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Pleasant Hill Recreation & Park District

People, Parks and Programs Since 1951
www.pleasanthillrec.com

June 23, 2008

The Honorable Terence Bruiniers
Presiding Judge
Contra Costa County Superior Court
Department One
725 Court Street
Martinez, CA 94553

Dear Judge Bruiniers:

On behalf of the Board of Directors of Pleasant Hill Recreation & Park District, this is to respond to the findings and recommendations in Grand Jury Report No. 0803.

This response is submitted in accordance with California Penal Code section 933.05. The respondent assumes that the reference to Government Code Section 933.5(a) in the Grand Jury Forperson's letter dated March 27, 2008 was inadvertent.

Please let me know if there is anything else required or if further information is needed. I can be reached at (925) 682-0896, extension 18.

Sincerely,

Robert B. Berggren
General Manager

slk

c: Board of Directors

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(925) 682-1633, Fax

Community Center
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(925) 676-5200, Office
(925) 676-5630, Fax

Senior Center
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Pleasant Hill, CA 94523
(925) 798-8788, Office
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Park Maintenance
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(925) 671-4659, Office
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Winslow Center
2590 Pleasant Hill Rd.,
Pleasant Hill, CA 94523
(925) 937-2707, Office
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FINDINGS

1. The Pleasant Hill Recreation & Park District (District) was created by the voters in the District in 1951 pursuant to California Public Resources Code section 5780 et seq. The District covers approximately nine square miles, has approximately 22,000 voters, and provides parks, recreation facilities, open space, and recreation programs for District residents.

The District agrees with the finding.

2. A five-member Board of Directors (Board) governs the District. The Board is made up of five District citizens directly elected by District voters.

The District agrees with the finding.

3. The District's 2007 – 2008 budget includes approximately \$5.6 million in revenues, of which approximately \$2.4 million is from property taxes on District residences and businesses. The District generates the balance through the provision of services such as sports activities, facility rentals, weddings, dances, and other functions.

The District agrees with the finding.

4. The District has 27 full-time employees, and also hires numerous part-time employees. The subject of this report affects approximately 1,400 former and current part-time employees.

The District agrees with the finding.

5. The District has well-kept parks and extensive recreation programs.

The District agrees with the finding.

A Former District Pension Plan

6. Until 2004, the District, together with 10 similar districts across the state, invested funds in a pension plan on behalf of its part-time employees through the California Recreation District Employee Benefit Plan (Plan). An individual, who died in 2004, administered the Plan.

The District agrees with the finding.

7. The Plan was a 401 (a) FICA alternative plan, in lieu of Social Security.

The District partially disagrees with the finding. The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended the Internal Revenue Code to mandate that employees of public agencies, who are not members of their employer's existing retirement system as of January 1, 1992, be covered under Social Security or an alternate plan. This plan satisfied the OBRA 90 federal requirements.

8. The District's elected Board provided minimal oversight of the Plan, its manager, funds, and investments.

The District disagrees with the finding. The Board of Directors reviewed reports from the CRDEB Plan. Annual audits were completed by independent auditors of the District's financial transactions and no issues regarding the retirement plan were discovered. Retired and former employees who no longer worked for the District were receiving their invested money up to the date of the death of the administrator in 2004. The District was receiving and reviewing reporting for the CRDEB plan, however, it was later discovered these reports were overstated and falsified.

9. An audit performed in 2004, after the death of the Plan administrator, found that approximately \$700,000 was missing. Of that amount, this District's share of the loss was approximately \$283,000. After legal proceedings began against the administrator's estate, a settlement was negotiated in which this District received approximately \$40,100.

The District agrees with the finding. The settlement was agreed upon on the advice of counsel. The settlement was agreed to due to the fact that the assets of the estate were rapidly diminishing and were insufficient to pay the claims.

10. When concerns arose, the District withheld approximately \$17,000 from contributions it would have otherwise been required to deposit under the terms of the Plan. This sum, plus the \$40,100 received by the District as part of the settlement resulting from the suit brought against the Plan administrator's estate, has been deposited in the Local Agency Investment Fund (LAIF). The LAIF is an investment alternative available to local governments and special districts through the California State Treasurer.

The District agrees with the finding. The money was withheld before the legal proceedings referred to finding #9 were instituted.

11. The District has adopted a method to disburse the \$57,100 held in the LAIF to eligible employees. The District was awaiting cooperation from other affected districts, but has voted to proceed even if the other districts do not.

The District partially disagrees with the finding. The District is exploring distribution options to determine the proper and most expeditious way to manage and to distribute funds to covered members. The total settlement amount was allocated among the participating districts on a pro-rata basis.

12. Following the death of the Plan administrator, legal proceedings revealed that he was neither bonded, nor covered by a type of insurance upon which the District could make a claim.

The District agrees with the finding. Records indicate that when the District started in the program, the administrator was bonded.

13. Not including the above-referenced settlement amount, approximately \$155,000, plus interest, remaining in the former Plan belongs to the District. This District attempted, without success, to get the other districts to cooperate in an apportioned disbursement of the Plan's funds.

The District agrees with the finding. As of this date, the other affected Districts have not agreed to the new plan.

14. The District has not secured the services of an agent to manage and distribute the funds remaining in the former Plan. Since some of the retired employees have reached the IRS mandatory withdrawal age of 70 ½, the absence of an agent to handle legally required distributions exposes eligible retirees to potential IRS scrutiny.

The District disagrees with the finding. Following advice from our attorney representing the affected Districts, the Board of Directors voted to retain Chang, Ruthenberg & Long for legal counsel, professional trustee by ING National Trust, and the Administrative Services provided by Poly Comp. However, not all affected districts have agreed. The District is considering the possibility of retaining services on its own. The District is not aware that any participant has been exposed to IRS scrutiny.

15. The District has not replaced the money its employees lost due to the actions of the District's Plan administrator. The District intends to replace only the money that was contributed by employees through their payroll deductions. The District does not intend to replace the money the District contributed to the Plan.

The District disagrees with the finding. A number of Districts contributed to the plan. The Board of Directors has requested that the General Manager submit a plan to fully reimburse the affected employees. The Board of Directors will be making that decision after review of the proposed plan.

16. The District's failure to replace the missing funds for its employees may result in tax problems for employees as they reach retirement age. Since the IRS has no knowledge of the missing funds, it may calculate mandatory minimum withdrawal amounts based on the total amount reported by the District for each employee. The District is aware of this potential. Some affected employees already have reached retirement age.

The District disagrees with the finding. Based on information supplied by Certified Public Accountants, it would appear that the individual employee has no tax liability for funds that were never received.

17. The failure of the District to replace missing funds for its employees may result in tax and/or legal implications to the District. The Plan was made available to part-time employees in lieu of Social Security. As with Social Security, the District has Plan funding obligations with which it has not complied.

The District disagrees with the finding. The District funding obligations were fulfilled once the payment to the Plan was made that represents the employee and Districts contribution. Social Security has a funding obligation as they have a specified payment amount due to the retiree. There is no such obligation for this Plan to pay a specified amount. The employee is entitled to their account balance whatever that might be.

B. The New Plan

18. On September 7, 2006, the District Board unanimously authorized the District manager to sign documents for the District that appointed Public Agency Retirement Services (PARS) as the 457(a) FICA (Social Security) Alternative Retirement Plan's Trust Administrator.

The District agrees with the finding.

19. On October 2, 2006 the District's General Manager signed an Agreement for retirement fund services with Phase II Systems, a California corporation, which does business as PARS.

The District agrees with the finding.

20. PARS is not licensed to provide advice on tax, accounting, legal, investment or actuarial issues.

The District agrees with the finding. PARS as Trust Administrator handles agency personnel and participant inquiries, performs monthly valuations of participant accounts, administers the distribution process, handles all reporting to the Agency, the Participant, and the State Controller, and assures that the Trust complies with

federal and state government reporting requirements. The District's understanding is that an administrative entity such as PARS cannot legally be licensed to provide the advice referred to in the finding.

21. At PARS' suggestion, the District's General Manager signed a contract with Union Bank by which the bank will act as the trustee of the pension funds for the District's part-time employees.

The District disagrees with the finding. The Trustee is required as part of the retirement program...not a suggestion. Union Bank of California as Trustee manages plan assets, holds the plan assets for the exclusive benefit of the plan participants, and distributes benefit payments to the plan participant or his/her beneficiary.

22. The Union Bank contract does not include effective limits on fees that may be incurred by the bank and charged to the District.

The District disagrees with the finding. Union Bank has structured fees for services provided to the Plan. These range from .12% to .005% depending on the collective value of funds under their management.

23. The Union Bank contract permits the bank to make potentially risky investments, such as investing on margin (depositing only a small percentage of the funds actually at risk), and investing in its own paper (investing in the bank itself). Current District practices preclude that from happening.

The District disagrees with the finding. A written investment policy for this Plan dictates an allowable percentage of various investment options to meet the investment guidelines. Commercial paper from the bank itself or any other corporate entity may be allowed if it meets the written investment guidelines. The bank is required by law to make only prudent investments.

24. The Union Bank contract permits oversight by the District, including investment options. The District Board has not done so.

The District disagrees with the finding. The Board of Directors authorized the General Manager to select an investment strategy with the investment objective to provide growth of principal and income...it is expected that dividend and interest income will comprise a significant portion of total return, although growth through capital appreciation is equally important. The two investment options include: HighMark Plus – actively managed mutual funds are selected for equity and fixed income portfolios, and Index Plus – Index-based securities are selected for the equity portfolio and actively managed mutual funds are selected for the fixed income portfolio.

RECOMMENDATIONS

The 2007 – 2008 Contra Costa County Grand Jury recommends that the Pleasant Hill Recreation & Park District Board of Directors:

1. Require the Plan administrator (PARS) to provide the District with quarterly, detailed financial and investment performance reports.

The recommendation has been implemented. PARS provides the District with monthly financial reports and a detailed quarterly financial and investment report.

2. Within three months of this report, appoint a qualified employee to oversee the District's part-time employee pension Plan.

The recommendation has been implemented. The Board of Directors entrusts the day-to-day operations of the District to the General Manager. The General Manager has appointed the Accounting Supervisor to oversee the District's part-time employee pension plan.

3. Within three months of this report, adopt a Board policy to provide fiduciary oversight of the District's part-time employee pension Plan, not less than quarterly, to monitor Plan performance, establish and review investment guidelines, and monitor pension Plan policies.

The recommendation has been implemented. The Board of Directors when reviewing the District's quarterly financial report also reviews the PARS quarterly financial and investment report. The Board of Directors also review the overall District's investment guidelines including the PARS Plan.

4. Within three months of this report, engage the services of a qualified agent to manage the funds in the former Plan, including the transfer of funds to qualified employees.

The recommendation will be implemented as soon as reasonably possible and before September 25, 2008. The Board of Directors approved retaining Chang, Ruthenberg & Long for legal counsel, professional trustee by ING National Trust, and the Administrative Services provided by Poly Comp. However, not all of the affected Districts have agreed to the agreement. The District is considering the possibility of retaining services on its own.

5. Within three months of this report, publish and implement a strategy to fully reimburse the part-time employees for the funds (employee and District contributions) lost due to the former Plan manager's malfeasance.

The recommendation requires further analysis. The Board of Directors has requested that the General Manager submit a proposed plan to the Board to reimburse affected employees. The District expects that the matter will be addressed and decided by no later than September 25, 2008.

6. Continue to closely review proposed investment selections to ensure that pension funds are not invested in potentially risky instruments such as margin accounts or commercial paper issued by the trustee bank.

The recommendation has been implemented similar to Recommendation #3. The Board of Directors when reviewing the District's quarterly financial report also reviews the PARS quarterly financial and investment report. The Board of Directors also reviews the overall District's investment guidelines including the PARS Plan.

REQUIRED RESPONSES

Findings:

Pleasant Hill Recreation & Park District: 1-24

Recommendations:

Pleasant Hill Recreation & Park District: 1-6