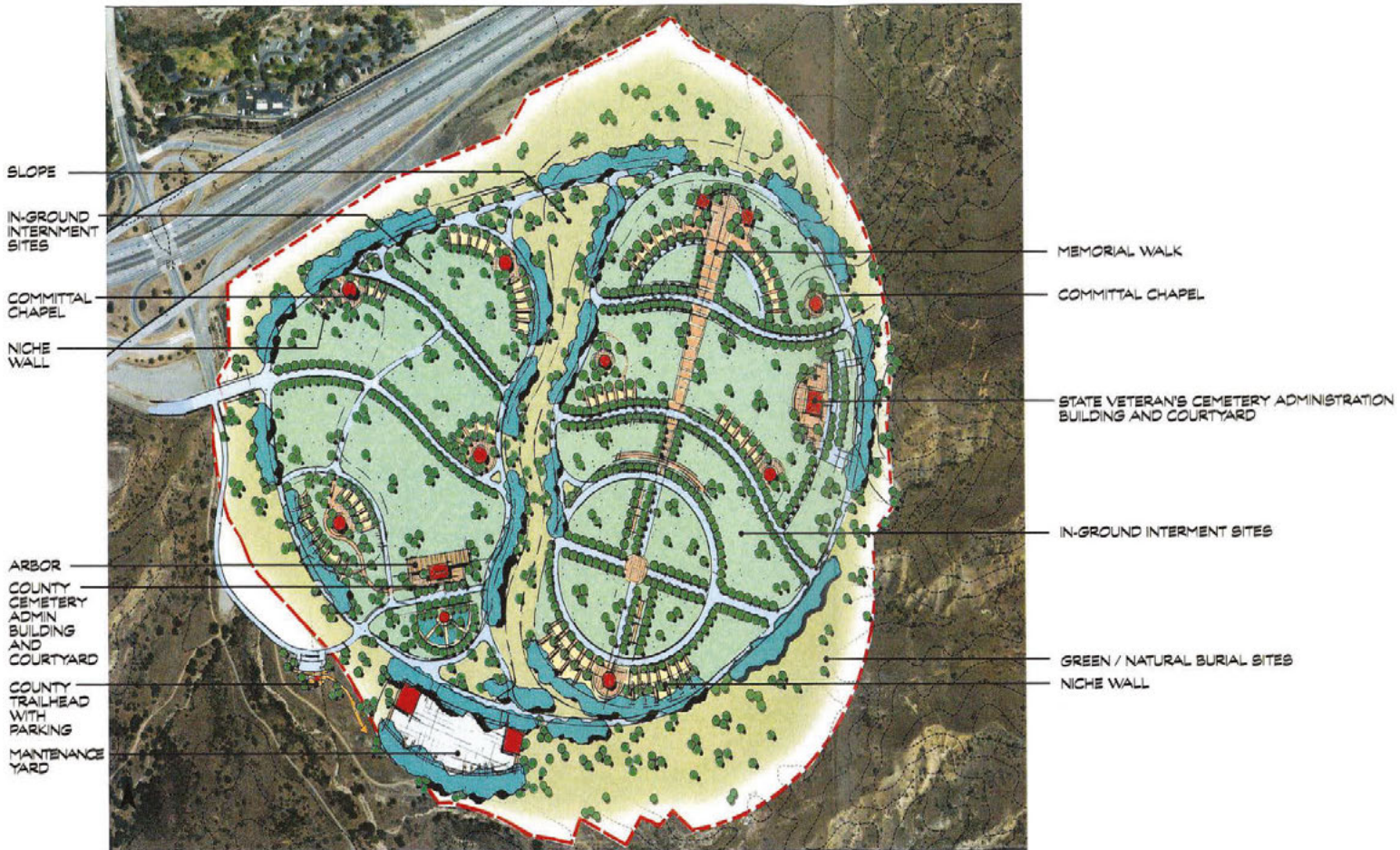
H: Aerial Photo of Gypsum Canyon (91/241) Site in the City of Anaheim 2019



Imagery ©2019 County of San Bernardino, DigitalGlobe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 Google 500 ft

Source: Google Maps

I: Conceptual Design of an OCCD Public Cemetery and Separate Veterans Cemetery for the Gypsum Canyon (91/241) Site in the City of Anaheim



SITE STUDY
GYPSUM CANYON CEMETERY DEVELOPMENT
ORANGE COUNTY, CALIFORNIA

Source: OCCD and RJM Design Group

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J: Chronology of key City of Irvine Great Park Veterans Cemetery, Marine Corps Air Station El Toro and Orange County Veterans Cemetery - related history.

- **March 17, 1943:** Marine Corps Air Station El Toro is commissioned.
- **June 27, 1993:** The federal base closure panel decides to close El Toro by 1999.
- **July 1993:** The Orange County Board of Supervisors proposes to oversee El Toro base-closure planning with an advisory council made up of cities and business and community interests.
- **January 1994:** The El Toro Reuse Planning Authority is formed with participation by the County of Orange, and the cities of Irvine and Lake Forest.
- **July 2, 1999:** El Toro officially closes.
- **May 2001:** The City of Irvine unveils a new citizen-sponsored initiative to overturn 1994's Measure A and replace aviation uses with the Orange County Great Park.
- **March 5, 2002:** Voters pass Measure W, eliminating the planned airport uses at El Toro.
- **March 6, 2002:** The Department of the Navy announces that, rather than giving the land to the county or a city, it instead will sell the base.
- **March 2003:** The County of Orange and City of Irvine adopt a property tax transfer agreement, necessary for the annexation of the El Toro base.
- **Nov. 12, 2003:** Local Agency Formation Commission votes to allow the city of Irvine to annex the 4,700-acre base property, which includes a parcel that will remain under the jurisdiction of the Federal Aviation Administration.
- **Dec. 5, 2003:** The first meeting of the Great Park Corporation board.
- **Jan. 14, 2004:** City of Irvine completes annexation of the old base property.
- **Feb. 16, 2005:** The Navy's auction of El Toro ends, with a developer buying the former base for \$649.5 million.
- **July 12, 2005:** The Developer pays the balance of \$649.5 million total due to the Navy and takes over ownership. The company also presents the first installment of the \$201 million in developer fees for construction of the Great Park to the city of Irvine.
- **Jan. 23, 2006:** Ken Smith organization design team picked by the Great Park Board to create the park master plan.
- **June 20, 2006:** The 2005-2006 Orange County Grand Jury releases a report on the Great Park titled "The Orange County Great Park: Whose Park is It?" and subtitled "Power tends to corrupt, and absolute power corrupts absolutely."
- **June 22, 2006:** The Great Park Board unanimously adopts 12 sustainability goals for the park that are intended to conserve water, reduce energy use, recycle materials, honor the land's history, educate park visitors about environmental preservation and integrate environmental-friendly features into every aspect of the park.
- **July 5 and 6, 2006:** Designers meet with the public to discuss themes of the park – accessibility, artistic concepts, recreational trails and a military memorial.
- **July 11, 2006:** The Irvine City Council votes to reject the findings and recommendations contained in the Grand Jury report that criticized the governance of the Great Park. The decision included the City drafting a response to the report. The Council also earmarked

\$300,000 for any lawsuit. At the same meeting, the City Council accepts a pledge by the Developer to sponsor the Great Park Balloon.

- **Sept. 13, 2006:** A proposal to allow the same developer to build 5,875 more houses at the Great Park wins preliminary City Council approval. Under the plan, the Developer would reduce by 30 percent the commercial and industrial development originally expected at the former El Toro Air Station. The proposed transaction also calls for the Developer to give 402 acres to the Great Park Corporation for inclusion in the public portion of the park, bringing the size of the public portion of the park to 1,749 acres.
- **Oct. 12, 2006:** Ken Smith organization design team releases a draft master plan for the Great Park. Revisions to the design reveal for the first time how the 1,347-acre park and its neighboring housing developments and commercial projects will interact.
- **January 2007:** The last major pollution cleanup at the old El Toro base begins. Thirty-five pumps begin drawing up 390 gallons of polluted groundwater per minute, around the clock. The remediation is expected to cost the federal government \$42 million and take 30 years.
- **October 2009:** The Developer transfers title of Amended and Restated Development Agreement (ARDA) site to the City of Irvine.
- **March 2014:** The Irvine City Council approved support of State Assembly Bill 1453 that provides for the California Veterans Administration (CalVet) to develop a conceptual plan that could be used as part of an application to the U.S. Department of Veterans Affairs for a grant proposal for a State run veterans cemetery on the City of Irvine 125-acre site known as the ARDA.
- **September 2014:** State Assembly Bill 1453 is signed by Governor Jerry Brown and enables CalVet to contract with the California Department of General Services (DGS) to manage the overall development of a State veterans cemetery on the ARDA site. DGS and CalVet contracts with the private sector Owen Company that developed the “Concept Plan for the Southern California Veterans Cemetery.”
- **June 2016:** The 333 page \$500,000 CalVet Concept Plan for the Southern California Veterans Cemetery is finalized and the report is available on the City of Irvine website, “2016 Concept Plan for the Veterans Cemetery in the Great Park”. This concept plan includes a first phase 30-month timeline for a State-managed and -operated veterans cemetery on the Irvine ARDA site to be constructed and opened at a projected cost of over \$77 million. This first phase would accommodate burials for the first ten years.
- **April 2017:** The City of Irvine City Council, at their April 4 meeting, votes in favor of proceeding with working with CalVet and the U.S. Veterans Administration to develop the 125-acre ARDA site with the goal of opening on Veterans Day 2019. Included in this approved City Council motion was the City of Irvine’s commitment to provide funds toward this project from its Great Park account. Later, in this same meeting, as it was concluding, one of the Irvine City Council members changed a prior vote, resulting in a new motion being passed by Council members opposed to the ARDA site being used for the veterans cemetery. This new motion reduced the amount the City of Irvine would contribute to Phase 1, giving the State and Federal governments a three-month deadline

to provide their share of Phase 1 costs and lastly directing Irvine City staff to pursue a possible land-swap alternative if the State failed to meet the funding amount and timeline defined in the City Council's approved motion.

- **May 2017:** Assemblywoman Quirk-Silva received support from Governor Jerry Brown to include \$30 million in the pending State appropriation to be used towards Phase 1 of the State veterans cemetery project on the ARDA site.
- **June 2017:** The Irvine City Council votes to identify the Strawberry Field/Bake Parkway site as the preferred site for the veterans cemetery and authorizes the City to pursue the "land swap". One of the outcomes of this decision resulted in the cancellation of the potential State \$30 million grant for the ARDA site. There was concern by some in the Irvine community of the accuracy and equity of the proposed "land-swap" that included appraisal values of the Strawberry Field/Bake Parkway site, appraised as agricultural use, at \$68 million and the ARDA site, appraised as parkland use at \$4 million.
- **June 2017:** The purpose of California State Senate Bill 96 was to amend California Military Veterans Code section 1410 to change the specified site from the former Marine Corps Air Station El Toro to the Bake/Parkway site aka Strawberry Field/Bake Parkway. In June 2017, the Strawberry Field/Bake Parkway site referenced in Senate Bill 96 was concurrently in the process of being swapped with the ARDA site, In June 2018, City of Irvine voters by a majority vote of 63 percent defeated Measure B thereby rejecting the "land swap".
- **December 2018:** The Irvine City Council instructs its City Manager to perform an analysis on using the Great Park area designated to become an 18 hole golf course as an alternative site. Results from this study have not yet been released.
- **December 2018:** The Orange County Board of Supervisors assigned to the OCCD the land [Gypsum Canyon (91/241)] that had been previously donated to the County. The land is to be used exclusively for either open land, or a cemetery (either public, veterans, or a combination). OCCD is currently evaluating the Gypsum Canyon (91/241) site for possible public cemetery, possibly combined with a veterans cemetery. The Grand Jury is not aware of any official or formal process underway by City, County or State officials to plan a veterans cemetery at this site.
- **February to May 2019:** State Assembly Bill 368 was introduced and was approved by a 10 to 0 vote by the State Assembly Committee on Veterans Affairs. Assembly Bill 368 has been forwarded to the Assembly Appropriations Committee. This Bill's intent is to supersede the previously approved Senate Bill 96 and will establish the City of Irvine ARDA site as the designated site for the State veterans cemetery. The intent of Assembly Bill 368 is to amend California Military and Veterans Code section 1410. There are concurrent congressional efforts underway to gain United States Department of Veterans Affairs financial support for a veterans cemetery in Orange County.

