

Brian Helmick
Interim Fire Chief



SERVING THE COMMUNITIES OF:
Bethel Island Discovery Bay
Brentwood Knightsen
Byron Morgan Territory
Oakley

September 12, 2017

Contra Costa County Civil Grand Jury
P.O. Box 431
Martinez, CA 94553

Also by email to: ctadmin@contracosta.courts.ca.gov

Dear Members of the Grand Jury:

This letter is the East Contra Costa Fire Protection District's (District) response to Contra Costa County Grand Jury Report #1706, "Funding the East Contra Costa Fire Protection District." The response addresses Grand Jury Findings F1-F7 and F12 and Grand Jury Recommendations R1-R5.

Grand Jury Findings and District Responses:

1. ***"The closure of five of the district's eight fire stations has resulted in slower response times."***

Response: The District agrees. When the District had 8 stations, the average response time was 7:04 minutes; with 4 stations, the average response time increased to 8:19 minutes; with 3 stations, the average response time has been 10:03 minutes.

2. ***"Slower fire district response times increase potential loss of life and property damage."***

Response: The District agrees. Brush and house fires can double in size every 30 seconds. Permanent brain damage can occur if the brain is deprived of oxygen for as little as four minutes and brain death can occur in as little as eight minutes.

3. ***"High ISO rates may increase rates for residential and commercial insurance coverage."***

Response: The District partially agrees in light of information the District has received indicating that the ISO rate increases have *already* increased insurance premiums. ISO ratings range from 1 for the best to 10 for the worst. As of 2002, ISO ratings in the District were 3/9. As of 2010, they were raised to 4/9. Public commenters at District Board meetings have shared that District residents are seeing insurance costs increase by up to 198.2% over a three year span from 2014 to 2017, which, in turn, reduces the value of property within the District.

4. ***“ECCFPD has been unsuccessful in finding sufficient funding to reopen closed fire stations.”***

Response: The District partially agrees. The District has experienced some success in obtaining short-term funding (e.g., 1-2 years) to reopen closed stations, but has been unsuccessful in finding long-term, sustainable funding. One District parcel tax measure failed, one benefit assessment ballot proceeding failed, and most recently, the Cities of Brentwood and Oakley placed utility user taxes on the ballot, which could have funded fire and emergency response services. On a shorter term basis, the cities of Brentwood and Oakley, along with the County, contributed to reopen one station for up to one year, but that station closed again on July 1, 2017, when funding ran out.

5. ***“Three recent tax ballot measures that would have raised revenues for ECCFPD were rejected by the voters.”***

Response: The District partially agrees. The second failed measure referred to in the report was a ballot proceeding to allow the District to impose a benefit assessment on properties with its jurisdiction. Benefit assessments are not taxes.

Also, as stated in response to Finding F4, the proposed, but unsuccessful, utility user taxes placed on the ballot for consideration by the voters of the Cities of Brentwood and Oakley were not District measures. However, both cities planned for resulting revenues partially to have funded fire and emergency response services.

6. ***“Revenue and Taxation Code § 99.02 provides for the voluntary transfer of property tax revenues from one local agency to another local agency.”***

Response: The District partially agrees. While voluntary transfer or reallocation of property tax revenues is possible under Revenue and Taxation Code § 99.02, the Report and the finding fail to recognize or explain the restrictions placed on such a voluntary action. State law requires that the following four conditions be met before a voluntary transfer of property tax revenues can be implemented:

- a. The transferring agency must find that subject revenues are available for transfer;
- b. The transferring agency must find that the proposed transfer will not increase the ratio between the transferring agency’s revenues generated by regulatory licenses, use charges, user fees, or assessments and revenues used to finance services provided by the transferring agency;
- c. The transferring agency must find that the transfer will not impair the transferring agency’s ability to provide existing services; and
- d. Property tax revenues to school entities cannot be reduced. (Revenue and Taxation Code § 99.02(f).)

For the Grand Jury's reference, attached please find an April 29, 2016 memorandum prepared for the District by its Legal Counsel, entitled "Legal Analysis of Proposal to Receive Property Tax Revenue Transfers from Other Agencies in the ECCFPD Service Area."

Finally, the District already receives funds from the County under this state statute in one, limited situation arising from a detachment of a portion of the District's jurisdiction from the Byron Bethany Irrigation District (BBID).

7. ***“Legislation, AB 898 and 899, introduced by Assembly Member Frazier proposes reallocating property tax increment funds from the East Bay Regional Park District to ECCFPD.”***

Response: The District partially agrees. AB 898 proposed to require the County auditor to allocate ad valorem property tax revenues that would otherwise be allocated to the county’s Educational Revenue Augmentation Fund from the East Bay Regional Park District to the East Contra Costa Fire Protection District. This bill would have limited the amount allocated pursuant to these provisions to \$10,500,000 per fiscal year. AB 899 proposed to provide for an election in Contra Costa County for the purpose of reallocating property tax revenues for fire protection services. Neither of the bills was subject to a hearing or vote of the policy committee in the house of origin (the Assembly), and the District understands that Assembly Member Frazier is not pursuing either bill at this time.

12. ***“ECCFPD accepted and implemented recommendations made by the Fire District Task Force.”***

Response: The District agrees. The Fire District Task Force made five recommendations:

- The District was to commission and staff the Knightsen station with financial support from the cities of Brentwood and Oakley. This recommendation was accepted and implemented.
- The parties were to form a grass roots, community based group to educate the public on fire and medical response risks and requirements. This was implemented by the District along with the cities of Brentwood and Oakley.
- A consultant was to be engaged to explore the possibility of a 2016 ballot initiative to bring more funding for fire and medical response services in the District. The cities of Brentwood and Oakley opted to propose city taxes, rather than a more regional measure, in 2016.
- The parties were to consider including the following ideas in a potential 2016 ballot initiative: a) making the ECCFPD an independent district with an elected board, b) changing the District’s name to make it clear it is not a “county” agency, and c) establishing a citizen’s oversight committee to oversee implementation of changes as a result of a successful revenue measure.

The District placed Measure N on the ballot to transition to an elected Board. Measure N passed and the first elected Board will be elected in November of 2018.

The cities' utility user tax measures and companion advisory measures did not (and could not) address the other listed concepts.

- Finally, a master plan for the District was to be completed to address the service needs for current and future populations of the District. The District engaged Citygate Associates to perform a Standards of Cover and Headquarters Staffing Master Plan, which was completed in 2016. Where appropriate and financially feasible, the District has taken steps to implement recommendations in the study.

Grand Jury Recommendations and District Responses:

1. ***“The ECCFPD Board should consider continuing to place tax measures on the ballot that would provide funding to reopen fire stations.”***

Response: This recommendation requires further analysis.

As quoted above, Finding F5 states that three past tax measure attempts have failed. This indicates that any additional funding measure will require significant analysis to determine its feasibility. The District plans to conduct several workshops with the Cities of Brentwood and Oakley, the County, and the unions representing District personnel in hopes of identifying potential funding options to support increased fire service. It is possible that this effort will generate a tax measure that the District will propose or support. It is anticipated that this effort could be completed within the next six months. In any case, significant polling would be necessary as identified below in response to Recommendation R2 before any measure could be appropriately framed and proposed.

2. ***“The ECCFPD Board should consider undertaking market research to better understand how to motivate potential voters to approve ballot measures that would raise funds to increase the number of operating fire stations.”***

Response: This recommendation requires further analysis.

As noted above, significant effort is planned to identify possible funding options and directions for the District. Depending on the options identified, market research may be necessary as well. Should another tax measure be the preferred option developed by the District, market research is very likely to be undertaken. A time frame for this effort cannot be established at this time.

The District intends to undertake a strategic planning process starting within the next six months. The resulting plan may include identification of potential long-term funding options. After this process, the District will be in a position to determine whether a future ballot measure is feasible, and whether / what kind of market research might inform this conclusion.

The District notes that its ability to interface with potential voters through market research is limited under State law, especially once a decision is made to put a measure on the ballot.

3. ***“The ECCFPD Board should consider appointing a district-wide task force to research possible funding opportunities to benefit the fire district and make recommendations to the ECCFPD Board.”***

Response: This recommendation requires further analysis. One multi-agency task force has already studied the District’s funding problems and made recommendations, which the District has implemented as discussed above in response to Finding F12. Additionally, as noted in response to R3, above, the District is preparing to undertake strategic planning, which likely will include a workshopping process with the other governmental agencies to investigate options for additional funding. Should this process indicate another task force is needed, the District will consider forming another task force with a to-be-determined scope, goals, membership, etc.

4. “The ECCFPD Board should consider supporting legislation to reallocate property tax revenues from one or more local agencies to ECCFPD.”

Response: This recommendation has not been implemented but will be considered by the District Board of Directors if and when the District's state representatives or other state legislators are prepared to move this idea forward. This could occur within six months, though it may take until further into the 2018 legislative session.

The District was aware of both 2017 legislative proposals (A.B. 898 and 899), addressed under Finding F7, above. District staff has kept the Board of Directors informed regarding the measures and has communicated with appropriate State legislators regarding these measures. The District understands that neither of the legislative proposals is moving forward at this time.

The District will continue to review and consider supporting any subsequent legislation proposed, and to be a resource to legislators with an interest in helping the District secure a long-term funding solution. However, the District cannot commit to supporting or opposing any particular bill in advance.

5. “The ECCFPD Board should consider negotiating with local agencies to voluntarily transfer a portion of their property tax to ECCFPD.”

Response: This recommendation has been implemented. It also remains the subject of ongoing consideration. The District has communicated with all local agencies in the District's jurisdiction that receive revenues from property taxes to gauge their level of support for voluntary reallocation. Other than the single BBID/County transaction, the District has not seen or heard of any agencies considering a property tax transfer. Furthermore, a significant number of the property-tax-supported agencies have indicated that they do *not* support this option. Though it may be legally feasible, indications thus far are that the idea likely is not realistic. Therefore, while the District acknowledges this option exists, the District does consider it to be reasonably available.

If the Grand Jury has additional questions or concerns, please contact me at bhelmick@eccfpd.org or 925-634-3400. Thank you for the opportunity to increase transparency into the District's funding challenges.

Sincerely,

Brian Helmick
Interim Fire Chief

cc. East Contra Costa Fire Protection District Board of Directors

Memorandum

TO: East Contra Costa Fire Protection District Board of Directors
Hugh Henderson, Fire Chief

FROM: Shayna M. van Hoften, Legal Counsel
Samir Abdelnour

DATE: April 29, 2016

RE: Legal Analysis of Proposal to Receive Property Tax Revenue Transfers from
Other Agencies in the ECCFPD Service Area

At its April 4, 2016 regular meeting, the East Contra Costa Fire Protection District (District) Board of Directors requested Legal Counsel to prepare an analysis of the legality of a property tax transfer proposal presented by Mr. Harold Bray on behalf of a local citizens group calling itself East County Voters for Equal Protection (ECV).

In sum, we conclude that the proposed voluntary property tax transfers from other agencies to the District, as presented, would violate Revenue and Taxation Code section 99.02, absent a change in the law.

I. Background

East Contra Costa Fire Protection District serves approximately 110,000 residents in an area covering 249 square miles. The District receives 7.5% of the property tax revenue generated within its boundaries – also stated as “7 cents of each tax dollar” – as compared to the other fire protection agencies in the County receiving 12 to over 30 cents per property tax dollar collected in their jurisdictions.

The District’s current revenues allow it to operate three fire stations and fund operation of the CalFire Sunshine station during non-fire season, down from nine stations in 2010. In June 2012, voters in the District rejected a ballot measure to enact a \$197 parcel tax for a total of \$4.2 million in additional funds to allow District operation of six stations. Then, in April 2015, property owners in the District rejected a proposed benefit assessment that would have funded District operation of five stations.

In recognition of the District’s structural financial crisis, and resulting inability to provide sufficient fire and medical emergency response services, a multi-jurisdictional taskforce was convened to address the problem. As a result, in November 2015, the City of Brentwood, the City of Oakley, and Contra Costa County adopted resolutions to enter into a Memorandum of Understanding (MOU) with each other and the District to provide funding to the District totaling approximately \$2.2 million over two fiscal years to allow the District to re-open and operate a fourth station

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through June 30, 2017, and to allow the taskforce members to engage outside expertise to assist with developing long-term funding solutions for the District, including through extensive public engagement. Long-term options may include increasing local taxes or assessments to create dedicated funding for fire protection and fire and medical emergency response in East Contra Costa County.

II. ECV Proposal

ECV has proposed a plan to raise \$7.8 million in additional revenue to the District through the voluntary transfer of property tax revenues from other public agencies (the "Plan"). ECV's Plan calls for all public entities within the District's boundaries to agree to transfer 5.2% of their property tax revenues to the District for 3 fiscal years or budget cycles. According to ECV, the Plan would generate sufficient revenue to allow the District to operate six fire stations, without raising taxes on District residents.

Law concerning property tax transfers

Under Revenue and Taxation Code section 99.02 (Section 99.02), a public agency may "transfer any portion of its property tax revenues that is allocable to one or more tax rate areas within the local agency to one or more other local agencies having the same tax rate area or tax rate areas." (Rev. & Tax. C. § 99.02(b).) However, there are four enumerated limitations on property tax transfers under Section 99.02, which require the transferring agency to make the following determinations:

- (1) that revenues are available for the transfer;
- (2) that the transfer will not increase the ratio between the transferring agency's revenues generated by regulatory licenses, use charges, user fees, or assessments and revenues used to finance services provided by the transferring agency;
- (3) that the transfer will not impair the transferring agency's ability to provide existing services; and
- (4) that property tax revenues to school entities will not be reduced.

(Rev. & Tax. C. § 99.02(f).)

This means that the transferring agency, as a precursor to agreeing to the transfer, must declare that the lost property tax will not result in service cuts or in increased use charges, fees or assessments to offset the contemplated property tax transfer.

Legal concerns with ECV's short-term proposal

ECV's proposal presents significant legal concerns.

ECV's presentation materials regarding the Plan call for "equal participation by all public entities" in the property tax funding re-allocation proposal, including school districts. However, under current law, school districts would need to be excluded from the Plan to avoid running afoul of the limitation on transfers in Section 99.02(f)(4).

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Furthermore, the remaining transferring agencies would have to comply with Section 99.02(f)(1)-(3). To that point, ECV's presentation materials suggest that public agencies can "agree to simulate property tax allocation locally through a MOU or JPA," citing as examples the resolutions passed by Brentwood, Oakley and Contra Costa County in November 2015 to provide the District with additional funding. However, those resolutions were not adopted under Section 99.02, and did not require compliance with Section 99.02(f), which creates a significant hurdle.

In fact, Contra Costa County authorized its share of the short-term funding to the District to come from "back-owed SB90 reimbursement," which is a payment by the State to reimburse a local agency for the cost of a state-mandated new program or higher level of service, subject to certain exceptions. (Cal. Const. Art. 13B, § 6; Gov. C. § 17550 *et seq.*) Unlike under Section 99.02, agencies have "complete discretion in the expenditure of funds received" under SB90. (*Kinlaw v. State of California*, 54 Cal.3d 326, 335 (1991); Gov. C. § 17563.) The cities' contributions under the taskforce MOU are coming from one-time revenues from Community Facilities Districts, also not subject to Section 99.02.

Thus, to the extent ECV proposes that agencies "simulate property tax allocation" in a manner that does not require compliance with Section 99.02 – as Brentwood, Oakley, and Contra Costa County did with their one-time allocations – ECV's Plan fails to identify potential alternative sources of revenue, other than property tax revenues, available to agencies to transfer to the District at their discretion.

Requirements for ECV's long-term transfer or re-allocation proposal

ECV characterizes the bulk of its plan as temporary, but it states the initial elements would be a first step. ECV's presentation materials suggest that approval of the Plan will demonstrate a willingness for affected agencies to address the District's funding issues on their own, thereby making it more likely that the State legislature will approve a re-allocation to benefit the District in the future. Legislative re-allocation of property tax revenues at the State level, which may or may not result in a larger share for the District, would require a two-thirds majority of both houses of the State legislature. (Cal. Const. art. XIII, § 25.5(a)(3).) A change to Section 99.02 would require simple majority approval in the legislature. However, as with legislative re-allocation of property tax revenues, a modification of Section 99.02 would not necessarily result in lowering the hurdles for agencies to transfer property tax revenues to the District. Moreover, at this time, no legislation re-allocating property tax revenues or modifying Section 99.02 has been proposed.

If you have further questions or legal concerns regarding the ECV Plan or related matters, please contact Shayna at 415-995-5880 or svanhofen@hansonbridgett.com.