

Humboldt County Grand Jury



2012-2013
Final Report

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Humboldt County
Grand Jury
825 Fifth Street
Eureka, California 95501-1153
<http://co.humboldt.ca.us/grandjury>

June 30, 2013

Honorable Dale Reinholtsen, Presiding Judge
Superior Court of California
County of Humboldt

The Grand Jury thanks you for the services you provided this term. I am pleased to announce that the 2012-2013 Humboldt Grand Jury has completed its duties. The following report is the result of their many hours of voluntary service. While we began with 19 members, due to health concerns of three jurors and two who moved out of state, this year's report was completed by our remaining 14 members.

The jury considered numerous complaints, conducted approximately 120 interviews, and inspected several public facilities located throughout Humboldt County. In addition, we examined a broad range of documents provided by both public and private parties. The following individual reports were produced for those general topics and the specific complaints that, when investigated, resulted in the following recommendations. Some reports are required by mandated statutes.

In conclusion, the 2012-2013 Humboldt Grand Jury extends its sincere appreciation to county and local government personnel as well as to the private citizens who aided us in accomplishing our work. We also thank the concerned citizens of Humboldt County who brought issues to our attention. We particularly wish to thank the County Counsel, the Chief Administrative Officer, the Sheriff's Office, and the numerous county support staff for their indispensable assistance. Finally, we wish to thank the Humboldt County Board of Supervisors for their collective support of the Grand Jury and their serious consideration of the reports we have prepared.

Respectfully yours,

Robert D. Dunlap
Foreman, Humboldt County Grand Jury

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**HUMBOLDT COUNTY GRAND JURY
2012-2013**

Robert D. Dunlap	Foreman
Michael Adams	
Jennie Barnes	
Frank Cope	
Phyllis Coy	
Jonathan Flyer	
Bonnie Sue George	
Carolyn Green	
Bill Hassler	
Chris Johnson	
Rafael Leon	
Judith Little	
Al Parodi	
Judi Pollace	
Don Thompson	
Janet Waddell	
Roger Ward	
Elaine Weinreb	
Richard Yeider	

The above listed jurors are residents of Arcata, Cutten, Eureka, Ferndale, Fortuna, Loleta, McKinleyville, Myrtle town, and Trinidad.

INTRODUCTION

MISSION, HISTORY, AND OPERATION OF THE HUMBOLDT COUNTY GRAND JURY

MISSION

The Grand Jury is a civil institution that operates under the direction of the State Superior Court of the County of Humboldt. Its mission is to monitor the performance of local governments—county, cities, special districts, and certain boards and commissions. In a nutshell, the purpose of the Grand Jury is to provide oversight over elected and appointed officials and the departments they operate. One of the Grand Jury’s goals is to make sure that citizens are getting the services they pay for with their tax dollars. Another goal is to make sure that all citizens are treated fairly by their local governments.

The Grand Jury consists of a voluntary panel of citizens, serving a twelve-month term. Some of the issues it investigates originate with citizen complaints; others are mandated through state law; and others may originate with the jury members’ observations of potential problems.

The Grand Jury does not deal with criminal issues, and if these come up during the course of an investigation, the investigation is turned over to the District Attorney for further action.

The Grand Jury has no authority over state or federal government agencies, or Indian tribes, and cannot investigate them.

HISTORY

The Grand Jury system originated in English law during the Middle Ages, and was brought to America by the first colonists. Each of the colonies subsequently adopted some form of the Grand Jury system. The California State Constitution requires that a Grand Jury be impaneled annually in each of the 58 counties.

OPERATION

The 2012-2013 Humboldt County Grand Jury consists of 19 citizen volunteers selected, formally charged with their responsibilities, and sworn in by the Presiding Judge of the Superior Court. Confidentiality regarding the identity of complainants, witnesses, and their statements is a core component of the oath taken by the jurors.

Since some problems cannot be totally solved in a one-year period, it is customary for Grand Juries to look at unresolved issues studied during the previous year and evaluate

the degree of improvement that has resulted. Issues that were still unresolved as of June 30, 2012, when the term of last year's Grand Jury ended, were examined by the current Grand Jury. The responses made by officials to these problems, and the current Grand Jury's evaluation of these responses, are published in an appendix at the end of this report. The 2012-2013 Grand Jury also studied several new issues in depth, and formal reports on those issues follow.

Many additional issues were studied that did not result in formal reports, either because the initial complaint proved to be without merit, or because the government agencies involved were already on their way to solving the problems.

SEMPERVIRENS PSYCHIATRIC HEALTH FACILITY

INTRODUCTION

The Health, Education, and Social Services committee of the Humboldt County Grand Jury investigated the Sempervirens Psychiatric Health Facility. The Grand Jury finds that Sempervirens provides a critically needed service for Humboldt County and neighboring counties.

BACKGROUND

The Sempervirens Psychiatric Health Facility, which is operated by the County of Humboldt, provides inpatient hospitalization for evaluation and treatment of severe acute psychiatric episodes posing a danger to self or others, or for individuals who are gravely disabled due to mental illness. It works in conjunction with numerous social service agencies.

APPROACH

The Health, Education, and Social Services committee visited Sempervirens, focusing on the physical condition and management of the facility as well as patient care. The majority of admissions to Sempervirens are initiated by police officers under a law commonly referred to as “5150”¹. The Grand Jury interviewed representatives from several law enforcement departments about police procedures and the process of admitting patients to the facility. The Grand Jury also interviewed Patient Advocates to learn about the right of patients confined to a psychiatric unit.

Documents Reviewed:

1. Application for 72 hour detention evaluation and treatment
2. Psychiatric Health Facility Review Protocol
3. Handbook: Rights for Individuals in Mental Health Facilities
4. Patients’ Rights Advocacy Services Guide

¹ Section 5150 et.al. of the California Welfare and Institutions Code defines grounds for detention in a facility for 72-hour treatment and evaluation as “When any person, as a result of mental disorder, is a danger to others, or to himself or herself or gravely disabled.”

5. Sempervirens Information Guide
6. 5150 Criteria

Site Tours:

1. Sempervirens Psychiatric Health Facility
2. The new wing of St. Joseph Hospital

Interviews:

1. Sempervirens staff
2. Patient Advocates
3. Representatives from several law enforcement departments

DISCUSSION

Sempervirens Goals

Sempervirens' goal is to help the patient re-integrate into the community.

Sempervirens Environment

Patients are encouraged to engage with others and to be active participants in their treatment teams. Art work done by patients is displayed. A daily schedule of activities and groups is posted by the nurses' desk. These activities are designed to improve coping skills, promote socialization, physical fitness, creativity, overall mental well-being, and assist clients in working on their own recoveries.

Admittance Procedures

Patients may admit themselves, or be admitted by a police officer, emergency responder, or other medical personnel using a 5150 form.

Medications

Tracking and dispensing of medications is controlled by strict procedures and numerous checks in order to prevent misuse.

Treatment of Minors

Immediate parental consent is not required for the short-term treatment of minors aged 13 and older for acute psychiatric conditions. However, every effort is made to contact the parent or legal guardian as soon as possible. Parental consent is required for long-term treatment. There is no short-term inpatient mental health facility in Humboldt County for juveniles. Younger clients are often sent to the Bay Area for treatment, separating them from their families.

Psychiatric Health Facility Review Protocol

Sempervirens was reviewed by the California Department of Mental Health March 13-14, 2011 and was found to meet the all specified regulations. The next Psychiatric Health Facility review will be in 2013.

Patient Advocate

Two Patient Advocates contract with the Mental Health Branch of Humboldt County to advocate based on the *expressed* interest of the patient, which does not necessarily coincide with the recommendations of the psychiatric staff. The recommendations of the psychiatric staff are based on the *best* mental health interest of the patient.

Patients may call a Patient Advocate at any time. Detailed contact information is posted in at least 11 different locations at Sempervirens. If requested by a patient, the Patient Advocate has a right to attend any meeting of a patient and staff. The Patient Advocate participates in interdisciplinary team meetings concerning treatment, monitoring and planning.

Hearings

For involuntary patients, continued inpatient retention requires hearings on probable cause, which must occur within 72 hours of admittance. Those hearings can be postponed for 48 hours (or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date). If a patient is retained involuntarily in inpatient treatment for longer than seven days, he or she may seek a writ of habeas corpus to obtain release. Currently, hearings are held on Tuesday and Thursday. Sempervirens recently came to an agreement that the patient advocate can call ad hoc meetings as needed.

Discharge

Discharge planning begins upon admission. The Discharge Planner is part of the treatment team and planning is continuous. If a patient to be discharged has no place to go, the Discharge Planner works with other agencies and programs to find a solution.

SUMMARY

The nurses' station does not have an unobstructed view of patients' rooms, creating potential safety and security concerns. In contrast, the nurses' stations at St. Joseph Hospital are designed with completely flat desktops. This issue had been brought to the attention of the Humboldt County Board of Supervisors, and on October 23, 2012, the Supervisors approved the expense to upgrade the stations at Sempervirens. The Grand Jury trusts that the workstation improvements will be made in the near future.

The issue of the number and frequency of hearings available to patients has now been resolved through an agreement with Patient Advocates, who now request ad hoc meetings as needed.

The Grand Jury found the physical facility to be well-managed. The environment is bright and cheerful. The facility is clean and well-maintained, and there are ample therapy options. The staff is well-qualified and performs its duties with care for the patients' well-being.

Sempervirens not only serves Humboldt County's acute psychiatric patients but also serves patients from neighboring counties. The Grand Jury wishes to stress how fortunate Humboldt County is to have this facility. Many counties in California do not have a Psychiatric Health Facility.

The Grand Jury, however, is concerned that there are few if any long-term psychiatric treatment facilities for troubled youth in Humboldt County, and considers it unlikely that any additional facilities will be opened in the near future. The Grand Jury believes that such facilities would be highly beneficial to the families of troubled juveniles who need sustained treatment.

FINDING

Sempervirens provides necessary treatment for acute psychiatric patients from Humboldt and neighboring counties. The staff, including Patient Advocates, is professional and dedicated to its patients.

RECOMMENDATION

The Board of Supervisors should continue to place a high priority on the maintenance of this treatment facility that serves our residents and those of neighboring counties.

REQUEST FOR RESPONSE

Pursuant to Penal Code section 933.05, the Grand Jury requests response from the following:

- Humboldt County Board of Supervisors to respond to the recommendation.

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

HUMBOLDT COUNTY JAILS

SUMMARY

The Jails Committee of the Humboldt County Grand Jury is statutorily required to inspect and report on the conditions at all jails, prisons and holding facilities located in the County. The following report details the findings and resulting recommendations of the current year's (2012/2013) Grand Jury arising out of those inspections, and reviews the response of the County to the findings and recommendations made by the previous year's (2011/2012) Grand Jury.

BACKGROUND

Penal Code Section 919(b) provides that the Grand Jury, "shall inquire into the conditions and management of the public prisons within the county." To fulfill this responsibility, the Grand Jury annually assigns to its Jails Committee the task of visiting and evaluating the physical conditions and management of each jail and holding facility located within the County of Humboldt.

For purposes of fulfilling this requirement, the Grand Jury visited all facilities operated by the Sheriff's Department. It also visited holding facilities operated by city police departments and conservation camps operated by the State of California; the Coroner's Facility; and the County Animal Shelter.

Penal Code Sections 933 and 933.05 also require certain public officials to comment on findings and recommendations made by the previous year's Grand Jury. The officials may agree or disagree with each finding. The officials must also respond to each recommendation made by the previous year's Grand Jury, saying whether or not each recommendation has been implemented, and if it has not been, explaining why not.

The Jails Committee of the 2013 Grand Jury conducted a series of inspections in compliance with those Penal Code provisions, with each facility being visited at least once, and by two or more Committee members. The Committee then compiled a report of its observations and recommendations, and submitted it to the full Grand Jury.

FACILITIES INSPECTED:

Sheriff's Department

- Humboldt County Correctional Facility (County Jail)
- Main Evidence Room
- County Animal Shelter
- Hoopa Sheriff's Station
- McKinleyville Sheriff's Station
- Garberville Sheriff's Station

- Sheriff's Boat Yard
- Sheriff's Work Alternative Program Wood Yard and Farm

City Police Stations

- Eureka
- Arcata
- Fortuna
- Ferndale
- Rio Dell

Humboldt County Probation Department

- Juvenile Hall
- Northern California Regional Facility

Sites Operated by the State of California within Humboldt County

- Eel River Conservation Camp #31
- High Rock Conservation Camp #32

Humboldt County Coroner

DISCUSSION (CURRENT ISSUES)

Although some of the incorporated cities have police departments with holding cells, none of the cities keep prisoners within these cells. Instead, the city police departments transport prisoners immediately to the County Jail. The cities do this primarily to avoid liability issues, and because they often lack adequate staff. In some departments, the holding cells are used as storage rooms.

The Jury notes that the task of managing the County Jail has been and will continue to be significantly impacted by the prison "realignment" process currently underway in California, under which substantial numbers of inmates who would previously have been sent to state facilities are being housed in county facilities. Among the local impacts of that shift are an ongoing shortage of space for inmates at the County Jail that is expected to become more severe, and a change in the composition of the County Jail's population to include more long-term inmates and more serious offenders.

Because that process is in its early stages, it is difficult to predict with any precision what the long-term effects will be locally. Accordingly, the committee recommends that future Grand Juries pay close attention to the situation.

The current condition of the majority of facilities inspected is satisfactory, but some facilities have clearly reached the limits of their useful life. The officers and support staff were knowledgeable and friendly during our visits.

As part of the annual inspection of the jails, members of the Grand Jury interviewed randomly selected inmates at the County Jail, two male and two female. All interviews were conducted separately and in private, and involved the same prepared questions. The inmates appeared to speak willingly and candidly.

FINDINGS

F1. The Hoopa Sheriff's Station is obsolete. Deputies often use the California Highway Patrol station in Willow Creek, which has better communications equipment.

F2. The Sheriff's Work Alternative Program farm is an exemplary program that provides much needed relief from overcrowding at the County Jail.

F3. The Sheriff's boat yard evidence facility has inadequate control and inventory issues. The evidence is not stored, tagged, or organized in a safe, controlled manner.

F4. Some of the cameras in the women's cellblocks of the County Jail are broken.

F5. No full-time maintenance staff member is assigned to the County Jail, although there is enough ongoing maintenance work to warrant such an assignment.

F6. The two conservation camps operated by the State in southern Humboldt have no medical facilities on site. Inmates who become severely ill or are injured are transported to the hospital in Garberville.

Less seriously ill or injured inmates have their ailments diagnosed over the telephone by off-site health care workers. Inmates who require treatment that cannot be provided by onsite correctional officers are transported by prison bus to the state prison at Susanville, a journey of several hours. The buses do not run every day, so sick inmates may have to wait more than a day before being treated. There are no "sick bays" at the conservation camps where contagious inmates can be segregated from healthy inmates.

F7. The inmate interviews conducted by the committee indicate that the Sheriff's correctional facility provides satisfactory or better housing and services to inmates. The inmates indicated that outreach and educational programs are available, and that adequate medical care is available. Some inmates did express concerns that jail staff is not providing inmates with adequate information concerning "jail rules and regulations."

RECOMMENDATIONS

R1. The County should continue its attempt to secure funding for construction of a more modern Sheriff's station in the Hoopa or Willow Creek area.

R2. The Sheriff's Work Alternative Program should be expanded to include more non-violent offenders and inmates as the prison realignment process continues.

R3. The Sheriff's office should develop a safe, controlled, and organized method of storing evidence in its boat yard.

R4. The broken cameras in the women's cellblocks of the County Jail should be repaired or replaced.

R5. A full-time maintenance worker should be assigned to the County Jail.

R6. The County has no jurisdiction over State-run correctional facilities, even those located within the County's borders. The Board of Supervisors should ask our State representatives to investigate possible remedies for problems described in Finding 6.

R7. The Sheriff's office should provide all inmates with written information about the County Jail's rules and expectations when they enter the facility.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses from the following:

- Humboldt County Board of Supervisors to respond to recommendations R1, R2, and R6
- Humboldt County Sheriff to respond to recommendations R1, R2, R3, R4, R5, and R7.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

FOLLOW-UP ON LAST YEAR'S FINDINGS AND RECOMMENDATIONS

In conducting its site interviews and inspections, the 2012/2013 Grand Jury also investigated the County's implementation of recommendations made in the "Jails" section of the Grand Jury's "*2011/2012 Final Report*."

The Grand Jury observed the following during its inspections:

Recommendation #1 (regarding cracked glass at the Humboldt County Correctional Facility): The glass has been replaced.

Recommendation #2 (regarding structural problems at the Evidence Room): Some physical restraints have been built onto the higher shelves in the Evidence Room to prevent items from falling in an earthquake. Some damaged ceiling tiles have been replaced.

Recommendation #3 (regarding structural problems at the Hoopa Sheriff's Station): This issue continues to be a problem. See current year's Finding F1 and Recommendation R1 on pages 11 and 12.

Recommendation #4 (regarding lack of an identifying sign which includes a telephone number at the Garberville Sheriff Station): At the time of the Jury's inspection, there was still no such sign in front of the Garberville station.

Recommendation #5 (regarding need for matching funds to rebuild Juvenile Hall): About 1/3 of the required funds have been allocated, but a source for the remaining 2/3 (about \$2,300,000) has not yet been found. An ongoing effort continues to find such a source.

Recommendation #6 (regarding improving the ventilation and the loading ramp at the Coroner's office): Both the ramp and the ventilation system have been improved.

CITY OF RIO DELL

BACKGROUND

The 2012-13 Cities and Districts Committee of the Humboldt County Grand Jury received a complaint alleging that in or around 2008 1) public official/s employed by the City of Rio Dell committed a number of improper acts that amounted to felony violations of the law in the course of their employment by the City, 2) the City retained the services of a firm named Stokes and Associates to investigate those allegations, 3) Stokes and Associates prepared a report (Stokes Report) that concluded a number of felonies had indeed been committed, and 4) the City failed to take any action to punish the employees involved, or to prevent further, similar conduct. The complaint also stated that a redacted version of the Stokes Report was made available to the public last year. The complainant asked the Grand Jury to investigate the matter, and to determine 1) whether any charges were filed against the official/s involved, and 2) whether an unredacted copy of the Stokes Report should be made available to the public.

APPROACH

The committee conducted numerous interviews during its investigation. The committee reviewed the Stokes Report, other documents, and requested additional documents from the City, the complainant, and the Humboldt County District Attorney.

FINDINGS

F1. The Grand Jury agrees with the complainant and the Stokes Report that felonies were apparently committed.

F2. The Grand Jury found no support for the claim that the release of an unredacted copy of the Stokes Report would serve the public interest.

F3. The City presented a copy of the Stokes Report to the Humboldt County District Attorney's Office for review. The City was informed by the District Attorney's Office that if the City dealt with the employee/s involved, the District Attorney's Office would be disinclined to pursue the matter. The District Attorney's Office has complete discretion with regard to the decision whether to prosecute alleged crimes brought to its attention.

F4. Because the deliberations and/or decisions relating to the employment status of the employee/s alleged to have committed the criminal violations at issue occurred in closed sessions of the City Council, and are thus confidential and protected under the Brown

Act, the Grand Jury was unable to obtain additional information from the City, its public officials, or its city attorney relating to the dismissal/resignation of the offending employee/s.

F5. The City has adopted revised policies and procedures intended to prevent future incidents of misconduct like those at issue.

F6. The complainant did not provide the Grand Jury with any evidence that the City's employees continue to commit crimes, misuse public funds, or otherwise continue the pattern of misconduct substantiated by the Stokes Report.

RECOMMENDATION

In order to more responsibly serve its residents, the City of Rio Dell should continue to improve its policies and procedures. Its employees should receive annual training covering any changes in those policies and procedures.

REQUEST FOR RESPONSE

Pursuant to Penal Code section 933.05, the Grand Jury requests response from the following:

- The City of Rio Dell to respond to the recommendation.

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

THE HUMBOLDT TOURISM BUSINESS IMPROVEMENT DISTRICT

SUMMARY

As of July 1, 2012, Humboldt hotels, motels, inns, campgrounds, and vacation rentals are required to pay an additional 2% assessment, in addition to the Transient Occupancy Tax² already paid by these businesses in most areas of the County. This additional 2% assessment will finance a new tourism business improvement district, that consists of the entire County except for the areas governed by Blue Lake and Rio Dell.

The 2% tax is collected by the County and given to a private non-profit agency called the Humboldt Lodging Alliance, for promotion of tourism within Humboldt County.

BACKGROUND

Tourism is one of the core industries of Humboldt County. Visitors are attracted to the natural beauty of Humboldt's oceans, mountains, and redwood forests. Although tourists bring money into the area, stimulating the local economy, they also incur costs. Visitors naturally expect the same police and fire protection, well-maintained roads, safe food, and clean water that they enjoy in their own communities.

These essential services are generally provided by local governments, which in Humboldt include the seven incorporated cities (Eureka, Arcata, Fortuna, Ferndale, Rio Dell, Blue Lake, and Trinidad), and the County itself, which governs unincorporated areas. When the population of a community increases because of an influx of tourists, the need — and the cost of providing these services—increases as well.

These services are mostly paid for by the general funds of cities and the County, although police, fire, and road maintenance are sometimes supplemented by state and federal grants.

To help reimburse local governments for the fluctuating costs of providing these services, in the 1970's the legislature passed Revenue and Taxation Code Section 7280. This legislation gave each county and city the authority to impose a "bed tax," also called the Transient Occupancy Tax, and add that to the cost of an overnight stay at a hotel or other lodging facility. The funds collected were to go into the general fund of the governing entity.

² A tax collected by a county or a city, levied upon hotels, motels, inns, campgrounds, and vacation rentals, which in Humboldt can be up to 10% of the business's gross revenue.

The Transient Occupancy Tax law does not say that the money is to be used for promotion of additional tourism. The cities and counties can choose to do so if they wish, but they are not obligated in any way to do so. Many, but not all of Humboldt's governing entities, took the opportunity to add this tax to their general funds, using it for various public services, such as police, fire protection, and whatever else the local government might deem appropriate.

In the five-year period between July 2006 and June 2011, over \$25 million in Transient Occupancy Tax was collected throughout Humboldt County and six of its seven incorporated cities. (Blue Lake does not collect Transient Occupancy Tax.)

Many local non-profit agencies, such as chambers of commerce, promote tourism, raising much of their own funding through various events, and by dues paid by their members. Sometimes these agencies also request funding from local cities or the County.

The Humboldt County Convention and Visitors Bureau was founded as a non-profit corporation in 1978 for the purpose of promoting tourism.

As a non-profit corporation, the Humboldt County Convention and Visitors Bureau had to raise its own funds, competing with other organizations for community support. The Humboldt County Convention and Visitors Bureau requested each of the cities and the County for donations, but was competing for these funds with local chambers of commerce and other civic improvement associations. Between 2006 and 2011, it received about 12% of all Transient Occupancy Tax funds collected in Humboldt, or a little over \$3 million.

Initially the Humboldt County Convention and Visitors Bureau included the Humboldt Film Commission, a group whose purpose was to attract film-producers to Humboldt; however the Humboldt Film Commission broke off from the Humboldt County Convention and Visitors Bureau four or five years ago, and became another competitor for funding.

In 2012, some local hoteliers decided to create their own source of public funding, which, unlike the "bed tax", would be dedicated solely to the promotion of tourism, and which they alone would control. Following the example of some other California communities, they decided to form a Tourism Business Improvement District taxing each lodging business 2% of each fee received from a traveler for a night's lodging. Every business that already paid Transient Occupancy Tax to a city or the County would have to pay an additional 2% assessment which, however, would not go to a city or the County, but is allocated directly to the Tourism Business Improvement District.

The Humboldt County Convention and Visitors Bureau took on the task of forming the district, and did so under the supervision of Civitas, a Sacramento-based planning and legal firm.

A Business Improvement District differs in some interesting ways from more commonly known methods of taxation. A Business Improvement District is more like a homeowner's association than a special district dedicated to providing a public service such as water or firefighting. Technically, the revenues collected are known as "assessments" and not "taxes."

Conflict of interest laws do generally apply to Business Improvement Districts; they are also required to adhere to the Ralph M. Brown Act, which requires open, publicized, and agendaized meetings; and they must conform to the Public Records Act. The Humboldt Lodging Alliance is a "mutual benefit corporation" that has agreed to follow the conflict of interest laws, the Brown Act and the Public Records Act.

Usually in California, in order to pass a new special tax, 2/3 of the residents in an area must first approve the imposition of the tax at the ballot box. But in determining whether or not a Business Improvement District will be created, it is not the number of individual voters that count, but rather the number of dollars that each affected business will bring to the table. In other words, a large business has more weight in deciding whether or not a Business Improvement District will be formed than a small business does.

In a Business Improvement District, only properties or businesses that will benefit from the specific activities proposed must pay an assessment. Once the Business Improvement District is formed, all such properties and businesses must pay into the fund, whether or not they initially approved the Business Improvement District's formation.

The procedure for forming a Business Improvement District is strictly spelled out by state law (Streets and Highways Code Section 36620-36630). First, businesses which together will pay more than 50% of the revenue in each area must petition for the district's formation. However, the businesses are not counted numerically, but weighted by the amount of revenue they will bring in. A few large businesses can outvote a greater number of small businesses.

Once it is determined that there is enough support to form the district, ballots are sent out to each affected business. However, as in the petitions, the ballots are weighted according to the amount of revenue the business will bring in, giving the advantage to large businesses. If a business does not send in a ballot, it is counted as a "Yes" vote.

The revenue estimates in Humboldt County and its incorporated cities were based upon the amount of Transient Occupancy Tax paid by each lodging business. Blue Lake and Rio Dell do not participate in the Humboldt Tourism Business Improvement District, and businesses located in those jurisdictions do not pay the 2%.

Public hearings on the formation of the Humboldt Tourism Business Improvement District were held by the County Board of Supervisors, and by the City Councils of each of the five participating cities. There was some dissension at the public hearings,

especially from businesses located in Shelter Cove, but all six entities passed resolutions approving the formation of the Humboldt Tourism Business Improvement District.

State law requires a Business Improvement District to be managed by a non-profit agency composed solely of businesses that will benefit directly from the assessments charged. In this case, the managing agency would have to consist solely of hoteliers.

The Humboldt County Convention and Visitors Bureau itself could not fill this role, since its membership included a wide variety of local businesses and individuals not specifically involved in the lodging industry. The Humboldt County Convention and Visitors Bureau helped create a new agency, called the Humboldt Lodging Alliance, to manage the new Tourism Business Improvement District. The Humboldt Lodging Alliance then contracted with the Humboldt County Convention and Visitors Bureau to manage its affairs. The Humboldt Lodging Alliance also signed a contract with the County of Humboldt, enabling it to receive the 2% tax revenues.

Both the Humboldt County Convention and Visitors Bureau and the Humboldt Lodging Alliance have the same address, telephone number, and the same Executive Director.

There is, however, a key difference between the two agencies. The Humboldt County Convention and Visitors Bureau is free to do business essentially as it wishes, provided it does not violate California law. The Humboldt Lodging Alliance on the other hand is dealing with public funds, and therefore must adhere to the Brown Act, the Public Records Act, cannot use publicly collected funds in any ways that will not specifically benefit the businesses that provide the funding, and cannot co-mingle its funds with those of other agencies, including the Humboldt County Convention and Visitors Bureau.

APPROACH

Members of the Administration and Finance Committee of the 2012/2013 Grand Jury studied the formation of Tourism Business Improvement Districts, the laws concerning the assessment and collection of Transient Occupancy Tax, and in particular the formation of the Humboldt Tourism Business Improvement District. Sources of information included:

- The sections of the California Code concerning Business Improvement Districts and Transient Occupancy Taxes. (There are no sections in the code to date dealing specifically with Tourism Business Improvement Districts, although it may be assumed that they fall under the category of Business Improvements Districts.)
- The contract between the County of Humboldt and the Humboldt Lodging Alliance; the contract between the Humboldt Lodging Alliance and the Humboldt

County Convention and Visitors Bureau; and the District Management Plan prepared by the Humboldt Lodging Alliance.

- The list of board directors for both the Humboldt Lodging Alliance and the Humboldt County Convention and Visitors Bureau; the Articles of Incorporation for both agencies, and updates provided by the Humboldt County Convention and Visitors Bureau to the Secretary of State.
- Recordings of public hearings and public meetings provided by Humboldt Access, in which the formation of the Humboldt County Convention and Visitor's Bureau was discussed.
- A list provided by the County Treasurer of all businesses paying Transient Occupancy Tax and a statement from the County Treasurer providing a count of weighted ballots. That statement expressed his opinion that the count permitted the formation of the district.
- Interviews with officers of the Humboldt County Convention and Visitors Bureau and the Humboldt Lodging Alliance.
- Attendance at a public meeting of the Executive Committee of the Humboldt Lodging Alliance.

FACTS

Under an agreement with the County, the Humboldt Lodging Alliance will manage the Humboldt Tourism Business Improvement District, which will last for five years, at which time the district sunsets.

The Humboldt Lodging Alliance is financed by a 2% assessment charged on all overnight rentals of less than 31 days. These funds are collected by the County and the cities on a quarterly basis.

The Humboldt Lodging Alliance will use the funds for the promotion of tourism in Humboldt County, and will follow the procedures of a Management Plan which has been approved by the County.

The County and the cities will continue to collect Transient Occupancy Tax, usually 10%, from all lodging businesses except those in Blue Lake. The Transient Occupancy Tax will not go to the Humboldt Tourism Business Improvement District; it will continue to go to the general funds of the various cities and the County to be used as those entities see fit.

The Humboldt Lodging Alliance must adhere to the Brown Act and the Public Records Act.

FINDING

The Humboldt Lodging Alliance is a new agency handling public funds, and one without much obvious experience in such matters. It has, however, signed a contract with the County, in which the County provides oversight.

RECOMMENDATION

The County should provide training in the Brown Act and the Public Records Act to officers of the Humboldt Lodging Alliance; and should monitor the operations, minutes, and financial records of the Humboldt Lodging Alliance to ensure that the Brown Act is being followed; that all expenditures conform to the requirements of the Humboldt Lodging Alliance's District Management Plan; and that co-mingling of funds between the Humboldt Lodging Alliance and Humboldt County Convention and Visitors Bureau has not occurred.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses from the following:

- County Administrative Office to respond to the recommendation.
- Humboldt County Board of Supervisors to respond to the recommendation.
- Humboldt Lodging Alliance to respond to the recommendation.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

ADDITIONAL MATTERS OF INTEREST

The 2012-2013 Humboldt County Grand Jury received numerous citizen complaints, which were all evaluated and handled appropriately. The Jury interviewed a wide range of government and agency representatives about areas of interest. Several lines of inquiry stimulated these interviews. Following is a summary of topics and issues the Grand Jury pursued in some depth, but which did not result in official reports. The Jury presents these summaries because it believes these are issues of interest to the citizens of Humboldt County.

HUMBOLDT COUNTY FAIR ASSOCIATION BOARD

The Humboldt County Fair Association has successfully operated our County Fair for over one hundred years. The County and its residents have benefited from the hard work of these dedicated volunteers. The Grand Jury recently became aware of some troubling allegations regarding the Humboldt County Fair Association Board of Directors and its adherence to the State's Open Government Law, the Brown Act. The Grand Jury interviewed several current and former Fair Board members, some of whom appeared voluntarily, while others did not respond to the Grand Jury's request to appear and were subsequently subpoenaed. The Jury also interviewed County administrative staff and local elected officials. While no consistent evidence was found to support these allegations, it is evident that the Fair Board was remiss in receiving Brown Act training and that the County has not provided reasonable oversight in this regard. Since these issues have surfaced, the Fair Board has received some Brown Act training and the County has become more aware of its responsibility to provide greater oversight of Fair Board operations.

HUMBOLDT COUNTY BRIDGES & LEVEES

The Grand Jury studied the state of the County's bridges and levees, interviewing personnel from the Humboldt County Public Works Department and the Humboldt County Harbor, Recreation and Conservation District, as well as the Board of Supervisors, and a private expert. The Jury concluded that the bridges are being maintained in accordance with state law, and in as good a fashion as the County's limited finances allow. Further, the Jury concluded that the County and other public agencies are acting proactively to compensate for future sea level rise around Humboldt Bay and to mitigate the potential impacts of natural disasters such as floods and tsunamis.

AB-109 - PRISON REALIGNMENT

The Grand Jury conducted numerous interviews with law enforcement and justice system officials, focusing on the impact of AB-109 realignment on Humboldt County. While the consensus of law enforcement indicated that there has been an increase in property crime since implementation of realignment, insufficient data exists at this time to clearly

indicate that the AB-109 early release population is the cause of the increase. It was also found that, in most cases, no consistent process or database is available to law enforcement to identify suspects as early release parolees/probationers. It was indicated the technology exists to have this data available to officers in the field, but budget constraints have precluded upgrades that would provide it. The Jury concluded that the full impact of realignment cannot be accurately assessed until more statistical data is available.

THE HUMBOLDT COUNTY BUDGET PROCESS

The Grand Jury diligently researched the Humboldt County budget and the budget process, but no concrete recommendations can be made at this time. It is difficult to track next year's budget, because the County does not know how much money it is getting from the State until the State's budget process is complete. At this stage of the fiscal process (May 1), the emphasis is on establishing budget priorities, rather than on generating specific dollar amounts for agencies and departments. Public input seems to be restricted to "Open Humboldt" which is a problem for those portions of the County that do not have high-speed internet, a reality that exists in many parts of the County, especially in the southern and eastern areas.

**APPENDIX:
UPDATE OF ISSUES DISCUSSED
BY THE 2011-2012 GRAND JURY**

FOREWORD

The Grand Jury's function is to investigate complaints and/or reports of problems in local government functions, and to prepare reports setting out its findings and recommendations concerning those issues. Those reports are then made available to the public, and submitted for response to the governmental entities responsible for overseeing the operations at issue, in most cases the County Board of Supervisors. Those governmental entities are then required to prepare written responses to the Jury's findings and recommendations and to state whether and/or how the recommended changes in practices and procedures will be implemented. The succeeding Grand Jury has the option to investigate and report on the responses to the recommendations made by its predecessor, and on the progress made in implementing those recommendations. This is the 2012-2013 Grand Jury's report on the responses to the four reports issued by last year's jury. As to each of those reports, this report will 1) set out the Jury's findings and recommendations, 2) set out the responses to those findings and recommendations, and 3) briefly assess whether and to what extent those recommendations have been implemented.

I. HUMBOLDT COUNTY PLANNING COMMISSION³ (Grand Jury Report # 2012- L&J-01)

The Law and Justice Committee of the 2011/2012 Grand Jury investigated the procedures and practices of the Humboldt County Planning Commission, and made several findings and recommendations:

Recommendation 1

Finding: The members of the Planning Commission are not offered the opportunity for formal training for their responsibilities. On-the-job training by interaction with the Community Development Services Department⁴ or by learning from the recommendations of the Community Development Services Department is limited.

³ Humboldt County Planning Commission: This is a committee of seven citizens who have been appointed by the County Board of Supervisors to serve as the County's planning agency with a mandate to render decisions on most matters related to planning and development.

⁴ Humboldt County Community Development Services Department: When the 2011/2012 Grand Jury originally wrote this report, a large department called the Humboldt County Community Development Services Department contained the County Planning Department and several other county departments. Since that time, the Board of Supervisors dismantled the Community Services Department, separating its various functions. At the time that this update was written (March 2013), the County Planning & Building Department bears primary responsibility for the application of law and policy relevant to land use and development. It serves as technical advisor to both the Planning Commission and the Board of Supervisors. The County Planning & Building Department, which is staff, should not be confused with the County Planning Commission, which is appointed directly by the Board of Supervisors, and has the power to make decisions.

Recommendation: Provide training to the members of the Planning Commission. Perhaps having specialized training in different areas for different members could lend depth to the knowledge required for analyzing particular recommendations.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be partially implemented.

The Board of Supervisors agrees that training for all Planning Commissioners should be available dependent on adequate funding. However, the Board of Supervisors does not agree that individual Planning Commissioners should receive more specialized training over other Planning Commissioners and will not implement this portion of the Grand Jury's recommendation.

2012/2013 Grand Jury's comment on this response:

There is no clear procedure for training of Planning Commissioners, or for funding training as needed. There is no guide, such as a checklist of required and available training, established for Commissioners. It would seem reasonable for the Board of Supervisors to direct the County Administrative Officer⁵ to develop a checklist of required and recommended training, as well as a training resource guide, for Planning Commissioners, and maintain records of training completion.

Recommendation 2

Finding: The Planning Commission has no independent staff to support them. The Planning Commission relies on the Community Development Service Department for support, knowledge, evaluations and background services to be able to come to their decisions.

Recommendation: Provide support staffing to the Planning Commission for validating findings upon which planning decisions are based. Such support staffing needs to be independent of the Community Development Services Department. Also political guidance by the Board of Supervisors may need to be provided for particularly sensitive recommendation to facilitate implementation of those recommendations.

⁵ County Administrative Officer: The person responsible for carrying out the decisions of the Board and seeing that policies and procedures are implemented and executed.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted.

The Planning Commission reviews and acts on matters related to planning and development as the Planning Agency for the County of Humboldt. Making and validating findings is the responsibility of the Planning Commission. The Board of Supervisors should not offer political guidance to the Planning Commission on matters pending before them as this may be construed as unfairly influencing a land use decision. Planning staff is delegated the authority to advise the Commission on plans, ordinances, and policies and to provide professional and technical advice and make recommendations as required by law. The Planning Commission reviews all evidence presented by Planning staff and makes independent decisions and recommendations to the Board of Supervisors after conducting public hearings. There is no need to create a separate support staff, nor is there sufficient funding to duplicate this job.

2012/2013 Grand Jury's comment on this response:

It appears that the administrative and technical support provided by Planning staff is sufficient for the Planning Commission to fulfill its duties.

Recommendation 3

Finding: Thorough review of the materials provided to the Planning Commission by the Community Development Services Department can be compromised by the limited time available for the evaluation of that material.

Recommendation: Provide sufficient time to the Planning Commission for evaluating materials provided by the Community Development Services Department. Involving Planning Commissioners with expertise in a particular topic addressed within a given Community Development Services Department staff report during the development of that report could facilitate analysis and shorten evaluation time.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented where warranted.

The Board of Supervisors agrees that the Planning Commissioners should have sufficient time to review materials. However, staff cannot, by law, prevent applicants, opponents or third parties from giving the Planning Commission information of whatever length at the last minute.

Involving Planning Commission members during the development of a staff report may create a conflict of interest or perception of a conflict of interest. This recommendation could also possibly create a Brown Act violation.

2012/2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

Recommendation 4

Finding: The presentations to the Board of Supervisors of the Planning Commission decisions are not made by members of the Planning Commission but by members of the Community Development Services Department. Thus, questions from the Board of Supervisors are answered by Community Development Services Department, not the Planning Commission which performed the analysis of the materials presented. Some recommendations in the presentations by members of the Community Development Services Department have differed from those of the Planning Commission. Without direct input from the Planning Commission to the Board of Supervisors, the Planning Commission can be overruled or sidelined by the Community Development Services Department.

Recommendation: The Planning Commission should present their decisions upon appeal, or factual findings upon request directly to the Board of Supervisors, and to be available to support their reasoning. Recommendations which differ from those of the Planning Commission should be independently presented to the Board of Supervisors.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented where warranted.

The Board of Supervisors agrees that the Planning Commission may choose to communicate directly with the Board of Supervisors in an open meeting. However, this is not necessary as the Planning Commission's decisions and the reasons supporting their decisions are captured by a resolution, findings, and/or the minutes. These documents are conveyed to the Board of Supervisors.

2012/2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

Recommendation 5

Finding: Up until recently, the infrequency of the meetings of the Planning Commission appears to have resulted in lengthy delays of the update, review and publication of the General Plan.

Recommendation: Increase the frequency of the Planning Commission's meetings.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented as warranted.

The Board of Supervisors agrees that the frequency of Planning Commission meetings should increase dependent upon community and project needs. However, to increase the meetings arbitrarily would place an undue burden on the volunteer Planning Commissioners.

2012/2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

Recommendation 6

Finding: Public input to the Planning Commission by citizens wishing to present material pertaining to their requests, appeals, or complaints is limited to 3 minutes and restricted as to the location as to where they may address the Planning Commission.

Recommendation: The Board of Supervisors should instruct the Planning Commission to request estimates of required time from citizens appearing before the Planning Commission before their appearance and schedule those citizens accordingly.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted.

The Board of Supervisors agrees that the Planning Commission should request the number of speakers per meeting and proceed with their agenda accordingly. However, it would not be good practice to allow some speakers more time than others. Giving all speakers an equal amount of time promotes ethical and equitable practices and also gives everyone an opportunity to express their opinions.

2012/2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

Recommendation 7

Finding: There are no term limits in place for Planning Commission members thus restricting the influx of fresh thinking and new ideas.

Recommendation: Establish a limit of two consecutive 4-year terms to assure a periodic turn over in the Planning Commission's make-up.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted.

The Board of Supervisors disagrees with this recommendation as acquiring a set of skills related to land use matters can take some time and it would therefore be ineffective to limit the term of a Planning Commissioner. In addition, Planning Commissioners serve on an at will basis, meaning the Board of Supervisors can either fill or vacate their Planning Commission member at any given time.

2012/2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

II. WHO'S WATCHING THE WATER? (Grand Jury Report # 2012- HESS-01)

Grand Jury Report 2012-HESS-01 deals with the Public Health Department's Division of Environmental Health's public drinking water sampling program. Responses were requested on all five recommendations from the Humboldt County Board of Supervisors. The HESS⁶ Committee of the 2012/2013 Grand Jury reviewed these responses and subsequently met with a representative of the Public Health Department's Division of Environmental Health on January 8, 2013. The Committee was particularly concerned with determining if the response to Recommendation 1 had in fact been implemented, but all five of the responses were discussed.

Recommendation 1

Finding: There is only one person that does water sampling at the Division of Environmental Health, while there are four food inspectors.

Recommendation: Cross-train food inspectors to do water sampling.

The Humboldt County Board of Supervisors responded as follows:

The recommendation has been implemented.

The Department of Health and Human Services, Division of Environmental Health, Consumer Protection program works to prevent illness and injury caused by unsafe or unsanitary conditions through inspections of food facilities, pools, water system testing, public education and enforcement. One staff person is primarily responsible for water program inspections including sampling. However, according to the department, all field staff in the Consumer Protection program are also trained in water sampling, and can collect samples as needed.

2012/2013 Grand Jury's comment on this response:

The representative of the Health Department confirmed that all food service employees are trained on water sampling and receive annual updated training.

Recommendation 2

Finding: Food and water inspections are done separately by different inspectors.

Recommendation: Train food inspectors to take a water sample at the same time they are performing their routine inspections. This would relieve the water system owner from

⁶ Health, Education, and Social Services committee of the Humboldt County Grand Jury.

taking a sample, delivering it to a private laboratory and paying for that service. The cost of County lab work could be added to the yearly permit required by the Division of Environmental Health without a significant increase of cost to the Division of Environmental Health and a potential savings to the owner.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted or reasonable.

Having the Division of Environmental Health collect water samples would probably not decrease costs to the operator because good inspections would not necessarily align with water sampling schedules required by state law and could require additional trips for quarterly or monthly sampling. Having the Division of Environmental Health take on water sampling responsibility would increase costs to the Department because significant additional sampling would be required. Additionally, the Division of Environmental Health does not have the authority to require operators to utilize the County for sampling so any charge would need to be separate from the yearly permit fee.

2012/2013 Grand Jury's comment on this response:

See comment on Recommendation 3.

Recommendation 3

Finding: Private property owners bring in their own water samples for testing, but they are not “trained” water samplers, and there is no mechanism for assuring the integrity of these samples. (e.g. Is the sample actually from where it is supposed to be from?).

Recommendation: Have the Division of Environmental Health conduct all water sampling to ensure sample integrity.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted or reasonable.

Under *California Code of Regulations section 64212. Bacteriological quality monitoring*, state small water system operators shall collect at least one sample quarterly and submit results to the local health officer. Food facility water system operators also have the responsibility for sampling under state law. If all food facility and state small water system samples were collected by the Division of Environmental Health an estimate 100 additional water collection trips would be required annually. Providing this service would result in additional costs to the program and require additional staff and fees to the operators. Additionally the Board of Supervisors does not have legal authority to require operators to utilize the Division of Environmental Health for all water sampling.

To help insure sampling integrity the County initially provides operators written and verbal instructions on water sample collection as well as a demonstration of proper sample collections techniques. The Division of Environmental Health has knowledge of the water systems falling under County regulation and collects at least one sample a year.

2012/2013 Grand Jury's comment on this response:

The California Code of Regulations (Section 64212: Bacteriological quality monitoring) specifically requires the private water system operator/owner to collect the quarterly water samples and bring them to a state-certified laboratory for analysis. The Division of Environmental Health relies on the owners/operators to do this correctly.

The regulations do not provide any mechanism for enforcement if the owner/operator does not comply with the quarterly sampling requirement.

If a problem with water quality is discovered, the private owner/operator is expected to notify its customers to boil the water or use bottled water.

The Division of Environmental Health does check for water quality improvement and the adequacy of filtration systems.

Recommendation 4

Finding: The Division of Environmental Health monitors public food establishments that use their own water systems once per year.

Recommendation: The Division of Environmental Health should inspect private water systems serving the public quarterly instead of annually.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted or reasonable.

Changing the inspections of private water systems from once per year to four times per year would result in a significant cost increase to water system owners. Providing this additional level of regulatory oversight would increase expenses for the program and require additional staff. These expenses would ultimately be passed on to the operators in the form of increased fees for the program. The Division of Environmental Health believes that a once per year County inspections combined with required sampling and State inspections is an adequate level of regulatory oversight for protection of public health and safety for a food facility or small water system. The California Department of Public Health also inspects the public water systems in Humboldt County once every two to five years. These inspections are very thorough and include a review of the physical

setting, condition of the water system components, maintenance records, testing results, an interview with the operator, and possibly collection of a water sample.

2012/2013 Grand Jury's comment on this response:

Increasing oversight is simply not possible given the Department's level of staffing.

Recommendation 5

Finding: There are no signs to inform the public when private water systems were last inspected by the Division of Environmental Health.

Recommendation: Post signs indicating the date of the last inspection.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will not be implemented, because it is not warranted.

Food facility operators are required by state law (*Health and Safety Code Section 113725: Inspections report availability*) to maintain a copy of the most recent routine inspection report and make it available to the consumer upon request. The operator is also required to post a sign advising that a copy of the most recent inspection report is available for review by any interested party. The condition of the water supply is indicated on the inspections report. If there is a condition with the water supply threatening public safety, then there will be a boil water notice posted in public view or the food facility will be closed. The Board of Supervisors does not have authority to require operators to post a sign indicating when the water system was last inspected.

2012/2013 Grand Jury's comment on this response:

At restaurants, food and water inspection reports are available upon request. The Department's goal is to have these reports available on-line.

III. PLANNING & BUILDING DEPARTMENT (Grand Jury Report # 2012-PW-01)

A citizen complaint submitted to the Grand Jury in 2011 alleged mistreatment by the Community Development Services Planning Division, and claimed that Planning Department staff had purposefully delayed processing an application for a Determinations of Status and related Certificates of Compliance for a several parcels contained within a larger division of land. The Grand Jury issued a final report (2012-PW-01) on the matter which did not specifically find that the mistreatment alleged in the complaint had occurred. However, the report did find that the Planning Division had a number of practices or procedures that were "troubling" or "disturbing," and that those

practices or procedures were likely to adversely affect customer service and/or departmental efficiency. Accordingly, the report made eight recommendations for changes to the Planning Division practices and procedures. The Board of Supervisors responded to those recommendations in due course, stating in sum that each of the recommendations either had been or soon would be implemented to the extent possible.

Recommendation 1

Finding: Hourly rates for the same service to an applicant may vary due to the “burden” rate used. The burden rate equaling an employee’s salary added to the cost of that employee’s benefits. We understand that individual burden rates are used, rather than an average rate calculated across a class of employees of equivalent rank and duty. As an example, a member of the public requesting services for a Determine of Status might pay a higher or lower hourly rate for the same service depending on which planner is assigned.

Recommendation: Burden rates used in the calculation of hourly billing rates for cost recovery purposes should be an average of the realized rate applicable to a given civil service employee class, rather than a specific employee. For example, the billed rate for work performed by a senior planner should be the same across that classification.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented.

The Planning Division has stated that they will work to modify their billing system to use average hourly rates instead of individual employee hourly rates effective June 1, 2012.

2012/2013 Grand Jury’s comment on this response:

The recommendation has been fully implemented. The Planning Division has provided documentation demonstrating that it now bills based on average hourly rates within classification levels, as recommended and directed.

Recommendation 2

Finding: The hourly rate charged to the customer is not divulged on the billing statement. We understand that new billing software installed and in use since November of 2011 will provide more clarity to the customer and accountability within the Planning Division. We understand that the new statements will show the time spent on a particular task but will not show the hourly rate; that calculation left to the recipient of the bill.

Recommendation: The billing software should be modified to allow an hourly rate to be expressed; listed for each task appearing on the billing summary statement.

The Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented.

This change was implemented by the department in January 2012. The billing software has been modified and billing statements should now show the time spent on a particular task as well as the hourly rate.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to be in the process of being implemented. The Planning & Building Department reports that the Planning Division "is currently transitioning" from a paper-based system for tracking projects to the on-line OnTrack system, and expected to complete that process by the end of March 2013. As part of that process, Planning will provide its customers with billing statements – available on-line – that set out the hourly rate billed and the specific task performed for each entry. Planning also requires its planners to maintain task logs and to enter "Task Codes" and/or "Task Notes" for all billings to facilitate this process. The Grand Jury has seen concrete evidence of these changes in billing practices.

Recommendation 3

Finding: The billing statement shows an abbreviated description of the service provided for each task being charged. For ease of communication between the person performing the task and the person doing the billing, a billing code is used. While this is convenient for Planning Division personnel, it is not for the customer paying for or trying to understand the service rendered. Current software provides for additional detail but is not consistently used.

Recommendation: A detailed description of services rendered should be provided for each task appearing on the billing summary statement. Any billing for an activity lacking a coherent description should be subject to dispute by the applicant without penalty.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented where warranted.

The Planning Division has committed to review all task descriptions and will make modifications as needed to make sure the billing activity clearly communicates the work that was performed. However, it is not evaluated and modified by Planning with a goal of promoting clear billing communication in the most cost effective manner. This will help minimize the costs to the applicant while improving the detail appearing on the billing statements.

There currently should not be a charge or penalty to customers for time spent by Planning answering billing questions or dealing with disputes and this practice is not anticipated to change.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to have been fully implemented, as noted in Recommendation 2. The changes to its billing practices implemented by the Planning Division, along with the assurance that Planning does not now charge for time spent on billing issues, and does not intend to do so, seem to directly conform with the Grand Jury's recommendations.

Recommendation 4

Finding: We received and reviewed the official case file from the Planning Division associated with the complaint examined for the purposes of comparing and confirming documents in the complainant's file. We were unable to confirm the time line because documents in the official case file were not identified as to the date and time received.

Recommendation: All documents received by the Planning Division should be identified by date and time of receipt. Affixing an inked stamp revealing the date and time of receipt is preferred. All documents so received should reside within the official file established for the matter under consideration.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be partially implemented, because it is not possible in all cases.

The Board of Supervisors agrees that date stamping documents for official case files is an important practice. Planning will work to provide training and reinforcement to staff on the procedure of date stamping to ensure that it is done consistently on official documents. However, some legal documents and maps that are ultimately filed with the Recorder cannot be date stamped.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to have been implemented, since the Planning Division has reportedly carried out additional staff training to reinforce the practice of date-stamping documents, as recommended. Planning staff will not be asked to date stamp documents that must be filed with the Recorder, as these original documents cannot be altered.

Recommendation 5

Finding: The official file in the case examined does not contain records revealing the content of substantive telephone conversations or verbal agreements even though such conversations apparently occurred. Records are confined to electronic mail transcripts.

Recommendation: Detailed notes of substantive telephone conversations or other verbal conversations resulting in agreements, or possibly construed as understandings in principal, should be logged and a copy of such log entered into the applicable case file.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented.

The Board of Supervisors agrees that keeping records of verbal agreements with applicants in the applicable case provides better documentation. Planning has stated that notes of key telephone conversations are routinely made by planning staff and permit specialists. This practice will be continued by Planning and training and reinforcement of the policy will be conducted to ensure that it is done consistently by all staff and that the records are put in the case file.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to be in the process of being implemented; as noted in Recommendation 2. As detailed above, the OnTrack system will allow the customer to review the planners' activities in the case, including reviewing their Task Notes and Task Codes. However, a caveat applies here; it is too early to predict how the changes Planning has made in this area will affect results over time.

Recommendation 6

Finding: We questioned apparent missing records in the official file and were informed that the files get purged following completion of the transaction. For example, billing records are purged.

Recommendation: The full and complete file for all ministerial and administrative transactions should be maintained without purging for a period of time commencing with the conclusion of the particular transaction and concluding with the lapse of the statute of limitations applicable to civil action.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented.

File retention policies and practices will be evaluated and modified as necessary to ensure that no records other than drafts and duplicates are purged prior to the close of applicable statute of limitation periods.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to have been implemented. The Planning Division reports that all billing records are maintained indefinitely on line, and all planning documents are maintained indefinitely in the archives.

Recommendation 7

Finding: We discovered that some Planning Division personnel have assumed, or have been assigned by management, a degree of specialization apparent by their individual activities. We recognize that specialization might be needed to address complex transactions that require unique skills. However, this approach to the utilization of personnel cannot be reasonably justified in the routine processing of ministerial and administrative actions, core skills that any competent planner should possess. Personnel of equal civil service class should be able and available to accomplish the tasks that their class requires, readily substituting for a coworker who might be absent or diverted to other duties.

Recommendation: Personnel of equivalent rank and meeting the minimum qualification for their positions should be both capable of and available for substituting for their peers. All senior planners should be able and available to perform administrative and ministerial actions. They should stand ready to substitute for one another without delay to the queue of customers being served. Management should ensure that planning personnel are afforded training. Management might consider an internal program testing and certifying the skills of planners according to their ranks, ensuring consistency and competence.

The Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented and will continue to be implemented where warranted.

The Planning Division has already partially implemented this recommendation and currently has experienced employees that can and do substitute for each other for most planning functions. Creating a balance between specialized knowledge and skills and fully cross trained staff is a challenge faced by many County departments. For planning, there appear to be two factors that inhibit full implementation of personnel substitution for all cases. They are complexity of function or of the specific project.

The first limitation is related to the complexity of the subject matter and level of experience needed for the work. For example the Determination of Status process and

the application of Subdivision Map Act requirements are some of the most complex functions of the Planning Division. Because of the difficulty it has not been feasible for Planning to train multiple staff on these functions and currently there is only one staff member responsible for this work. Over the last year, Planning has been training a second staff member to add more coverage in these areas.

The second limitation is related to the intricacy of ongoing project applications. The ability to substitute staff on projects varies with the complexity of the project and importance of the project history in processing and decision making. For a complex project, a planner that does not understand the project is not in a good position to help the customer without first becoming familiar with project details. In many cases due to the time involved to accomplish this it is not reasonable or cost effective to cross train staff on individuals projects. Additionally having projects assigned to designated staff provides better continuity of service for the applicant.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to be in the process of being implemented, to the degree possible. The Planning & Building Department reports that Planning is attempting to provide "cross-training of staff," and to encourage those planners who possess particular specialized information to share it with their peers. However, as noted by the Board of Supervisors, it is not feasible for each planner to be familiar with all aspects of planning, and/or with every detail of all the projects under consideration by Planning, to the point where they can all work on any project at any time. Accordingly, as the Board points out, full implementation of the recommendation is not reasonably possible.

Recommendation 8

Finding: The Planning Division never constructively informed the applicant in the case examined of the length of time required to complete the transaction, neither at the time of initial consultation nor subsequently.

Recommendation: Applicants should be afforded an estimate of the time required to process their applications concurrent with the cost estimates already provided at the time of initial consultation. The Planning Division should then either complete the transaction within the estimated time period or, if unable to do so, transmit in writing an explanation for the delay to the applicant and enter a copy into the case file. The written notification would identify the reason for delay whether attributable to the applicant, County offices, or other parties. The notification would supplant the original completion time estimate with another date. If that ensuing date is not met, then the process would repeat. The use of this suggested system might allay future allegations of purposeful delay by establishing a clear and coherent record.

The Humboldt County Board of Supervisors responded as follows:

This recommendation will be implemented.

According to the Planning Division this practice is informally followed under current procedures and as such may not be applied consistently and/or in all cases. Based on the Grand Jury recommendation this practice will be formalized by the Planning Division and should be fully deployed effective June 1, 2012.

2012/2013 Grand Jury's comment on this response:

The recommendation appears to be in the process of being implemented. Planning & Building reports that Planning is still evaluating a cost effective and practical method for formally implementing the suggested practice – providing customers with written notifications that explain the reasons for any delay in processing their applications, and that also provide new estimated completion dates.

IV. AUDITING THE AUDIT (Grand Jury Report # 2012-A&F-01)

The Administrative and Finance Committee of the 2011/2012 Grand Jury investigated the failure of Caporicci & Larson to complete the independent audit of Humboldt County finances as contracted by December 2010. The result of that failure was that several grant applications were not completed, and others were never begun, leading to a substantial loss of potential funding for the County. The report contained five findings and recommendations. Responses were requested from the Humboldt County Auditor/Controller and the Humboldt County Administrative Officer to R1 and R2. Responses were requested from the Humboldt County Counsel and the Humboldt County Board of Supervisors to R1 through R5.

Recommendation 1

Finding: The firm initially selected in May 2010 through the bid process, due to retirements, staffing changes and new ownership was not the same firm contracted in August 2010 and no longer able to complete the annual external audit. A review process was not in place to note changes in the firm's capabilities prior to entering into a contract with that company.

Recommendation: The contract review process should involve a detailed investigation into the firm and qualifications of the individuals assigned to fulfill the contract.

The Humboldt County Auditor/Controller, the Humboldt County Administrative Officer, the Humboldt County Counsel and the Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented.

Auditor/Controller: Respectfully, the recommendation has been implemented to the extent possible given the Auditor-Controller's authority and resources. The auditing firm with which the County of Humboldt originally contracted for its 2009-2010 annual audit (Caporicci & Larson, CPAs) had a sound reputation in California local government circles, and its license was in good standing with the California Board of Accountancy. The Auditor-Controller had met partners of Caporicci and Larson, CPAs, at various training events around the State over the years and they had produced an impression of a professionally competent auditing and accounting firm.

Beyond obtaining knowledge of a contractor's professional reputation and a check of their license status, it isn't clear what further steps would have revealed the potential for the problems that later developed. The contractor certainly had a moral obligation to reveal they were in negotiations to sell their business, and possibly a legal obligation as well in that they were in possession of information that could have made a material difference in the County's decision to contract with them. But the contractor chose not to share that information about the sale during the contracting process, and it is unclear by what mechanism the County of Humboldt could have learned about a possible future sale on its own.

County of Humboldt now has a business relationship with a new auditing firm, Gallina, LLP, which has been completing its auditing engagements in a timely and professionally competent manner, and we expect to be fully current with regard to our audit requirements by the end of this month.

County Administrative Officer: The County Administrative Office will continue to work with the Auditor-Controller and Audit Working Group to investigate the qualifications of any firm selected to perform the County's annual audit. In most cases the Request for Proposal process is used for the selection of an auditing firm.

County Counsel: Before the County enters into a contract with an auditing firm to provide the annual audit, the Auditor, within his authority and resources, investigates the qualifications of such a firm.

Board of Supervisors: The County Auditor-Controller has implemented this recommendation to the extent possible based on his authority and resources. The Board concurs that before the County enters into a contract for the annual audit the firm and individuals working on the audit should be thoroughly reviewed.

2012/2013 Grand Jury's comment on this response:

See comment on Recommendation 2.

Recommendation 2

Finding: Once the County entered into a contract with a poorly performing company, County staff failed to protect the County by not making sure safeguards were in place for monitoring timelines and deadlines. The Grand Jury believes that the auditors were in breach of contract and that the initial contract should have been voided immediately upon discovery of deficient performance.

Recommendation: An aggressive review process must be established to protect the County by making sure safeguards are in place for monitoring contracted work products, timelines and deadlines.

The Humboldt County Auditor/Controller, the Humboldt County Administrative Officer, the Humboldt County Counsel and the Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented.

Auditor/Controller: Respectfully, the recommendation has been implemented to the extent possible given the Auditor-Controller's authority and resources. We are now receiving our audit services in a timely and professionally competent manner. We do have safeguards in place for monitoring contracted work products, timelines and deadlines.

County Administrative Officer: The Auditor-Controller has implemented this recommendation to the extent possible based on his authority and available resources. The County Administrative Office will continue to work with the Auditor-Controller to ensure that safeguards are in place for monitoring the performance of the annual audit.

County Counsel: The Auditor, within his authority and resources, has safeguards for monitoring contracted work products, timelines and deadlines.

Board of Supervisors: The Auditor-Controller has implemented this recommendation to the extent possible based on his authority and resources.

2012/2013 Grand Jury's comment on responses to Recommendations 1 and 2:

The Grand Jury is encouraged by the County's report that adequate procedures are now in place for monitoring the performance of outside auditors, and anticipates that County staff will respond to any similar situation in the future with heightened diligence.

Even though the precise situation at issue – where the County contracted with a firm that had a good track record in the field of municipal audits, only to have that firm purchased by another that had no experience in the field, and no apparent concern for maintaining the original firm’s record of sound performance – is unlikely to recur, the Jury expects the Auditor and County Counsel to consult more effectively in the future concerning any problems that do arise with outside auditors, and expects all County staff to demonstrate a greater awareness of the potential for problems if strict oversight is not exercised.

Recommendation 3

Finding: The one year delay in obtaining the 2009-2010 external audit caused several grant applications to go uncompleted and others to never be initiated at all. This represents a loss of substantial funding opportunities.

Recommendation: The County Counsel’s office should pursue its remedies for loss and damages against the accounting firm, both compensatory and punitive.

The Humboldt County Counsel and the Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented.

County Counsel: The County Counsel office is considering all appropriate legal options in consultation with county representatives and will proceed in a manner that best represents the interests of the County.

Board of Supervisors: The County Counsel office has implemented this recommendation. The Board, County Counsel and County staff have reviewed and considered all legal options available with regard to damages related to the audit. The County has and will continue to pursue these options in a manner that best represents the interests of the County.

2012/2013 Grand Jury’s comment on this response:

The outstanding invoice from the auditing firm has not been paid and the County does not intend to pay it. The Grand Jury has learned that the County does not intend to take legal action to obtain repayment of the \$15,000.00 it paid the Caporicci firm, or to recover additional damages for any lost grant funding. Reasons identified are 1) the Caporicci firm may countersue for the unpaid balance of its contracted fees in the event the County filed such a lawsuit, 2) it would be difficult to establish any recoverable damages based on lost grant funding because it would be hard to prove that the County would have received any such grants, which are competitive, and 3) the legal requirements for initiating a class action lawsuit against the Caporicci firm in

association with other adversely affected governmental entities are very high, and would be costly and time consuming. In sum, the County's view is that pursuing legal remedies against the Caporicci firm would be expensive and difficult, and that any possibility of a positive result does not justify the expense.

Recommendation 4

Finding: The County has not undertaken action against the auditing firm for the recovery of the initial fee, voiding outstanding invoices or seeking damages.

Recommendation: The Board of Supervisors and its Administrative Staff needs to ensure itself that its legal counsel is sufficiently knowledgeable and experienced to handle all of the County's legal needs, including the capability for litigation.

The Humboldt County Counsel and the Humboldt County Board of Supervisors responded as follows:

This recommendation has been implemented.

County Counsel: The Office of the County Counsel is staffed with highly knowledgeable and experienced attorneys, all of whom handle litigation as the workload permits. When the County is faced with litigation that involves a special area of expertise, or when the workload and resources in the office do not allow for the litigation to be kept in office, outside counsel is retained.

Board of Supervisors: The County Counsel office is staffed with knowledgeable and experienced attorneys to the extent possible given resources. The County utilizes outside counsel for litigation when it involves a special area of expertise or during periods of high workload. Using outside counsel is a cost effective option because it provides for litigation when needed without ongoing staffing costs.

2012-2013 Grand Jury's comment on this response:

This response appears to address the recommendation as written.

Recommendation 5

Finding: Other counties and cities within the state of California have reported similar problems with the firm initially retained for the preparation of the external audit.

Recommendation: The County should contact the State's attorney general's office to determine if the state feels that any action should be taken against the initial accounting firm for an apparent pattern of behavior occurring in multiple local government jurisdictions.

The Humboldt County Counsel and the Humboldt County Board of Supervisors responded as follows:

This recommendation requires further analysis.

County Counsel: Such action will be taken if deemed appropriate and in the best interests of the County.

Board of Supervisors: The County will continue to evaluate possible courses of action against the initial accounting firm to determine what is appropriate and in the best interests of the County. This recommendation will be considered as part of that process.

2012-2013 Grand Jury's comment on this response:

The Attorney General's Office represents the state, not individual governing bodies within the state, and thus would not represent the County in this matter. Nonetheless, the Grand Jury continues to believe that the County should 1) inform the Attorney General's Office about its experience with the auditing firms involved, and 2) urge that office to take any appropriate action to prevent similar malfeasance in the future.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.