

EL DORADO COUNTY  
2015-2016 GRAND JURY  
REPORT



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LANDSCAPING AND LIGHTING  
ASSESSMENT DISTRICTS IN  
EL DORADO HILLS

CASE 15-03 • JUNE 2, 2016

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Public Release  
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# EL DORADO COUNTY 2015-2016 GRAND JURY

## *LANDSCAPING AND LIGHTING ASSESSMENT DISTRICTS IN EL DORADO HILLS*

Case 15-03 • June 2, 2016

### **SUMMARY**

Landscaping and Lighting Assessment District (LLAD) assessments upon constituent property owners within the El Dorado Hills (EDH) Community Services District (CSD) were investigated. Our investigation revealed that the assessments, collected for the CSD on the county property tax bills, may not be accurately assessed and accounted for.

- Assessments increase and decrease without clearly identifiable reasons.
- Although supposedly based upon actual costs, about half of the LLAD's fiscal year (FY) 2015-16 assessments have been set at exactly fifty percent of the previous year.
- Some LLADs have very large fund balances relative to budgeted expected costs.
- CSD overhead is applied to LLAD budgets without any clear methodology.

### **BACKGROUND**

An LLAD is a local special district created and governed pursuant to §22500 et seq. of the California Streets and Highway Code, also known as the Landscaping and Lighting Act of 1972. It provides funding for maintenance and improvement of landscaping and lighting facilities within the district's boundaries through assessment of its constituent property owners. The assessment is not an ad valorem tax<sup>1</sup>; it is a benefit assessment. Individual parcels within any given LLAD can be assessed a different amount based on the benefit that parcel receives from the improvements and services provided.

Each LLAD's assessment is meant to cover the costs of installing and maintaining public facilities and improvements within that LLAD. The assessment covers sidewalks, parking lots, turf and play areas, landscaping, ground cover, shrubs and trees, irrigation systems, drainage systems, street and accent lighting, fencing, entry signs, materials, supplies, utilities and equipment, including labor.

From an accounting standpoint, an LLAD's relationship to the CSD is analogous to that of a company's division having an independent revenue stream, direct expenses, and allocated overhead.

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<sup>1</sup> Ad Valorem (Latin meaning "according to value") tax is based on property value (like property taxes or vehicle licensing taxes).

More than twenty-five LLADs exist within the El Dorado Hills CSD. Most often, an LLAD is created within a CSD by a developer planning to build a subdivision of homes. At that time, while owning 100 percent of the parcels, the developer and the CSD will agree on a formation document that creates and governs that particular LLAD. Formation documents for LLADs in the EDH CSD vary from one LLAD to another. The formation document specifies the parcels to be in the LLAD, the total number of parcels, any areas or parcels to be ceded to the CSD, and the developer's responsibilities for initially installing lighting, landscaping, fencing, and other improvements. The same formation document may specify an initial parcel assessment amount, when the assessment will start, a maximum assessment amount, and a yearly inflationary factor that may be applied. The deliverance of a specific improvement or the commencement of collecting assessments may be linked to certain milestones in the build-out of the subdivision.

A purchaser of a parcel within an LLAD must be informed of the existence of the LLAD and the provisions of the governing documents at the time of purchase. A vote by the parcel owners within the LLAD is required to modify the provisions of the governing document. A subdivision may be part of both an LLAD and a Homeowners' Association.

## **METHODOLOGY**

- Interviewed employees of the EDH CSD and other CSDs
- Reviewed EDH CSD Budgets
- Reviewed EDH CSD Comprehensive Annual Reports
- Reviewed EDH CSD LLAD Engineer's Reports
- Reviewed similar reports from other CSDs

## **ASSESSMENTS INCREASE AND DECREASE WITHOUT CLEARLY IDENTIFIABLE REASON**

Approximately one-half of the active LLADs had their FY 2015-16 assessment reduced to exactly fifty percent of previous year levels. There was no explanation given for this substantial reduction.

The Promontory LLAD was one of the LLADs that had its assessment reduced by 50% in FY 2015-16. However, in the FY 2014-15 budget, the Promontory LLAD was one of "...six landscape and lighting districts that continue to struggle financially due to incorrect cost assumptions during formation as well as a cost inflationary factor not being included in some areas." Similarly, the FY 2013-14 budget used nearly identical wording to describe the Promontory LLAD. So, for two back-to-back budget years, the Promontory LLAD was struggling financially, yet, the assessment was cut in half. This does not seem logical. The CSD LLAD budget should, at a minimum, contain the rationale for the decrease.

**ASSESSMENTS ARE SUPPOSED TO BE BASED ON ACTUAL COSTS**

The FY 2014-15 CSD budget identified the need to base the LLAD assessment on the actual costs of installation and maintenance of improvements: "... several changes to ensure LLAD fund accountability to provide for more accurate cost allocations will take place. Such changes include implementation of tracking CSD employee work time spent at a given LLAD, development of standardized routes of travel, requiring contractors to identify cost-per-LLAD, and research into fleet tracking software. Through such operational changes the CSD will be equipped to provide more accurate costs associated with each LLAD."

The following year's CSD budget, for FY 2015-16, contained nearly identical verbiage. Both budget statements can be reasonably understood to be indicative that tracking of actual costs by LLAD still proves elusive.

**THE LLADS HAVE LARGE EXCESS FUND BALANCES RELATIVE TO COSTS; THIS APPEARS CONTRARY TO THE SPIRIT OF THE LAW**

Projected data from the FY 2015-16 budget:

LLAD	Est. Fund Balance End FY 2014-15	Budgeted Costs FY FY2015-16	Fund Balance as Pct. of Costs
Stonegate	\$104,145	\$35,965	290 %
Promontory	\$732,658	\$383,217	191 %
Silva Valley	\$264,280	\$68,998	383 %
Creekside A & B	\$301,089	\$104,930	287 %
<b>Total</b>	<b>\$4,251,917</b>	<b>\$1,480,058</b>	<b>287 %</b>

Clearly, the fund balances for all LLADs are well in excess of actual or expected expenses and have been increasing year over year as shown in the following table. Below is actual data for the prior four years:

Fiscal Year	Actual Fund Balances	Actual Expenses	Fund Balance as Pct. Of Expenses
2014-15	\$4,001,628	\$1,083,024	369%
2013-14	\$3,663,164	\$1,247,499	294 %
2012-13	\$3,446,680	\$1,142,322	302 %
2011-12	\$3,192,070	\$1,232,828	259 %

The Landscaping and Lighting Act of 1972 raises questions about whether surplus fund balances should be used to reduce assessments in the following year. To the extent that maintaining some taxpayer funds for subsequent years is allowed, it is uncertain how large a balance can be maintained and for how long.

Streets and Highway Code §22656 is excerpted below:

If there is a surplus or a deficit in the improvement fund of an assessment district at the end of any fiscal year, the surplus or deficit shall be carried forward to the next annual assessment to be levied within such district and **applied as a credit or a debit, as the case may be, against such assessment.**

The grand jury asked one EDH CSD employee for the justification of large fund balances as opposed to a strict interpretation of §22656. The interviewee cited attorney-client privilege.

Another EDH CSD interviewee countered that Streets and Highway Code §22660 provides the ability to accumulate reserves within limits. §22660 (a) is excerpted:

The legislative body may, by resolution, determine that the estimated cost of any of the proposed improvements described in subdivisions (a) to (d), inclusive, of Section 22525 is greater than can be conveniently raised from a single annual assessment and order that the estimated cost shall be raised by an assessment levied and collected in installments over a period not to exceed five fiscal years.

Similarly, subparagraph §22660 (b) provides for collection of installments over a period not to exceed 30 years for expected significant project expenditures.

However, subparagraph §22660 (c) states that the resolution adopted by the governing body **shall** generally identify the improvement to be made, the approximate cost of the improvement, the number of annual installments to be made, in which fiscal years the installment will be collected, etc.

The EDH CSD Board of Directors has not adopted resolutions identifying the improvement(s), the approximate cost, etc. An EDH CSD employee opined that §22660 (a) and (b) says **may** and not **must** or **shall**; therefore, §22660 (c) does not apply. However, the grand jury thinks that a more reasonable statutory construction is that a legislative body **may** determine the need for more funds, and if they do determine that, they **must** set forth their reasoning, including the costs and the timing, in a resolution. This interpretation is more rational than the one set forth by the CSD employee.

To be clear, the grand jury believes in the desirability of having an appropriate level of reserves arrived at transparently and thoughtfully as §22660 provides, and not funds accumulated capriciously or arbitrarily.

It appears undeniable to this grand jury, that the crafters of the Landscaping and Lighting Act did not want fund balances to continually accumulate without a specified goal or project(s) in mind. The EDH CSD may or may not be violating the **letter** of the law, yet, it seems clear that it is ignoring the **spirit** of the law.

### CSD OVERHEAD IS APPLIED TO LLAD BUDGETS WITHOUT A CLEARLY ARTICULATED METHODOLOGY

Overhead costs include administrative overhead, county collection fees, and professional fees. Direct costs include things such as direct wages, benefits, supplies, services, and capital improvements/replacements. The EDH CSD's independent accountant reported on Applying Agreed-Upon Procedures relative to the LLADs made the following observation: "The calculations generated by the software are not transparent which makes it difficult to understand the application of overhead costs. The District staff has not calculated the overhead costs using actual amounts. There is no comparison or analysis of budgeted overhead amounts to actual overhead amounts."

To clarify, according to the CSD accountant, there is no scrutiny of budgeted to actual overhead costs to validate the software's calculations.

The grand jury compared budgeted overhead as a percentage of budgeted direct costs for each LLAD. The overhead cost as a percent of direct costs varied wildly from one LLAD to another ranging from a low of 5% to a high of 192%. We would expect these percentages to be more closely aligned across all LLADs.

The *county collection fee* is imposed by El Dorado County for collection and disbursement of the LLAD assessment from the taxpayer to the CSD. Similarly, even the allocation of that overhead component varies significantly between different LLADs ranging from \$0.76 to \$9.33 per parcel.

### MISALLOCATION OF CAPITAL EXPENDITURE

"All LLAD's (sic) with an equipment or deferred reserve fund balance will contribute toward 50% of the cost for a medium duty truck replacement (\$978.26/ea.)" - *FY 2015-16 CSD Budget*

Homeowners living in an LLAD with a smaller number of parcels will pay a higher dollar amount than homeowners in an LLAD with a larger number of parcels. It's not even clear that this medium duty truck is used at any LLAD. This would likely be a violation of the Landscape and Lighting Act as well as Proposition 218<sup>2</sup>.

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<sup>2</sup> The Proposition 218 proportionality requirement ensures that the aggregate assessment imposed on all parcels is distributed among all assessed parcels in proportion to the special benefits conferred on each parcel. The special benefit requirement is thus part and parcel of the proportionality requirement.

## INEQUITIES IN ALLOCATION OF REVENUES AND EXPENSES

### **Fees**

When the public's use of a facility located within an LLAD requires a fee for its use, the LLAD does not get any benefit of those fees. Instead, this fee goes directly to the CSD. A few examples are fees collected for picnic rental sites at the Promontory or Lake Forest LLADs and synthetic grass fields at the Promontory LLAD. Yet, the LLAD must bear the full cost of operation, maintenance, repair, and replacement of those improvements.

### **Expense Tracking and Overhead Allocation**

The allocation of expenses and overhead among LLADs overburdens some LLADs and not others.

#### **FY 2014-15 Budget** (Expenses are less any capital expenditure)

LLAD	Expenses	Overhead	Acreage	Exp. per Acre	Overhead per Acre
Promontory	\$314,885	\$26,464	22.5	\$13,995	\$1,177
Bass Lake A	\$33,019	\$10,265	1.1	\$31,017	\$9,331
Bass Lake B	\$41,872	\$17,158	1	\$41,872	\$17,158

#### **FY 2015-16 Budget** (Expenses are less any capital expenditure)

LLAD	Expenses	Overhead	Acreage	Exp. per Acre	Overhead per Acre
Promontory	\$376,617	\$93,204	22.5	\$16,739	\$4,142
Bass Lake A	\$35,168	\$8,640	1.1	\$31,970	\$7,855
Bass Lake B	\$21,646	\$5,268	1	\$21,646	\$5,268

### **Notes:**

1. Bass Lake A and Bass Lake B are similar in size and improvements, yet in FY 2014-15 Bass Lake B was budgeted with nearly 70 percent more overhead and 25 percent more expenses.
2. Again, in FY 2014-15, it is hard to imagine how a 1 acre LLAD, Bass Lake B, can be allocated nearly 65 percent of the overhead costs allocated to the Promontory LLAD with 22.5 acres and 2 parks.
3. In FY 2015-16, now the budgeted expenses of Bass Lake B are only half of what they were for FY 2014-15.
4. Notice the wide differences in expenses and overhead per acre between the two years for the same LLAD and between different LLADs within the same year.

## OTHER OBSERVATIONS

A requirement of the Landscaping and Lighting Act of 1972 is a yearly engineer report. The most recent Final Engineer's Report posted on the EDH CSD website is from FY 2013. This document is the basis for the EDH CSD's resolution setting assessments for the LLADs and the budget and is the document that the public would need to use for a majority protest<sup>3</sup>. Therefore, in order to have an adequate public hearing and an adequate opportunity to protest, the report should be posted prior to the public meeting setting the assessments and subsequent thereto. The process for property owners to challenge the assessment levied by the CSD is defined in the Landscaping and Lighting Act and can prove quite onerous.

The 2015-16 Final Engineer's Report was prepared by SCI Consulting Group of Fairfield, CA. The grand jury obtained a copy of this report though it was not on the website. This report is very unclear to lay people and contains misleading information. Its detailed description of some assessment districts' (e.g. Hawk View and Bell Ranch) "...areas maintained and improvements..." do not, in fact, even exist. These LLADs are only in the planning stage and no significant development has yet started on these subdivisions. Similarly, Valley View's list of improvements only partially exist and, in fact, do not exist to the scale described.

In the most recent Engineer's Report for FY 2016-17, there is a nebulous calculation that attempts to determine the general benefit that properties outside of the LLADs derive from their proximity to LLADs. The calculation uses the number of parcels inside the park assessment district and the number of parcels within .25 miles of the park. It is surprising that the numbers of parcels have remained the same in the last four Engineer's Reports.

The Browning Reserve Group of Sacramento, CA published a reserve study in January 2012 that listed assets, current replacement value in 2011, estimated life, and expected replacement costs at the end of service life. The grand jury's cursory review of the Browning Study for the Promontory LLAD showed a current replacement cost for all landscaping, including irrigation and turf, at \$30,015, and sidewalks, curbs, gutters and stamped concrete at \$2,861. We find both of those numbers incredibly low. The Engineer's Report shows Promontory having 18 acres, which also seems to be in error; the CSD told us that Promontory Community Park was 18.72 acres and Kalithea Park is 3.82 acres. Since the Promontory LLAD contains both parks, the Engineer's report should list 22.54 acres for its size and makes the replacement costs all the more suspect.

The grand jury finds it disconcerting that glaring differences in the assets of an LLAD exist between the Browning Study and the SCI Engineer's Report. Equally perplexing was the ease with which the grand jury uncovered some of these blatant differences.

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<sup>3</sup> Majority protest requires support by over 50% of the parcel owners

The FY 2015-16 budget states "staff once again evaluated the Browning Reserve for deferred maintenance, and have budgeted repairs and replacements as needed". However, there is no mechanism in place to reflect that repairs, replacements, retirements, or additions since 2011 are reflected in the Browning Reserve. Similarly, if an LLAD was created and built subsequent to the 2012 report, the Browning Reserve would not include assets from that LLAD, e.g. Valley View. There does not appear to be an up-to-date list of LLAD assets and improvements.

Perhaps it is time for the EDH CSD to form a committee of interested LLAD parcel owners to assist the CSD in the review of the process and the documents provided by these consultants.

### **FINAL REMARKS**

The grand jury found many unusual and inexplicable aberrations in the budgets especially when looking at year-to-year comparisons within the same LLAD or within the same year at different LLADs. That the budgeted overhead costs as a percentage of direct cost can vary from 5% to 192% is incomprehensible. How the county collection fee can be over 12 times greater per parcel in one LLAD versus another? Or, how is the accumulation of excess fund balances, either surpluses or reserves, equal to 4 times expected expenses justified? And, how can anyone who has ever seen Promontory believe they could replace all of the turf and irrigation for \$30,000?

### **DISCLAIMER**

One, or more, of the 2015-2016 El Dorado County Grand Jurors recused themselves from participation in this investigation.

## **FINDINGS**

- F1. Oversight of the LLAD assessment process is lacking
- F2. Assessments vary significantly from year to year with little or no rationale provided for the changes.
- F3. The total fund balances are growing year over year. Some LLADs have fund balances of nearly 400% of expected expenses with no explanation as to why such large balances are warranted or necessary.
- F4. CSD employees were not forthcoming with the grand jury particularly when questioned about the fund balances and the characterization thereof - reserves versus surpluses.
- F5. Allocation of CSD overhead among the LLADs does not have an ascertainable rationale. Budgeted expenses and allocated overhead costs are inconsistent and vary widely between LLADs. Tracking actual costs by LLAD is problematic.
- F6. The SCI Engineer's and Browning Reserve Group reports contain very obvious errors and/or misstatements that need to be examined by CSD staff with a critical eye toward detail.
- F7. Fees collected by the CSD for usage of improvements within various LLADs are put into the CSD general fund and not used to offset LLAD expenses for maintaining those improvements.

## **RECOMMENDATIONS**

- R1. When assessments vary significantly from one year to another, the CSD should explain the rationale for the change.
- R2. The CSD should continue its recent efforts to accurately record costs by LLAD and determine a more equitable way to allocate overhead.
- R3. Excessive fund balances should be reduced to a more acceptable percentage of expected future costs.
- R4. The CSD should fully comply with the provisions of §22660 of the Landscaping and Lighting Act and clearly disclose in a resolution when an LLAD is accumulating funds for a future expenditure that is too costly to be paid for out of a single year's assessment.
- R5. A new reserve study should be undertaken to insure assets and replacement costs are accurately portrayed and a mechanism put in place to track repairs, additions, replacements and retirements.
- R6. The LLAD Engineer's report should be reviewed by staff for accuracy and should be posted to the CSD website for public review for a reasonable period prior to adoption by the EDH CSD Board of Directors.
- R7. The EDH CSD Board of Directors should consider the formation of a citizen's advisory group composed of residents in LLADs to review budgeted and actual costs while providing guidance to the board.

## **REQUEST FOR RESPONSES**

Responses to both findings and recommendations in this report are required by law in accordance with California Penal Code §933 and §933.05 by the El Dorado Hills Community Services District Board of Directors by September 7, 2016.

Address responses to:

The Honorable Suzanne N. Kingsbury  
Presiding Judge of the El Dorado County Superior Court  
1354 Johnson Blvd.  
South Lake Tahoe, CA 96150

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to El Dorado County Grand Jury reports to: [courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org).

Reports issued by the 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 Grand Jury.