



**CASTLEMONT HIGH  
SCHOOL: CHEATING  
ITS STUDENTS**

---

**ALAMEDA HEALTH SYSTEM:  
LOOMING INSOLVENCY  
OF A CRITICAL  
COUNTY SAFETY NET**

---

**OAKLAND 9-1-1  
COMMUNICATIONS CENTER  
– A CENTER IN CRISIS**

---

# **2019–2020 Alameda County Grand Jury Final Report**



---

**DISASTER PREPAREDNESS:  
HOW READY IS  
ALAMEDA COUNTY?**

---

**ALAMEDA COUNTY  
GENERAL SERVICES  
AGENCY TOO OFTEN  
FAILS AT  
CAPITAL PROJECTS**

---

**JAIL INSPECTIONS  
IN ALAMEDA COUNTY**

*[This page intentionally left blank.]*

# **2019–2020 Alameda County Grand Jury Final Report**

---

---



## **ALAMEDA COUNTY BOARD OF SUPERVISORS**

District One	Scott Haggerty
District Two	Richard Valle, <i>President</i>
District Three	Wilma Chan
District Four	Nate Miley
District Five	Keith Carson, <i>Vice President</i>

---

---

## **ALAMEDA COUNTY GRAND JURY**

1401 Lakeside Drive, Suite 1104  
Oakland, California 94612  
(510) 272-6259 | [grandjury@acgov.org](mailto:grandjury@acgov.org)  
[www.acgov.org/grandjury](http://www.acgov.org/grandjury)



### **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

- Do you want to increase the efficiency of local government, save taxpayers' dollars, and improve services?
- Are you a good listener?
- Can you cooperate with 18 others towards a common goal?
- Can you keep a secret? *All of your work must be kept confidential.*
- Can you commit yourself to a full year of work?
- Can you ask thoughtful questions, review documents, and help write reports?
- Can you attend at least two morning meetings each week in Oakland?
- Can you contribute a substantial amount of time to the Grand Jury? *(at least 10-20 hours or more per month)*

***The privilege of serving as a Grand Juror comes with many rewards including the satisfaction of making a worthwhile contribution to the improvement of your community.***

#### **How to Apply**

**1**

**Get an application!**

**2**

**Fill it out!**

**3**

**Give it to us!**

- Online: [acgov.org/grandjury/juror.htm](http://acgov.org/grandjury/juror.htm)
- In person (ask staff in the Court's Jury Room)
- Call, email, or mail:  
Cassie Barner  
Grand Jury Recruitment  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612  
[cassie.barner@acgov.org](mailto:cassie.barner@acgov.org)  
510-208-9855

*For more information, contact the Grand Jury staff or visit the Grand Jury's website at [acgov.org/grandjury](http://acgov.org/grandjury)*

*The Grand Jury serves on a fiscal year basis, from July 1 through June 30. Applications are accepted throughout the year and are reviewed each spring for service beginning July 1st. You must be over 18, have lived in Alameda County for at least one year, and possess sufficient knowledge of the English language. Grand Jurors are paid \$15 per day plus mileage.*

## Table of Contents

Alameda County Board of Supervisors	2
Grand Jury Foreperson’s Letter	6
Grand Jury Members	8
Officers and Legal Advisors	9
Grand Jury Committee Assignments	10
Grand Juror Photographs	11
Presiding Judges of the Alameda County Superior Court	12

---

Castlemont High School: Cheating its Students	14
Alameda Health System: Looming Insolvency of a Critical County Safety Net	32
Oakland 9-1-1 Communications Center – A Center in Crisis	56
Disaster Preparedness: How Ready is Alameda County?	70
Alameda County’s General Services Agency Too Often Fails at Capital Project Management	86
Jail Inspections in Alameda County:	100
Fremont Detention Facility	100
Berkeley City Jail	102
Eden Township Substation	103

---

About the Alameda County Grand Jury	106
Citizen Complaint Guidelines	111
How to Respond to Findings and Recommendations	112

**Special Note**

The grand jury acknowledges the difficulties of 2020 in the communities of the Bay Area: Covid-19, loss of jobs, shelter-in-place restrictions, and as we go to press, the protests in our community and across this nation.

As a grand jury we are selected to represent the people of Alameda County, to investigate local government, and to suggest change. We are saddened by recent events and stand by those who are struggling to have their voices heard. We, as a community, must not give up the fight to make things better. We acknowledge the desire for change that our community shows. We are hopeful that our government and elected officials mirror that passion when considering and responding to the recommendations in this report. A community cannot move forward without participation from both its citizens and its elected officials. We hope that the necessary dialogue will happen, and bring about the needed changes, paving the way for progress, peace, and understanding.

Government must constantly listen and strive to ensure that underserved and aggrieved communities are not further victimized by the very institutions that are supposed to serve and protect them.

The grand jury is made up of citizens from throughout Alameda County. It is important that all the people of the county be part of the process. We encourage every citizen of this county to consider participating in future grand juries.

Together, we can and will make a difference.

*To file a complaint with the grand jury or apply to be a member of the grand jury please visit:  
<http://grandjury.acgov.org/index.page>*





Alameda County  
**Grand Jury**

1401 Lakeside Drive  
Suite 1104  
Oakland, California 94612

June 15, 2020

510.272.6259  
fax 510.465.9647  
[www.acgov.org/grandjury](http://www.acgov.org/grandjury)

Hon. Tara M. Desautels, Presiding Judge  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland, California 94612

Dear Judge Desautels:

Members of the 2019-20 Alameda County Civil Grand Jury are pleased to present their final report to the Superior Court and to the people of Alameda County.

Grand Jury work this year addressed complex issues of major significance to our County. The coronavirus pandemic forced us to reinvent how to conduct jury work during the last three months of our term. Online meetings replaced our usual heavy schedule of weekly in-person meetings. Witnesses appeared on computer screens and our discussions felt a little like participating in a televised talking-heads discussion of current events. We adjusted and found the shift to virtual work satisfactory, if not quite as rewarding as face-to-face contact.

Grand Jury members interviewed over 90 witnesses, reviewed hundreds of documents, studied reams of data and conducted multiple site visits. We found shortcomings in government agency performance and disappointing examples of poor communication between and within districts or agencies. However, we also witnessed heartwarming dedication and learned of impressive professional work from many elected, appointed and employed people within Alameda County government, which continued even in the midst of the coronavirus pandemic.

We are proud of our government in Alameda County. Much is right with what we learned, even as we found areas for improvement.

Some of what concerns us in this report is:

- Oakland's 9-1-1 Emergency call center is shamefully understaffed and underfunded despite studies that reported this fact over two years ago. Citizens complain regularly about frighteningly long waits to get help in a crisis and they are correct.
- Alameda Health System has a serious cash flow problem and a debt crisis. Long-standing issues of distrust and posturing between County officials and hospital leaders continue to slow efforts to address this issue. The problem is big, years in the making, and must be resolved soon to insure continued care to our most vulnerable patients and soundness of County finances.

Hon. Tara M. Desautels  
Page Two  
June 15, 2020

- During the summer of 2019, media reports surfaced that one Oakland high school awarded students unearned grades in order to satisfy graduation requirements. OUSD publicly reported it had completed an internal investigation and found no wrongdoing. This Grand Jury found a widespread culture of academic indolence and absenteeism at Castlemont High resulting in students getting diplomas without a complete education. Improperly graded courses, misuse of on-line learning and out of control truancy has perpetuated academic failures that deprive students of a worthwhile education.
- Alameda County's General Services Agency (GSA) is responsible for delivering capital projects to County agencies. The jury learned some of the most important of these projects are caught in a quagmire of delays and cost overruns. The Grand Jury believes management failures, which take the form of staff turnover and poor training, sloppy project planning and GSA inattentiveness to client's needs has cost our County potentially millions of tax dollars.
- Alameda County has seen its share of disasters including the current nationwide pandemic. In order to assess the efforts being made in our County to prepare for disasters, the Grand Jury investigated how the 14 cities in the County and the County itself are complying with the emergency planning directive. This report contains a summary chart of our findings.

In total we are reporting on these five subjects as well as three jail inspections.

It has been an honor to serve as foreperson and a privilege to serve with the 18 other jurors who dedicated many hours of work to ensure this report is accurate, substantiated and true. Also, a big thank you to the professional guidance and support of Assistant District Attorney Rob Warren and Senior Program Specialist Cassie Barner. This report would not exist without them.

Sincerely,



Geoffrey Sylvester, Foreperson  
2019-2020 Alameda County Grand Jury



**2019–2020**  
**Alameda County Grand Jury**

Name	City
Jeffrey V. Baumgartner**	Piedmont
Timothy I. Brice	Oakland
Charlene E. Bush-Donovan	Livermore
Smile Dhir	Union City
Gil Dong	Oakland
Susan M. Frank	San Leandro
Susan M. Frost	Livermore
Theodore A. Griffinger, Jr.	Piedmont
Dian M. Hale	Alameda
Michael D. Irwin	Berkeley
Michael D. Miller	Oakland
Brian S. O'Malley	Oakland
Pamela E. Pierson	Oakland
Raymond A. Souza**	Oakland
Geoffrey Sylvester**	Alameda
Nicolaas J. Verhoek	San Leandro
Patty White	Piedmont
Anne M. Whittington**	Alameda
Robert S. Zucker	Berkeley

\*\* Jurors held over for a 2<sup>nd</sup> term by Presiding Judge Wynne Carvill

## **2019–2020 Alameda County Grand Jury Officers and Legal Advisors**



### ***GRAND JURY OFFICERS***

<i>Foreperson</i>	Geoffrey Sylvester
<i>Foreperson Pro Tem</i>	Raymond A. Souza
<i>Secretary</i>	Charlene E. Bush-Donovan
<i>Secretary Pro Tem</i>	Susan M. Frost
<i>Sergeant at Arms</i>	Michael D. Miller
<i>Sergeant at Arms Pro Tem</i>	Nicolaas J. Verhoek

### ***LEGAL STAFF***

<i>Assistant District Attorney</i>	Robert L. Warren
<i>Senior Program Specialist</i>	Cassie A. Barner

### ***OTHER LEGAL ADVISORS***

<i>County Counsel</i>	Donna R. Ziegler
<i>District Attorney</i>	Nancy E. O'Malley

## **2019–2020 Alameda County Grand Jury Committee Assignments**

---

### **GOVERNMENT**

Anne M. Whittington – *Chair*  
Timothy I. Brice  
Gil Dong – *Secretary Pro Tem*  
Susan M. Frank  
Susan M. Frost – *Secretary*  
Brian S. O'Malley – *Chair Pro Tem*  
Nicolaas J. Verhoek  
Patty White

### **LAW & JUSTICE**

Timothy I. Brice – *Chair*  
Gil Dong  
Susan M. Frost  
Theodore A. Griffinger, Jr.  
Dian M. Hale  
Raymond A. Souza – *Secretary Pro Tem*  
Nicolaas J. Verhoek – *Secretary*  
Patty White – *Chair Pro Tem*

### **HEALTH & SOCIAL SERVICES**

Pamela E. Pierson – *Chair*  
Jeffrey V. Baumgartner  
Charlene E. Bush-Donovan – *Secretary Pro Tem*  
Susan M. Frank  
Theodore A. Griffinger, Jr.  
Michael D. Irwin  
Michael D. Miller – *Secretary*  
Anne M. Whittington  
Robert S. Zucker – *Chair Pro Tem*

### **EDUCATION & ADMINISTRATION**

Jeffrey V. Baumgartner – *Chair*  
Charlene E. Bush-Donovan  
Dian M. Hale  
Michael D. Irwin – *Secretary Pro Tem*  
Michael D. Miller  
Brian S. O'Malley – *Chair Pro Tem*  
Pamela E. Pierson – *Secretary*  
Raymond A. Souza  
Robert S. Zucker

### **EDIT COMMITTEE**

Jeffrey V. Baumgartner  
Susan M. Frost  
Geoffrey Sylvester

**2019–2020 Alameda County Grand Jury Members**



**Geoffrey  
Sylvester**



**Anne  
Whittington**



**Jeffrey  
Baumgartner**



**Pamela  
Pierson**



**Timothy  
Brice**



**Raymond  
Souza**



**Nicolaas  
Verhoek**



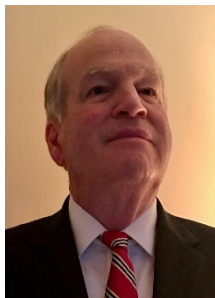
**Michael  
Irwin**



**Gil  
Dong**



**Charlene  
Bush-Donovan**



**Theodore  
Griffinger**



**Patty  
White**



**Robert  
Zucker**



**Susan  
Frost**



**Michael  
Miller**



**Susan  
Frank**



**Brian  
O'Malley**



**Dian  
Hale**



**Smile  
Dhir**

**Presiding Judges  
of the  
Alameda County Superior Court**



Honorable Tara M. Desautels  
November 19, 2019 – Present



Honorable Wynne S. Carvill  
January 1, 2018 – November 18, 2019

*[This page intentionally left blank.]*



## CASTLEMONT HIGH SCHOOL: CHEATING ITS STUDENTS

### EXECUTIVE SUMMARY

During the summer of 2019, media reports alleged that some educators at Castlemont High School in Oakland misrepresented student achievement and awarded students unearned grades to satisfy graduation requirements. It was further reported that former teachers at Castlemont had made formal complaints about these issues to the Oakland Unified School District (OUSD) without receiving any meaningful response from the district. Under pressure, OUSD publicly reported that it had completed an internal investigation and found no wrongdoing by staff.

As a result of the inconsistencies between media reports, complaints of former teachers, and the district's public statements denying any wrongdoing, the grand jury chose to investigate how some teachers, counselors and administrators at Castlemont High School administered online grade make-up curriculum and independent study/tutoring programs to advance a significant number of students who were not on track to graduate. Central to the controversy was Castlemont's disproportionate reliance on APEX Learning, an online educational program used for students who had previously failed traditional core courses. The grand jury conducted an extensive evaluation of grade and attendance records for 29 students coupled with intensive interviews of current and former Castlemont staff and OUSD administrators.

The grand jury found that a small number of school educators misused the online educational program, unfairly graded courses and, in some cases, entered grades for tests and courses never taken. The school officials also inappropriately cobbled together poorly designed grade recovery programs to qualify students for graduation.

*In the  
2017–18  
and  
2018–19  
school years,  
not one  
Castlemont  
student  
performed  
at or above  
the state  
standard  
in Math and  
in 2018-19  
only 10%  
achieved  
proficiency  
in English  
Language  
Arts.*

Witnesses described a widespread culture of academic indolence and absenteeism at Castlemont, resulting in record levels of substandard proficiency in basic language and mathematical skills. The district's weak internal policies, inadequate training, and lack of oversight led directly to inconsistent and inappropriate use of online teaching, independent study, and make-up curricula at Castlemont. While some teachers and counselors may have been trying to help struggling students obtain their diplomas or qualify to apply to

college, they were instead perpetuating an inequitable and failing system that pushed these students out the door without providing them with a complete education.

## BACKGROUND

Castlemont High School in East Oakland first opened in 1929 and is one of Oakland's fifteen public high schools. While the campus has the capacity to teach 1,600 students, its current enrollment is just over 830, approximately 180 of whom are seniors.

For some time, Castlemont students have struggled academically when compared with other students in California. High-poverty and violent crime in the surrounding neighborhood contribute to the difficulties Castlemont students face.<sup>1</sup>

Also contributing to academic shortcomings is the fact that Castlemont has had the highest unexcused absence rate of the district in three of the last four years. During the



*Castlemont High in 1929*



*Castlemont High today*

2017–18 school year, state data showed that nearly one-third of the students missed at least 10% of the school year.<sup>2</sup> Not surprisingly, Castlemont student results on the state's mandated English Language Arts and Math assessment tests have suffered. Between 2016 and 2019, 91–99% of Castlemont students performed below standard in English, and 99–100% performed below standard in Math. In the 2017–18 and 2018–19 school years, not one student performed at or above the state standard in Math and in 2018–19 only 9.4% achieved proficiency in English Language Arts. In 2017–18, only 34% of Castlemont seniors completed college preparatory requirements, the worst performance in the district.

State data shows that Castlemont has the second highest teacher turnover rate in the district: 69% of Castlemont's teachers left the school over a period of six to ten years. This lack of teacher continuity contributes to these poor achievement numbers.

Most perplexing, yet quite meaningful to the grand jury's investigation, is that while Castlemont's proficiency scores have been dropping, its graduation rate has been suspiciously increasing.

---

<sup>1</sup> <https://yr.media/health/castlemont-high-one-schools-struggle-with-daily-violence-long/>

<sup>2</sup> <http://www.ousddata.org/public-dashboard-list.html>

## INVESTIGATION

During our investigation, the grand jury interviewed eleven current or former OUSD staff, including teachers, counselors, and administrators. Some of the witnesses testified under subpoena to protect the confidentiality of student records. The grand jury also subpoenaed and examined course, grade, and attendance data along with online course data linked to 29 seniors at Castlemont in 2019. We examined OUSD staff reports and school board agendas and minutes. We consulted federal and state regulations in the U. S. Code Education chapter, the Code of Federal Regulations Education section, the California Education Code, the California Penal Code, and OUSD Board Policies. We examined two OUSD investigations of complaints filed in June and July of 2019, an appeal of those investigations filed in October 2019, summaries of OUSD investigative notes, copies of OUSD policies, and internal memos and emails, all regarding allegations of grade falsification at Castlemont High. We reviewed a special 2019 report of the New York State Orange County Grand Jury on an investigation of a similar case of improper APEX Learning usage in the Newburgh Enlarged City School District, and studied documents from APEX Learning, comprising program descriptions, teacher guides, policies and procedures, and best practices.<sup>3</sup>

*Contributing to academic shortcomings is the fact that Castlemont has had the highest unexcused absence rate of the district in three of the last four years.*

### Teacher Complaints

Two Castlemont High School teachers filed complaints with OUSD in the summer of 2019 alleging that the principal, counselors, and an APEX coordinator participated in the falsification of grades in traditional courses and APEX Learning grade-recovery online courses in order to allow some students to be eligible for graduation. The complaining teachers noticed anomalies in student transcripts and discovered that students were completing a high number of online APEX courses in very short periods of time (weeks or even days) at the very end of their senior year while concurrently not showing up to traditional classes.

These two teachers mistakenly believed that some student grades they assigned had been changed. This was likely a result of an inexcusable lack of communication among educators at the school site. It appears that school officials were circumventing assigned teachers to provide unorthodox and half-hearted make-up work to excuse student truancy, reverse failures in traditional coursework, and ensure graduation for a number of students.

---

<sup>3</sup>[www.orangecountygov.com/DocumentCenter/View/12884/Investigation-of-the-Newburgh-Enlarged-City-School-District-Grand-Jury-Report-March-29-2019](http://www.orangecountygov.com/DocumentCenter/View/12884/Investigation-of-the-Newburgh-Enlarged-City-School-District-Grand-Jury-Report-March-29-2019)

At Castlemont, APEX online courses were administered by the APEX coordinator and a small number of teachers during the 2018–19 school year. District documents showed that Castlemont students used APEX at much higher rates than other large high schools within the district. As students completed APEX courses, the teachers of record would report their grades to a counselor who would transfer that information into the Aeries Student Information System. Aeries is an online data platform used by many school districts to store and report student course records, transcripts, attendance records, and test scores. The transcripts keep track of all courses attempted in each semester, with grades, including APEX courses. The complaining teachers claimed that the APEX course records, in some circumstances, did not match-up with the course, grade, and attendance data in Aeries.

*It appears that school officials were circumventing assigned teachers to provide unorthodox and half-hearted make-up work to excuse student truancy, reverse failures in traditional coursework, and ensure graduation for a number of students.*

### Grade Recovery

Through the years, OUSD has used numerous methods to help struggling students who have failed traditional core courses to make-up those grades to meet graduation requirements. Some OUSD high schools have used independent study, summer school, and boot camps while other schools relied on the APEX Learning online platform to provide make-up course curriculum. To ensure that equitable and meaningful curriculum was provided to those students who were failing traditional courses, APEX recommended best practices to provide appropriate guidance and oversight. The grand jury learned from witness testimony and documents reviewed that Castlemont educators tried to rescue failing or under-performing students by using a

hodgepodge of methods with no viable standards and no best practices while failing to keep the teachers originally assigned to these struggling students in the loop.

### APEX Learning

APEX Learning is a digital curriculum company headquartered in Seattle, WA that produces online courses designed to aid middle school and high school students to successfully complete previously failed subjects required for graduation, college admission, or preparation for employment. The focus is on flexible instruction, remediation in the case of inadequate preparation, test readiness, and dropout prevention. The APEX course design and content meet high standards of rigor and challenge, and when used properly are highly regarded among educational experts.

APEX expects that normally only one or two of its courses would be used by a student at one time. The courses are intensive and comprehensive, engaging students actively in the learning

process, with liberal use of interactive material, graphics, videos, animations, exercises, and assignments. APEX expects that students require 70–90 hours of participation to complete just one of its high school courses.<sup>4</sup> Courses may be entirely virtual in nature or combined with traditional teacher and classroom-based instruction, which is referred to as "blended learning." A final exam is offered only upon completion of all course modules. Student progress is monitored by APEX using either a grade-to-date or an overall grade formula.

APEX courses are highly customizable. While this allows teachers to focus on specific areas of curriculum, it also allows for easy manipulation of the program. Teachers may exclude units or modules from the full APEX course curriculum, thus allowing course completion without learning all the material. Teachers may override assessment scores and manually enter quiz, exam, and final course grades.

When used improperly, online learning courses are particularly susceptible to cheating, especially if used in an uncontrolled or un-proctored environment, such as from a personal computer located at home or elsewhere.<sup>5</sup> APEX guidebooks describe many forms of cheating, including surrogates taking exams, downloading answers to exam questions posted online, or sharing test answers or assignments.

#### APEX Usage at Castlemont

APEX courses were used in six OUSD high schools, but far more heavily at Castlemont than at other comprehensive high schools. Data from 2017–18 showed that Castlemont High students enrolled in 257 APEX courses, while the total number of APEX courses at each of the other five OUSD comprehensive high schools ranged from only six to 33.

Witnesses suggested Castlemont used APEX more than other comprehensive high schools because many students had a difficult time connecting or relating to teachers, so they would tune out, stop attending, and ultimately fail class after class. This was borne out by student records and truancy data that the grand jury examined. Rather than sustained efforts to get students to attend traditional classes, Castlemont educators saw APEX as an easy solution.

Many failing students were pushed towards APEX as graduation neared. Ironically, some witnesses felt that APEX credit-recovery courses, as administered at Castlemont, were seen by students as an easy alternative to attending class for a full semester and fueled the school's widespread culture of truancy. To this end, the grand jury examined attendance records of 29 seniors, most of whom enrolled in APEX during the 2018–19 school year: nine of them

---

<sup>4</sup> [http://cdn.apexlearning.com/documents/BP\\_Planning-Digital-Curriculum-Programs.pdf](http://cdn.apexlearning.com/documents/BP_Planning-Digital-Curriculum-Programs.pdf)

<sup>5</sup> <https://www.westword.com/news/are-high-school-seniors-googling-their-way-to-graduation-5112854>;

<https://www.voiceofsandiego.org/topics/education/worse-think-teachers-students-say-online-cheating-pervasive>



graduated with over 100 unexcused class-period absences; another seven with over 200 absences; and another four with over 300 absences in their senior year alone.

#### APEX Misuse Prior to the 2018–19 School Year

While the grand jury focused on Castlemont's use of APEX during the 2018–19 school year, the jury learned that APEX misuse began long before that. For example, in an attempt to move a growing number of under-performing students through APEX more quickly, the school's only APEX teacher in 2017–18 bypassed the APEX curriculum modules and quizzes, and instead taught to the pretests. APEX allows a student to bypass a course module if the student can demonstrate mastery of that module by passing a pretest. A focus of instruction by the APEX teacher was to help students pass module pretests rather than gain subject mastery. This allowed students to circumvent course curriculum modules and quizzes, plunging through the course in weeks and, in some instances, days. The grand jury heard testimony that APEX answers were provided to these students, a claim denied by others. APEX classes included groups of 20 to 30 students, many taking different APEX subjects at the same time. Somehow, a single teacher was able to tutor multiple subjects to multiple students during the same class period and coach the students through an entire semester's content, in some cases in just a few days.

Additionally, the grand jury heard testimony that the APEX teacher wasn't credentialed in some of the courses taught. To compensate for the lack of credentialing by the APEX teacher, Castlemont educators would instead list a credentialed teacher's name on the student's grade records even though they did not teach the course. Some underperforming students were guided by counselors to concurrently take their normal, traditional course load while simultaneously taking between three and seven APEX courses, enabling them to graduate. All of this was contrary to APEX best practices, OUSD policies, and not in the best interest of the students. Twenty-eight of the students attended four years of high school within OUSD or at other San Francisco Bay Area schools. Another student attended their first three years of high school out of state.

#### APEX Misuse during the 2018–19 School Year

Castlemont changed the way it administered APEX during the 2018–19 school year. The school assigned four teachers, which included a new APEX administrator, to run APEX classes. Each was credentialed in one or more subject areas. While the APEX administrator did teach a handful of courses without being credentialed in the subject, this pattern was not as prevalent as in past years. The grand jury learned that some of the APEX teachers received no instruction or training on how to use APEX other than login and password advice. While the new APEX administrator received training from APEX representatives several years before, other Castlemont teachers had not. There was also evidence that some, if not all, Castlemont APEX teachers had never seen the two-page OUSD policies on APEX usage prior to the grand jury investigation.



### OUSD Guidelines on APEX Usage

The grand jury obtained a copy of OUSD’s guidelines on APEX usage from the district. While not robust, they did provide some teacher guidance for proper APEX practices. The guidelines include:

1. Students will enroll in courses they need to repeat, one course at a time.
2. Students will attend class each day.
3. Students will keep their phone/electronic devices put away during any exam and adhere to any site-specific policy about use of electronic devices during class time.
4. Students will maintain academic integrity at all times.
5. Students may only take an exam after a teacher approves the exam and monitors the full completion of the exam.
6. Students will meet with teacher upon course completion, to ensure all documentation for transcript recording purposes is accurate.

Unfortunately, these guidelines were routinely ignored by some of the teachers and counselors at Castlemont.

### Actual Practice

Rather than students being limited to taking one course at a time, the number of APEX courses students could take was not limited. OUSD attendance requirements also did not appear to play a factor in student access to APEX at Castlemont. Records reviewed by the grand jury showed that one student failed six traditional courses in English, U.S. History, Government, and Economics, but somehow passed five of them as APEX courses during the final semester while taking a full traditional course load. Attendance records show that this student was absent 133 periods that semester. Casting further doubt on the legitimacy of their APEX work, three of the student’s APEX courses were started during the last week of school. One semester’s credit for Government was provided after 58 minutes of online work. One semester’s credit for Economics was provided after 76 minutes of online work. One semester’s credit for one of three English courses taken that semester was provided after 24 minutes online on the last day of school. To reiterate, APEX Learning estimates that students need 70–90 hours to complete just one of its high school courses.

Another student attempted and failed traditional courses 24 times during their time at Castlemont, but eventually passed some on repetition. Six courses were made up by passing APEX courses with Bs and Cs in their senior year while completing an additional nine traditional courses. This seems an impossible achievement even for the most capable of students, let alone this student who was absent from 351 class periods, including 30 APEX class periods, in their senior year. This student passed two APEX courses while simultaneously failing the same

traditional courses. Some APEX courses were passed while completing no online assignments and with virtually no online participation.

Yet another student's records showed 230 class period absences in their senior year, as corroborated by attendance files and teacher testimony. This student received Ds in Algebra, Biology, Chemistry, Sustainable Urban Energy, English, and Economics, after repeatedly failing some of these courses. This student also failed American Government and both semesters of fourth-year English but passed all three as APEX courses in the final semester while taking a full traditional course load. The Government APEX course was started and completed in less than two hours during one day of the last week of school. This student also made up three semesters

*Legitimate completion of so many courses by students with a history of academic under-performance is simply not believable. Three of the Castlemont teachers violated district policy and APEX best practices by coaching students during exams and quizzes.*

of failed English and two semesters of U.S. History in the junior year with four As and one B- grade in the five APEX courses. The student spent between two and 3.3 hours online in most of the online courses while receiving a semester's worth of credit for each one. Without these atypically high grades, the grade point average (GPA) of this student would have been well below the 2.0 minimum required for graduation.

This pattern of students taking and receiving credit for excessive, unrealistic APEX course loads in their senior year—as many as 6, 10, or even 13 semester courses in addition to traditional courses taught at the school—was also seen for several other students. Legitimate completion of so many courses by students with a history

of academic under-performance is simply not believable.

Three of the Castlemont APEX teachers violated district policy and APEX best practices by coaching students during exams and quizzes. The grand jury learned that one teacher sat with each APEX student to help them through every test, question by question, giving the students direction and encouraging them to use their phones to search for answers to the test questions or to understand what the questions were asking. The grand jury was told that this was the only way many students could get through the material. Multiple witnesses testified that many struggling students were not prepared to take high school level courses. The curriculum covered in more advanced math courses was well beyond the capability of students who were years behind. For such students, APEX courses would be nearly impossible to complete without significant help or accommodation. While the teacher support was being rendered to individual students, other classmates would look at and play with their phones.

As noted above, OUSD Guidelines and APEX best practices also require teachers to monitor students during exams to prevent cheating. It was well known that APEX test answers were

available online, yet the grand jury heard that un-proctored exams were not uncommon. The grand jury learned of one example in which a counselor asked a teacher to enter quiz scores in APEX for two students who never took any of the quizzes. In return, this teacher was promised that a supervisor would proctor the final APEX exams for the students to ensure there was no cheating. Yet, the students took the APEX final exam without any oversight and were given passing grades and a semester's credit for the course even though the teacher was convinced the students could not have passed the exam without cheating. APEX records corroborated the story. One of the two students took and passed five APEX courses the last semester of their senior year yet had 249 unexcused school period absences during the year.

OUSD's guidelines for APEX also included a section describing how final grades should be determined for the online courses. These rules allow teachers to pass students regardless of the effort shown, time spent online, results of online quizzes and tests or final grades recommended by APEX. For example, if a student completed the quizzes throughout the semester and a final exam, APEX would average the quizzes and add in the final exam test score to determine the final course grade. Because OUSD policy permitted teachers to adjust a grade by taking into account "any additional consideration the teacher may make when awarding a grade (i.e., attendance, participation, citizenship, etc.)," some teachers awarded students higher grades than their testing would warrant. It should be noted that two of the APEX teachers relied solely on computer-graded scores on tests and quizzes to determine a student's final grade. The other two teachers deviated wildly from the APEX-graded scores, increasing them by as much as three to four times.

For at least 46 courses identified by the grand jury in which grades were assigned by one particular APEX teacher, the final grade in APEX as well as on the Aeries transcript was higher, often significantly higher, than the final score APEX recommended. Six students had Fs raised to Cs (in one case to Bs), eight students had Ds raised to Bs or Cs, 11 had Cs raised to As or Bs, and three had Bs raised to As.

### Problems with the District's Explanations

The district tried to justify these grade discrepancies by explaining that APEX-recommended final grades may have been unfairly low because teachers authorized students to skip sections of the APEX curriculum if the students already had mastery of the subject. This might also occur if a teacher was using APEX in conjunction with traditional in-class learning so that only targeted portions of the APEX curriculum was used. One teacher claimed to use this blended learning method by downloading all the content for APEX courses, and then taught the content as if it was a traditional course; students would only log into APEX to complete the unit quizzes online.

The grand jury found problems with the district’s explanations for low APEX scores. Using such methods would lead one to believe that quizzes were taken throughout the semester. While this

*Ultimately, the grand jury found that lack of training on basic APEX usage, improper administrative oversight, and unethical actions by some APEX teachers led directly to the ongoing, inconsistent, and inequitable use of the APEX Learning program to justify satisfying graduation requirements for some students at Castlemont High School during the 2018–19 school year.*

may have been the case for some students, others had many quiz scores manually entered by the APEX teacher on one date. Yet, no witnesses told the grand jury that APEX teachers quizzed students offline. One student received the same 70% score on 16 different quizzes in one subject all completed and manually entered by the APEX teacher on one day. This was also not uncommon for other students. Twelve students completed 65 quizzes in under 30 seconds, 24 of them with teacher-awarded scores of 80% correct or higher.

Another student spent only 24 minutes online on first-semester senior English, to complete 41 quizzes and the final exam. The student finished the final exam in 92 seconds, with a score of 24% correct. Despite an overall score of 52% as calculated by APEX (corresponding to a grade of F), the APEX teacher awarded this student a final grade of C. APEX records show that multiple students completed online courses towards the very end of the semester by taking dozens of quizzes and the final exam in one day. Courses were started and completed within hours. The grand jury calculated cumulative time spent by seven students in 44 APEX courses: five of those students completed 21 courses each in less than

three hours of total contact receiving a semester’s worth of credit.

Just as troubling, the grand jury compared the records of eight APEX students of concern. Student quizzes calculated by APEX were scored 58% on average while teacher entered scores for quizzes averaged 82%.

One student failed traditional Economics with 35 absences but enrolled late in APEX online Economics and received a final grade of C despite an APEX scored grade of 62% (D-). The student was logged into the APEX course for just 3.3 hours and received a 90% average on teacher-scored quizzes while APEX-calculated quiz scores averaged 28%. Two teachers testified that this student offered to pay money in exchange for APEX answers or better grades (the teachers refused) and had been reported absent over 323 periods that year. A similar pattern of grading occurred in Algebra, Geometry and English courses. The student was required to complete six semesters of English to graduate. To satisfy this requirement, the student could repeat one semester of sophomore English for a higher grade and have the course counted twice.

This student also failed World History three times but received B's on their transcript in APEX World History each semester of the senior year, yet there is no record of the student having enrolled in APEX World History that year. After all these attempts to help the student towards graduation, the student's final academic GPA was recalculated and raised from one insufficient to graduate to a GPA of barely sufficient to graduate.

One student graduated with fewer than the district-required minimum number of units, which is permitted if approved by a review team. However, the team failed to meet and approve a required graduation plan of action for this student. There was also no written documentation authorizing a reduction of requirements for graduation. No one took responsibility for allowing this student to graduate. None of the key decision-makers could explain how it happened or who authorized it. It just happened.

Ultimately, the grand jury found that lack of training on basic APEX usage, improper administrative oversight, and unethical actions by some APEX teachers led directly to the ongoing, inconsistent, and inequitable use of the APEX Learning program to justify satisfying graduation requirements for some students at Castlemont High School during the 2018–19 school year.

#### Informal Privately Tutored Course

Another troubling grade recovery method that Castlemont used to boost graduation involved a privately tutored English 4/Advanced Placement English course for six students who failed the first semester of the regularly taught course. The class was “off-the-books” with no formal Aeries records showing attendance or performance on assignments, quizzes and tests. The course also did not show up on the Aeries student grade report but was present on the students’ final transcripts. The class met one time per week for 90 minutes during the spring semester while the students were concurrently taking the second semester of the subject taught by the regularly assigned English teacher. One of the students received a D+ in the regularly taught first half of the course during the fall semester and earned a C- during the spring semester, but was given a grade of B- in this privately tutored class; this student received credit for three semesters of senior English. Another received an F the first semester and D+ the second semester in the traditional courses and a passing grade of C- in the tutored class; while a third received a D- the first semester, a C- in the second yet a B in the tutored class, while also receiving credit for three semesters of senior English. These passing grades, which appeared on the students’ transcripts, surprised and frustrated the regular English teacher who spent a whole year with a student who was not performing or participating yet still received credit as a result of a part-time, “off-the-books” tutored class. The communication between staff was so poor and recordkeeping so haphazard that the regularly assigned English teacher believed that administrators had inappropriately manipulated the students’ grades in the teacher’s class. The teacher was unaware that the students were provided with alternative accommodations that were not in accordance with normal district practices.

### Quasi-Independent Study

One teacher—who was not an assigned science instructor—provided credit recovery with a life/physical science course for students who failed the first semester of an environmental science course taught by one of the school’s primary science teachers. This nontraditional independent study course satisfied the science graduation requirement, although the curriculum was entirely in life science rather than in the physical science subject the students had failed. The class was not listed in the school handbook, and it did not include any classroom teaching. No records of student attendance or classwork grading were entered in Aeries. There were no tests. The four students who attended this course reported to the teacher on eight occasions at which time the teacher would hand out assignments that students would complete on their own time.

The teacher provided the grand jury with sign-in sheets, a handwritten document purporting to show the grades each student received on assignments, and blank workbook pages the students were required to complete. OUSD administrators admitted that this make-up course operated outside the bounds of district best practices. It was especially troubling that there was little to no interaction between the make-up instructor and the originally assigned science teacher who had worked with the students throughout the year.

### Validation Passes

The grand jury learned that on several occasions students were given credit for failed courses required for graduation if they passed subsequent courses. For example, some students who failed the first year of a subject but later passed a second year were presumed to have mastered the first year and given formal credit, even though the materials in the two courses were different. Some staff believed this was inappropriate, yet none of the witnesses involved in the practice indicated that they reached out to district administrators to see whether this was appropriate. The grand jury was troubled that one staff person denied knowing that credit was provided in this manner, although the grand jury was later provided documents confirming that the same staff person approved the decisions to provide credit in this manner.

### OUSD Response to Teacher Complaints

Upon receiving the two teachers’ formal complaints about APEX misuse and grading anomalies, OUSD was required by law to investigate. The grand jury spoke to OUSD investigators and examined their interview notes and other documents they collected. The jury concluded that the primary investigator uncovered most of the problems regarding grade and transcript discrepancies, rule violations, poor practices in the administration of APEX courses, and examples of suspicious student completion rates and grade assignments in APEX classes.



They discovered that the privately tutored after-school or make-up classes had none of the usual documentation regarding course content, assignments or exam grades, or attendance records that Aeries provides for traditional classes. The investigation appeared to be thorough, comprehensive, and fair. Concerns were passed on to OUSD superiors.

Based on this internal investigation, the district prepared and issued responses to the teachers who made the original complaints. Even though the district had received from its investigators extensive evidence of poor APEX practices, misuse of the online program by some teachers, inadequate teacher training, insufficient monitoring of student progress, and an environment in which effective teaching was often practically impossible, it did not relate any of this information when responding to the original teacher complaints. The formal response denied most of the allegations and concluded that there was no teacher misconduct.

While the grand jury understands that the investigation involved personnel matters and that federal law places stringent restrictions on the public release of student records, the responses were confusing and failed to directly address many of the claims of the complainants. The jury also recognizes that OUSD's lack of comprehensive, documented procedures and failures in APEX training provided little guidance-to and oversight-of teachers assigned to teach APEX courses. This provided some barriers to punishing staff for unprofessional conduct. In the grand jury's opinion, it also led to an unfortunate lack of accountability and unethical behavior.

The situation became more complicated when the complaints became public. During the summer of 2019, NBC Bay Area conducted its own investigation of the allegations of student record falsification and published its findings.<sup>6</sup> As a result, OUSD held a press conference summarizing the results of its internal investigation which had concluded that there was no employee misconduct.

Granted, the district was asked to comment on personnel issues and the very delicate issue of private student records, but their public summary of the investigative results was certainly incomplete and arguably misleading. While the district acknowledged flaws in the use of APEX and in the training of APEX teachers and administrators, OUSD found no unearned graduation of students and no improper supervision of APEX courses. The district did suspend its use of APEX and hired an outside consultant with expertise in APEX to evaluate what happened at Castlemont and to make recommendations for appropriate measures to prevent future misuse of the program.

---

<sup>6</sup> <https://www.nbcbayarea.com/investigations/Oakland-High-School-Accused-of-Falsifying-Transcripts-to-Boost-Students-Grades-559440471.html?akmobile=o>

## Why Did This Happen?

The grand jury asked each teacher it interviewed a simple question: “Why do you think this happened?” They answered unanimously that too many students arrive at Castlemont unprepared for high school level work. There are many reasons this can occur, but one mentioned by each witness is a practice called “social promotion.” The term refers to promotion of students to the next grade who have not satisfied academic requirements or met performance standards. Accumulating failures result in significant deficiencies of some students upon entering high school, and they can only graduate if records are finessed.

Research shows that neither social promotion nor repeating a grade, the primary alternatives, are particularly effective in improving student achievement, preparation for employment, or further education.

*OUSD’s weak internal policies, inadequate training, and lack of oversight allowed some Castlemont educators to run roughshod over academic integrity and best practices.*

The alternatives to social promotion or repeating a grade usually recommended by experts include remedial help, tutoring, early intervention, and specialized or individually tailored education. These options are expensive, and the necessary financial resources and specially trained personnel are not readily available.

OUSD struggled with the problem of social promotion in the past. In 1999, there was a public outcry about the prevalence of the practice, and OUSD set tough standards for promotion to the next grade. Over 14,000 students were required to repeat courses in summer school or face repeating a grade level. Fewer than half of them complied with the requirement. The district abandoned the policy and promoted the students anyway.

The state-required OUSD Pupil Promotion and Retention Policy, published in the OUSD Student and Family Handbook 2018–19, states:

“Effective for the 2016–17 school year, students will progress through the grade levels by demonstrating growth in learning and by meeting grade-level standards of expected student achievement. Students shall be placed at the appropriate grade level based on the number of credits earned each year in grades 9–12.”

The evidence presented to the grand jury indicates that OUSD is still not enforcing its own pupil promotion and retention policy.

## CONCLUSION

Public schools should be a place of refuge, a haven where children have the opportunity to learn. They should be staffed with teachers who have sufficient tools and training to both support and challenge students. Administrators have the responsibility to oversee both the teachers and students. There should be standards in place to ensure that the education system is administered equitably.

The grand jury is disheartened to conclude that some school officials at Castlemont High School, including a small number of teachers and counselors, misused an online educational program, unfairly and improperly graded courses and, in some cases, entered grades for tests and courses never even taken during the 2018–19 academic year for students who were struggling to graduate. It appears they did it all in the name of qualifying under-performing students for a diploma. Much of this took place because staff was confronted with educational obstacles that they were woefully unprepared to correct—too many students were unprepared for the rigors of high school. Also, truancy was out of control and poorly addressed, perpetuating academic failures.

OUSD's weak internal policies, inadequate training, and lack of oversight allowed some Castlemont educators to run roughshod over academic integrity and best practices. It is difficult to see how others in the same situation could have done better. Intentional misuse of the grade recovery programs intended to help struggling students masked the true nature of the problems that many Castlemont students faced.

OUSD leadership allowed school site staffs' beliefs and values (which guided staff actions) to stray from OUSD's key core values, which include:

- Students First: We support students by providing multiple learning opportunities to ensure students feel respected and heard.
- Equity: We provide everyone access to what they need to be successful.
- Excellence: We hold ourselves to uncompromising standards to achieve extraordinary outcomes.
- Integrity: We are honest, trustworthy, and accountable.

It is unfathomable that OUSD administrators were oblivious to the problems at Castlemont and did not intervene long before whistleblowing teachers reached out to the media in desperation. Statistical data demonstrating Castlemont's under-performance, student truancy and rising graduation rates in the face of poor standardized test results have long been available for district scrutiny. When OUSD was forced to acknowledge the problems publicly, it wrongly denied there was misconduct, doing teachers, students, and the public a disservice. OUSD's investigative reports failed to acknowledge the severe academic and ethical breakdown occurring at

Castlemont High. This school and the district that runs it are failing its students. There is no excuse for awarding a high school diploma to those who do not earn it. The practice of promoting failing students deprives those students of the education that they deserve and that they need to succeed in today's world. It cheapens the accomplishments of students who do work hard at Castlemont. It deprives Oakland and Alameda County of an educated and productive workforce. It compromises academic equity, undermines a fair system of scholastic evaluation, produces a disincentive for intellectual honesty, and undermines the civic fabric of Oakland. It is profoundly unfair to most students who work hard to qualify for a high school diploma.

## **FINDINGS**

### **Finding 20-1:**

Oakland Unified School District's public comments regarding Castlemont High School's misuse of APEX and other grade recovery programs misled the public about the severe academic and ethical breakdowns that occurred at the school.

### **Finding 20-2:**

Oakland Unified School District's weak internal policies, inadequate training, and lack of oversight enabled some Castlemont High School teachers of onsite make-up courses and credit recovery tutorials to run roughshod over academic integrity and best practices.

### **Finding 20-3:**

Oakland Unified School District's policies on administration of APEX Learning online credit recovery courses were inadequate to ensure consistent and appropriate application of APEX and allowed abuse by a small number of teachers and counselors at Castlemont High School.

### **Finding 20-4:**

APEX teachers received little or no training in the proper use and administration of APEX courses and of the grading of students in those courses.

### **Finding 20-5:**

Extraordinarily high truancy rates at Castlemont High School and insufficient administrator intervention made it impossible for habitually truant students to receive the required educational experience.

### **Finding 20-6:**

Some long-standing OUSD students arrive at Castlemont High School unprepared for high school level work due to being repeatedly promoted in earlier grades without meeting the district's requirements for promotion.

## RECOMMENDATIONS

### Recommendation 20-1:

The Oakland Unified School District must develop and enforce appropriate policies and practices for onsite make-up courses to correct the failures noted in this report. Specifically:

- Onsite teacher-designed make-up courses must be included in course lists and available to all failing students.
- Credit must only be given for make-up classes in the same subject as the failed course.
- Credit toward a required number of subject units cannot be given for the same semester course taken twice.
- Course curricula and assignments must be administratively reviewed.
- Aeries records must include attendance data and progress through the recovery course as in regular courses.
- Credit cannot be awarded for failed courses based on subsequent courses that were passed.

### Recommendation 20-2:

The Oakland Unified School District must implement specific controls to ensure all APEX learning complies with recommended APEX policy, procedures, and best practices. At a minimum:

- Limit the number of courses taken simultaneously.
- Require all quizzes and exams be proctored on campus.
- Confine APEX classes to one subject.
- Prohibit enrollment in the same traditional and APEX classes at the same time.
- Require a minimum number of online hours within a minimum number of weeks of instruction not restricted entirely to quizzes and exams.
- Ensure teachers do not coach students through pretests, quizzes and exams.

### Recommendation 20-3:

Teachers of APEX courses must be credentialed in the subject of the course and must be trained in APEX Learning's published best practices for teaching the classes, in using pretests for customizing course curricula, in making graded assignments, and in grading quizzes, exams and classes using progress and proficiency scores produced by the APEX program. The exercise of teacher discretion in assigning grades for APEX courses must be strictly regulated by school site administrators.

### Recommendation 20-4:

Castlemont High School administrators must put in place and rigorously enforce robust procedures to track and control excessive student absences, consistent with the Oakland Unified School District's standards and the California Education Code. When local efforts fail to ameliorate truancy, cases should be referred to the Alameda County Truancy Court. Graduation

of students with chronic absenteeism resulting in failures in required courses must be prohibited, until those courses are properly passed.

**Recommendation 20-5:**

District-wide procedures must be developed and implemented to consistently enforce OUSD's existing Pupil Promotion and Retention Policy that prevents students from being promoted into grades for which they are insufficiently prepared.

**REQUEST FOR RESPONSES**

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

**Responses to Findings shall be either:**

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

**Responses to Recommendations shall be one the following:**

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

**RESPONSES REQUIRED**

OUSD Superintendent

Findings 20-1 through 20-6

Recommendations 20-1 through 20-5



## **ALAMEDA HEALTH SYSTEM: LOOMING INSOLVENCY OF A CRITICAL COUNTY SAFETY NET**

### **EXECUTIVE SUMMARY**

Alameda Health System (AHS) is an integrated public health care system established by Alameda County to meet the county’s state-mandated health care obligations. As an independent hospital authority, AHS is operated by an Executive Leadership Team (AHS administration) which reports to a governing Board of Trustees (AHS trustees) appointed by the county Board of Supervisors (BOS).

AHS’s June 30, 2019 audited financial statements show AHS having a negative net worth (i.e., what AHS owes is more than what AHS owns) of \$300.6 million. AHS’s internal budget documents report a “balanced” budget for the year ending June 30, 2020; yet, the same documents show AHS having a cash deficit of approximately \$144 million. AHS’s forecasts for the years ending June 30, 2021 and 2022 show continued annual cash deficits of \$123 million and \$82 million, respectively, with deficits for the years 2019 through 2022 totaling \$453 million—prior to the additional expenses and lost revenue now projected as a result of the Coronavirus pandemic. AHS’s negative net worth together with the substantial and continuing cash deficits raise the grand jury’s concern as to the continued operation of AHS.

AHS and the county have shared a joint mission for nearly 25 years: to provide quality healthcare to the county’s indigent population. However, since AHS’s inception, the relationship between the parties has had a tension derived substantially from the parties’ failure to balance AHS’s responsibility for operational control of AHS with the county’s health service mandate and its allegiance to other constituencies.

The AHS administration, AHS trustees and BOS share responsibility for the financial health of AHS. While the three parties have held joint meetings about AHS financial challenges, those meetings have not resulted in a viable plan to return AHS to financial health. The parties’ goals are straightforward: the county must meet its statutory obligations to provide medical care to indigent county residents; AHS must operate the hospital system to provide that medical care as efficiently and transparently as possible. If resources

*As one witness indicated, “it’s not about the money. It’s about the political will and competency to make tough decisions.” These decisions cannot continue to be “kicked down the road.” The future of a critical county safety net is at stake.*

prove insufficient, AHS and the county need to identify and agree on the scope of services and on the least politically damaging way to provide them—by cutting back on services, increasing the county’s financial support, or some combination of the two. Both parties then will need to present a uniform public face in support of that decision.

An improved relationship between the county and AHS is necessary to focus on defining a reasonable scope of the care to be offered by AHS, along with AHS reducing expenses and achieving revenue targets. As one witness indicated, “It’s not about the money. It’s about the political will and competency to make the tough decisions.” Put another way, resolution will require the parties to make difficult decisions which appear to have been avoided or delayed to please special interests. These decisions cannot continue to be “kicked down the road.” The future of a critical county safety net is at stake.

## **BACKGROUND**

Historically, public hospitals are where the indigent, poor and uninsured seek health care. Alameda County has operated public hospitals for more than 100 years: Alameda County Infirmary (now Fairmont Hospital) in San Leandro accepted its first patient in 1864 and Oakland’s Highland Hospital opened in 1927. In 1933, the obligation of all California counties to provide health care to indigent, poor and uninsured county residents (safety net health care) was codified in California Welfare and Institutions Code section 17000.

The county merged its two public hospitals and three clinics into Alameda County Medical Center in 1991. Shortly thereafter, the BOS sought a new governance structure for the medical center that would allow it to be more efficient and cost-effective in a shifting, competitive market; they settled on a public hospital authority model. In 1996, enabling legislation and associated revisions to California Health and Safety Code section 17000 permitted the county to establish an independent public hospital authority to manage, administer and control the Alameda County Medical Center and to meet the county’s safety net health care obligations. The BOS formally handed legal control and governance of the medical center to the newly formed authority—now known as Alameda Health System—in July 1998. Currently, AHS operates five hospitals (Fairmont, Highland, Alameda, San Leandro and John George Psychiatric) and four wellness centers with over 800 beds and 1,000 physicians.

### **Relationship Between AHS and Alameda County**

Although separate legal entities, Alameda County and AHS are inextricably linked. The formal relationship between them is controlled by the enabling laws and agreements that govern AHS’s

creation.<sup>1</sup> AHS is operated by the AHS administration which reports to the AHS trustees. The BOS controls the AHS bylaws and appoints the AHS trustees.

The AHS bylaws give the trustees the “responsibility to manage, administer and control AHS including but not limited to all matters pertaining to quality of care....” The AHS trustees are obligated to fulfill specific duties and responsibilities related to budget, contracts, personnel, services, accountability, and reporting. Two budget-related responsibilities set out in the bylaws are noteworthy:

- Adopt a balanced budget by June 30 for the following fiscal year.
- Strive to maintain a balanced budget, making adjustments to offset unanticipated expenditures or unrealized revenues as needed.

### **History of Financial Interactions**

All public health systems have issues with funding. In addition to county funding, these systems rely heavily on federal (e.g., Medicaid and Medicare) and state (e.g., Medi-Cal) funding programs, the rules of which are volatile. AHS’s funding issues are further exacerbated by California having one of the lowest Medicaid reimbursement rates in the country, and by the high cost of labor in Alameda County.

AHS has an annual operating budget of approximately \$1.1 billion. Alameda County provides approximately \$200 million annually to AHS, including approximately \$120 million from Measure A funds and \$80 million in service contracts. In 2004, the county’s voters passed Measure A, a ten-year half-a-percent increase in its sales tax, to provide annual funding for medical and mental health services to the county’s indigent, low-income and uninsured residents. The measure was renewed in 2014 for another 15 years. AHS receives 75% of the generated funds; in FY2019 (July 2018– June 2019), AHS received approximately \$123 million in Measure A funding. In addition, in FY2020, the county has approximately \$81 million in service contracts with AHS: \$43 million to provide health care services through AHS public hospitals and wellness centers, and \$38 million to provide mental health services at John George Psychiatric Hospital.

Alameda County also has financed specific projects for AHS. For example, it issued and pays the interest on approximately \$600 million in bonds for construction of the Highland Hospital Acute Care Tower. The county also is providing up to \$70 million of designated capital funds over ten years to help support AHS’s \$240 million Epic Electronic Health Records project.

---

<sup>1</sup> *The enabling laws and agreements include Assembly Bill 2374 (1996); California Health and Safety Code section 101850; Alameda County Administrative Code Chapter 2.120; three agreements (“transfer documents”) known as the master contract, the services agreement and the lease agreement; and the AHS Bylaws.*

## Outstanding Debt with Alameda County Consolidated Treasury

In the early 2000's, AHS faced significant cash shortfalls and borrowed from the Alameda County Consolidated Treasury, accumulating a \$200 million debt, referred to by the parties as the “Net Negative Balance” (NNB). In 2004, the BOS placed a \$200 million limit on borrowing by AHS and established a repayment schedule. The debt repayment schedule called for a reduction of the \$200 million limit to \$70 million by June 30, 2016.

In 2013 and 2014, AHS again faced significant cash shortfalls, mostly due to inefficient billing and health records systems, as well as the cost of acquiring and operating financially struggling San Leandro and Alameda hospitals. In response, AHS and the county replaced the existing repayment agreement with the current Permanent Agreement in April 2016. The Permanent Agreement revised the 2016 debt limit from \$70 million to \$145 million and required that the debt limit be paid down by \$5 million per year to \$50 million in June 2034. The Permanent Agreement allows AHS, with county authorization, to exceed the annual debt limit by up to \$50 million during the fiscal year if the annual debt limit is met by the end of the fiscal year.



*Alameda Health System - Highland Hospital*

The Permanent Agreement also specifies a series of financial planning and reporting requirements. Perhaps most importantly, AHS is expected to immediately notify the BOS, the AHS trustees, the county auditor-controller and the county administrator if it believes it cannot meet the Agreement's repayment schedule. In that circumstance, AHS's chief executive officer, the county administrator and the county auditor-controller are directed to develop a financial and operational “turnaround” plan detailing how AHS can avoid or mitigate the problem.

## **2015 Grand Jury Report on AHS**

In June 2015, the Alameda County Grand Jury published a report titled “Alameda Health System Governance and Oversight.” The report focused on AHS's 2014 fiscal crisis—the need for a cash infusion of approximately \$220 million to maintain financial stability—and the governance and management issues that contributed to the crisis. That grand jury found that the fiscal crisis had been worsened because of ineffective oversight of AHS finances by the AHS trustees and the BOS. It also concluded the lack of transparent communication between AHS and the county

delayed the crafting of a comprehensive solution. AHS and the county both disagreed, in whole or in part, with the grand jury’s findings but indicated they were implementing the jury’s recommendations to address reporting and communication issues.

### **Déjà Vu All Over Again?**

This year’s grand jury was introduced to AHS during orientation sessions with several AHS executive managers as well as county elected officials and employees familiar with AHS. Statements made during the orientation sessions indicated AHS is experiencing issues strikingly similar to those reported by the grand jury in 2015. In particular, the grand jury was told AHS has a \$100 million liability coming due and does not have the cash to pay it; AHS characterizes its budget as “balanced” when it is not; the relationship between the AHS trustees and the BOS is “problematic;” and, most incredibly, AHS’s debt with the county could balloon to over \$500 million by June 2022. The grand jury asked itself: Are these statements accurate? And, if so, given the balanced budget requirement in the AHS bylaws, the financial reporting and oversight responsibilities under the Permanent Agreement and the supposed implementation of the 2015 grand jury’s recommendations, how could this situation have arisen – again?

*Political pressure by some county supervisors has interfered with AHS operations and efforts to control costs.*

## **INVESTIGATION**

During the course of our investigation, the grand jury heard testimony from current and former AHS trustees and members of the AHS administration, current Alameda County supervisors and current and former staff in the county’s Health Care Services Agency (HCSA) and Auditor-Controller Agency. The jury also reviewed numerous documents, correspondence, and other materials related to AHS finances, with a focus on FY2017 through FY2020, including:

- AHS governing documents.
- The 2016 Permanent Agreement on repayment of AHS’s debt to the Alameda County Consolidated Treasury.
- AHS preliminary and final budgets for FY2017 through FY2020.
- Meeting minutes, notes, as well as associated documents and presentation materials for selected meetings of the BOS, BOS Health Committee, AHS trustees, and AHS Finance Committee. The grand jury reviewed audio and video recordings of some of these meetings.



- Correspondence among AHS administration, AHS trustees, BOS and county staff.
- Recent independent audits and consulting reports related to the financial status of AHS.
- The 2014–2015 Alameda County Grand Jury report on AHS.

### **Is AHS Facing Another Financial Crisis?**

The grand jury first wanted to determine the correctness of the comments about AHS’s financial situation: AHS presents its budget as “balanced” when it is not; AHS has a \$100 million liability coming due but does not have the cash to pay; and AHS’s debt balance with the county could balloon to over \$500 million by June 2022.

#### Operating Budget and Efficiency

Although giving the AHS trustees the specific responsibility to adopt and maintain a balanced budget, AHS defines the term as a balanced *operating* budget—a balance of the revenue and expenses needed to operate AHS day to day. AHS’s definition excludes changes in both revenue and expense reserves which would normally be included in calculating a balanced budget. The grand jury heard from AHS witnesses that these items are excluded because they are transactions beyond AHS’s control. County witnesses disagreed and testified that AHS’s use of a balanced operating budget does not adequately represent the actual financial position of AHS, which contributes to the tensions between the parties, particularly between county staff and AHS.

*County witnesses testified that AHS’s use of a balanced operating budget does not adequately represent the actual financial position of AHS, which contributes to the tensions between the parties, particularly between county staff and AHS.*

AHS’s operating revenue comes from patient services and supplemental federal, state and county payments, including Measure A funding. Almost 80% of AHS’s operating expenses are employee wages and benefits, and physician contract services. The other 20% of operating expenses include pharmaceuticals, medical and other supplies, equipment leases and the like.

To measure its operating budget performance, AHS focuses on EBIDA (Earnings Before Interest, Depreciation and Amortization) and the EBIDA Margin ( $\text{EBIDA} \div \text{Total Operating Revenue}$ ). The EBIDA Margin is a measure of short-term operational efficiency or profitability—the higher the margin, the more profitable AHS’s operations. Witness testimony maintained that a realistic EBIDA Margin for a public hospital system like AHS is in the 6% to 8% range, that even 3% might be considered “healthy.”



For each of the three most recently completed fiscal years, FY2017 through FY2019, the AHS trustees approved a balanced operating budget with a positive EBIDA Margin (see Table 1). The end-of-year actuals indicate that AHS was more profitable than expected in FY2017 and FY2019 but less profitable in FY2018.

**Table 1: Revenue and Expense Statement for FY2017–19**

	(dollars in millions)								
	FY2017			FY2018			FY2019		
	Actual	Budget	Variance	Actual	Budget	Variance	Actual	Budget	Variance
Net Revenue	\$ 971,991	\$ 925,256	5.1%	\$ 1,008,197	\$ 1,020,624	-1.2%	\$ 1,062,607	\$ 1,058,365	0.4%
Operating Expenses	\$ 919,584	\$ 878,096	4.7%	\$ 992,672	\$ 991,173	0.2%	\$ 1,011,134	\$ 1,026,444	-1.5%
EBIDA	\$ 52,407	\$ 47,160	11.1%	\$ 15,525	\$ 29,451	-47.3%	\$ 51,473	\$ 31,921	61.3%
EBIDA Margin	5.4%	5.1%		1.5%	2.9%		4.8%	3.0%	

While annual operating performance is informative, the grand jury found that it belies the challenges and the internal tensions that the AHS trustees and administration face while trying to generate revenue and control expenses month to month. For example, by February 2018, a six-month trend of below-budget operating performance led the AHS Finance Committee to request that the AHS administration provide more detailed monthly financial reports, and implement a financial action plan to achieve a balanced budget in FY2018. Without the trustees' diligent financial oversight and the administration's successful "Back to Budget" plan, AHS's financial results for FY2018 might have been much worse. Similarly, by Fall 2018, AHS expected to receive significantly less supplemental revenue than budgeted. Again, AHS had to closely monitor and aggressively reduce operating expenses by \$15 million to achieve a balanced operating budget for FY2019.

The grand jury considered evidence that the following internal issues contributed to AHS's financial challenges and tensions over the past few years:

- Late or erroneous patient billings and delayed or late collection efforts resulted in lost revenue. Mismanaged billings and collections were attributed to AHS's inefficient and ineffective reporting systems. The implementation of the Epic system should greatly relieve these concerns.

- Service claims declined by Alameda County and/or the state of California were not analyzed by AHS for appeal, potentially resulting in lost revenue. This issue also was attributed to AHS’s poor, inefficient and ineffective reporting systems. Implementation of the Epic system should greatly relieve these concerns.
- AHS’s contractual rates with the county HCSA for provision of behavioral health services were never adjusted to reflect current and expected costs of delivering such services. In addition, AHS has not drawn down the full value of the contract in the past seven years. These practices resulted in lost revenue to AHS that is now being remedied by the county.
- Labor costs, which account for over three-quarters of AHS’s operating expenses, are high and an increasing percentage of total operating expense (see Table 2). AHS must negotiate separate contracts with 18 different labor unions, which is time consuming, expensive and limits its negotiating flexibility.

**Table 2: AHS Labor Costs**

	(dollars in millions)		
	<b>ACTUAL</b>		<b>BUDGET</b>
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Contracted Physician Services	\$ 89,177	\$ 92,419	\$ 88,692
Other Labor	\$ 685,855	\$ 702,110	\$ 734,267
Total Labor Expense	\$ 775,032	\$ 794,529	\$ 822,959
Total Operating Expenses	\$1,009,196	\$1,021,832	\$1,053,610
Contracted Physician Services	8.8%	9.0%	8.4%
Other Labor	68.0%	68.7%	69.7%
Total Labor Expense	76.8%	77.8%	78.1%

The grand jury also considered evidence that the following issues, which directly or indirectly involved the county, also contributed to AHS’s financial challenges and tensions over the past few years:

- Alameda and San Leandro Hospitals were incorporated into AHS. Each hospital was labeled a “loss leader” generating higher expenses than revenue.
- Political pressure by some county supervisors has interfered with AHS operations and efforts to control costs. The grand jury heard evidence of a county supervisor appearing at a hearing concerning a contentious AHS labor negotiation dressed in the uniform of

the involved labor union. Another example occurred after AHS voted to defer approximately \$20 million in seismic work at Alameda Hospital, the result of which would have been to reduce services. The grand jury heard testimony that a county supervisor’s public opposition was a significant factor in AHS reversing its decision and incurring that cost.

- AHS assumed the highest-cost (Class A) office space previously leased by the county in San Leandro. The grand jury was told that a lease for comparable lower-cost (Class B) space may have saved AHS \$3 million in rent.
- The county reclaims its non-federal share of Medi-Cal supplemental reimbursements to AHS, asserting that share is funded by AHS’s Measure A funds. The resulting loss of revenue significantly widens the gap between Medi-Cal coverage and AHS’s actual cost of care.
- Excessive overstay in AHS facilities of otherwise dischargeable patients with no placement options (e.g., homeless) resulted in an estimated unbudgeted cost of \$28 million to AHS in FY2019. The grand jury learned that the county has committed to work with AHS on this issue and to increase the availability of respite beds and other placement options.
- AHS has filed a lawsuit against the county and Alameda County Employees’ Retirement Association (ACERA) regarding current pension liabilities along with those dating back to the formation of AHS. A member of the BOS Health Committee is also on the ACERA board. These factors add to the tensions between AHS and county. The grand jury did not investigate this issue because of the pending litigation.

The harbinger of significant AHS operating losses materialized by early 2019. In February 2019, AHS’s interim chief financial officer reported to the Finance Committee:

*The additional cost [of Epic training and support] as well as [an estimated \$33 million decline in] supplemental revenues will put a significant strain on finances in the coming year. As you can see, without changes going forward, the EBIDA Margin is quickly shrinking. This gives a glimpse into the challenges that AHS will face when preparing the 2020 budget.*

In fact, throughout the spring of 2019, AHS’s “quickly shrinking” EBIDA Margin was forecast to turn negative for the first half of 2020—AHS operations would start losing money within six months unless significant expense reduction measures were instituted.

After an arduous and extended FY2020 budgeting process, the AHS trustees approved a balanced FY2020 operating budget in September 2019. However, AHS forecasts for FY2021 and FY2022 reflected significant operating losses of more than \$50 million per year (see Table 3). Worse yet, the forecasted operating losses will be further aggravated by the Coronavirus pandemic, which is projected as a weekly loss of \$2–\$3 million.

**Table 3: Revenue and Expense Projections for FY2020–22**

	(dollars in millions)		
	BUDGET FY2020	FORECAST	
		FY2021	FY2022
Net Revenue	\$ 1,082,445	\$ 1,009,489	\$ 1,029,678
Operating Expenses	\$ 1,041,773	\$ 1,063,156	\$ 1,094,565
EBIDA	\$ 40,672	\$ (53,667)	\$ (64,887)
EBIDA Margin	3.8%	-5.3%	-6.3%

### Cash Needs and Growing Debt

Simply put, AHS’s annual operating expenses are just a portion of its overall financial obligations. Additional cash is needed for liabilities AHS committed to in prior years. Many of AHS’s prior-year liabilities have been carried on its books for years, awaiting the completion of government audits and formal requests for payment. AHS now expects those significant liabilities to come due over the next few years but has no way to pay them.

Under the 2016 Permanent Agreement, if AHS has an outstanding debt with the county, all AHS cash receipts are deposited daily into the Alameda County Consolidated Treasury. AHS draws on the treasury to pay its bills up to the debt limit set by the Permanent Agreement. The debt limit was \$130 million as of June 30, 2019 and decreases by \$5 million per year through June 30, 2034.

In March 2019, AHS was informed that California intended to request reimbursement of \$99.6 million by December 2020, for the state’s 2008–2015 overpayments to AHS on Medi-Cal Waiver claims. The AHS Finance Committee noted, in April 2019, that “[w]hile we have reserved for these issues from a financial statement perspective, we do not have cash put aside for this issue.” This highlights a continuing dilemma and disagreement between AHS and the county: the difference between financial statement reserves and actual cash reserves. The grand jury heard from county witnesses that AHS has the ability, and was advised by the county, to set aside cash reserves to pay prior-year liabilities. In contrast, AHS witnesses testified that, while AHS

can reserve for liabilities in their financial statements, it does not have an ability to set aside cash reserves because all cash is taken by the county and applied against AHS's outstanding debt to the county. The reality is, regardless of who is correct, there is no cash reserved to pay for this liability.

AHS's FY2019 year-end financial report lists prior-year liabilities totaling \$200 million, including the \$99.6 million to California. These liabilities were not included in the FY2019 debt-balance calculation because AHS had not received a formal request for repayment. Instead, following usual practice, the liabilities were just moved forward to the FY2020 forecast.

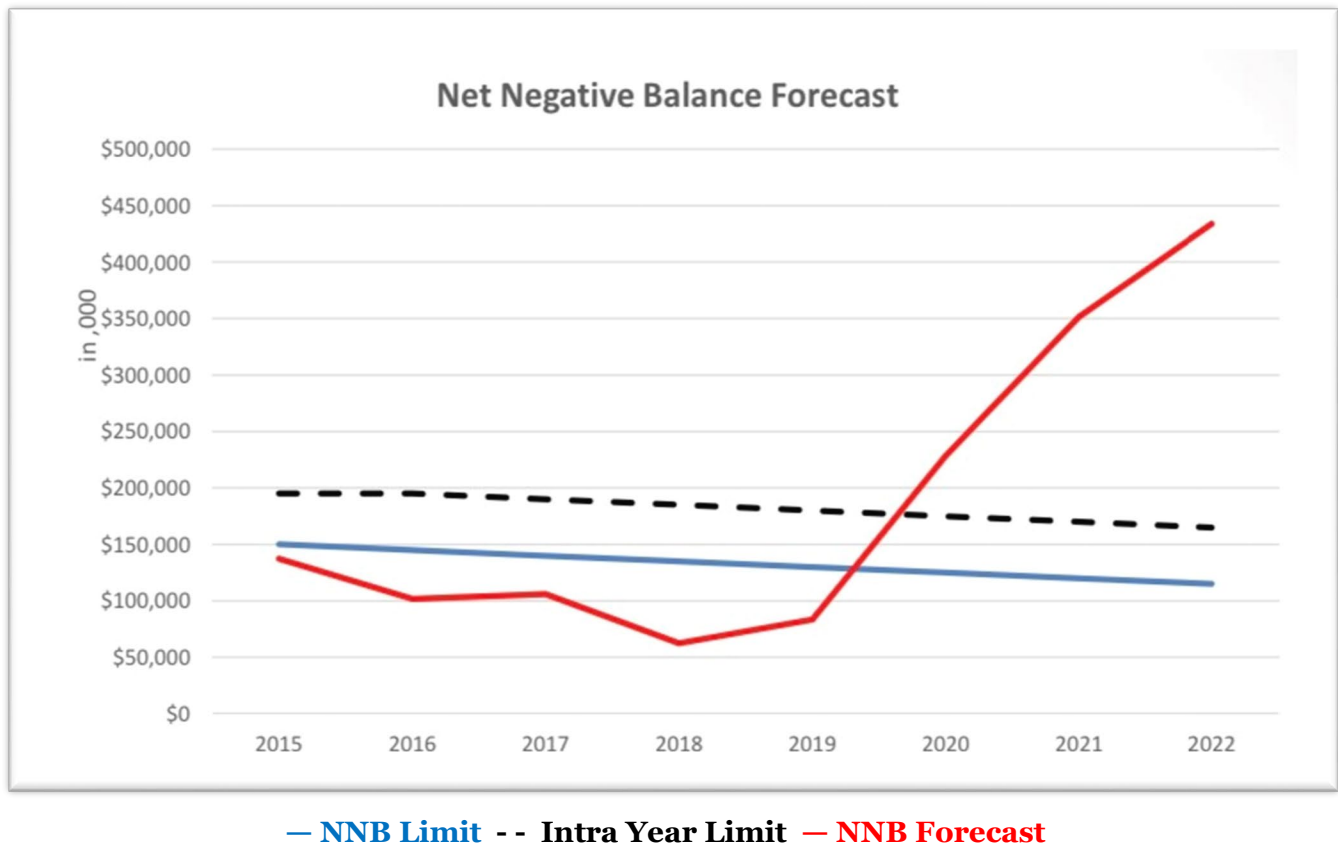
*Many of AHS's prior-year liabilities have been carried on its books for years, awaiting the completion of government audits and formal requests for payment. AHS now expects those significant liabilities to come due over the next few years but has no way to pay them.*

As of early 2020, AHS expects the prior liabilities to come due over the next few years. The combined cash deficits from FY2019 through FY2022 are forecast to total almost \$453 million (see Table 4).

**Table 4: AHS Cash Forecast for FY2019–22**

(dollars in millions)						
	ACTUAL		BUDGET	FORECAST		2019 through
	2018	2019	2020	2021	2022	2022
Cash From (To) Operations	\$ 15,525	\$ 51,472	\$ 40,671	\$ (53,667)	\$ (64,887)	
Other Cash	\$ 64,884	\$ (153,207)	\$ (185,691)	\$ (69,827)	\$ (17,467)	
Total Cash Surplus (Deficit)	\$ 80,409	\$ (101,735)	\$ (145,020)	\$ (123,494)	\$ (82,354)	\$ (452,603)
Line of Credit At June 30	\$ (62,483)	\$ (83,622)	\$ (228,399)	\$ (351,647)	\$ (433,753)	

The cash required to cover anticipated operating losses and pay prior-year liabilities is projected, in the worst case, to plummet AHS into a severe cash deficit and violate the debt limit (i.e., Net Negative Balance) set forth in the Permanent Agreement (see following Chart [Source: AHS]).



### AHS Reporting Obligations

Under the Permanent Agreement, AHS is required to report on the financial status of its operations to the BOS Health Committee at the committee’s regularly scheduled monthly meeting. However, AHS makes quarterly, not monthly, reports to the BOS Health Committee.

AHS is supposed to work with the county HCSA, the County Administrator’s Office, and the county Auditor-Controller Agency to provide relevant financial and operational information in its regular reports to the BOS Health Committee, including AHS’s ability to meet its debt limit with the county. The grand jury learned that AHS does not engage county staff to ensure the information in its reports is relevant to the county. The grand jury was told the BOS Health Committee and county staff typically receive AHS reports the day of a committee meeting, leaving little time to review the report prior to presentation and discussion. Witnesses also told the grand jury that the numbers presented in AHS financial reports were “volatile” and “inconsistent.”

The relevance and timeliness of AHS’s financial reporting became a contentious issue in Spring 2019.



## AHS and Alameda County Responses to the 2019–2020 Fiscal Crisis

AHS began the FY2020 budgeting process in early 2019 facing projected operating losses and needing to repay significant prior-year liabilities. The grand jury was particularly interested in how AHS and the county responded, given that the relationship between the AHS trustees and the BOS had been described as “problematic.”

### AHS Budgeting for FY2020

The initial draft FY2020 operating budget, in March 2019, projected a loss of \$88.3 million and an EBIDA Margin of -7.1%. The AHS trustees, required by the bylaws to adopt a balanced budget, advised the AHS administration to target a marginally profitable EBIDA Margin in the range of 1.47% to 2.8%. To achieve that target, between \$86.2 and \$99.6 million in savings had to be found. AHS worked to identify potential revenue sources and expense reduction options that could achieve the FY2020 EBIDA target. Options considered, among others, included staff wage freezes, furloughs, benefits restructure, elimination of discretionary expenses (such as travel), requesting [county] resources to support difficult patient placement, and service reductions/eliminations of lower margin programs such as primary care at Alameda Hospital, women’s health services, and neonatal intensive care (NICU).

By June 2019, the projected budget gap was down to \$25–\$30 million. The AHS administration proposed to further reduce the gap by cutting the previously identified lower-margin services. The AHS trustees and the county objected to the elimination of these services and agreed to a two-month delay in the submission of a balanced budget that would avoid such service cuts. A balanced operating budget ultimately was accomplished through an unexpected windfall from several state and county programs totaling approximately \$60 million. The final FY2020 operating budget was approved by the AHS trustees on September 26, 2019. It projected annual operating income of \$28.8 million and an EBIDA Margin of 3.8%. Both operating revenue and expenses were budgeted to be higher than in any previous year.



*Alameda Health System*

### Communications and Posturing

Throughout the FY2020 budgeting process in the spring and summer of 2019, AHS and the county publicly praised each other and emphasized the need to work together to solve AHS’s financial crisis. But an underlying tension was evident in both sides readily pointing out shortcomings of the other and, in doing so, were often prone to old biases and posturing.

Once the magnitude of its financial crisis became apparent, AHS recognized the need to communicate the situation to its funders and stakeholders, including the county. On March 11, 2019, at a regularly scheduled update to the BOS Health Committee, AHS reported that current and future supplemental funding uncertainty, pension costs, debt, and lack of cash reserves were significant concerns. As required by the Permanent Agreement, on March 15, 2019, AHS advised the BOS Health Committee and the county administrator that AHS expected to settle the \$99.6 million Medi-Cal waiver claim against it in FY2020, which would likely exceed AHS's available cash and violate the debt limit with the county.

Notwithstanding these unsettling prospects, the grand jury was told only one substantive meeting took place between the parties over the next six weeks. That meeting occurred on April 3, 2019, when AHS met with the chair of the BOS Health Committee and delivered the message:

*We [AHS] fully expect that we will not be able to remain in compliance with our Permanent Agreement with the County next year. We foresee the need to partner with the County to share details of the efforts we are taking to close the gap and asking for your help in whatever you may be able to offer, including a temporary suspension of the Permanent Agreement or broader renegotiation.*

On May 22, 2019, AHS again met with the BOS Health Committee, county administrator, county auditor-controller, and the county HCSA Director to confer on the reasons for AHS's expected noncompliance with the Permanent Agreement in FY2020.

Two weeks later, on June 4, 2019, the BOS summarized their concerns about the depth and scale of the structural financial problems in a letter to the AHS trustees:

*While AHS informed the County of challenges related to balancing its FY 2019–20 budget and need to repay prior year Medicaid Waiver overpayments...it was only after additional questioning that AHS disclosed a major structural deterioration in financial performance that is not limited to the FY 2019–20 budget....AHS projects its forecasted [debt with the county] to be over \$572 million in FY 2021–22....[which] would result in AHS being out of compliance with the Permanent Agreement by over \$457 million at the end of FY 2021–22.*

*After the County's request for additional data, AHS disclosed a long-range forecast...that shows AHS's operating cash flow declining from a \$46 million surplus in FY 2018–19 to a \$169 million deficit in FY 2021–22....This forecast is radically different than the last long-range forecast shared with the County...in January 2018 when [AHS] was seeking approval for a financing plan related to the Epic Electronic Health Records [project]....*

*Unfortunately, AHS did not fully disclose its structural financial challenges and forecasts during its regularly scheduled updates to the County's Health Committee. Given the lack of transparency and timely information from AHS regarding the scope of its structural financial problems, as well as widely differing financial forecasts...the County had no alternative but to retain [on May 21, 2019] independent consultants...to evaluate AHS's fiscal condition and validate the information provided by AHS to the County.*

In the next regularly scheduled quarterly update to the BOS Health Committee, on June 10, 2019, AHS again advised that the forecast \$99.6 million recoupment from prior-year Medi-Cal waivers threatened AHS's ability to meet the \$125 million debt limit in FY2020. Also, that AHS's options to eliminate the remaining \$25–\$30 million FY2020 budget gap were to discontinue lower-margin programs including psychiatric emergency services, women's services, and well-baby and NICU services.

Later that same day, the AHS chief executive officer sent an email to all AHS employees staking out AHS's position vis-a-vis the county:

*These changes [i.e., declining supplemental revenue] pose a greater threat to Alameda Health System as they are exacerbated by other financial burdens we already bear with Alameda County including repayment of structural debt that has existed since our inception, pension costs, and no general fund support from the county that is normally available to other comprehensive public health systems like AHS....*

*Despite our aggressive efforts to reduce expenses by nearly \$15M in FY19...operating expenses will further outpace revenue growth in the foreseeable future unless there are significant changes in Medi-Cal rates and the financial structural relationship between Alameda Health System and the County of Alameda [emphasis added]....*

*...without additional local support our Board is faced with only the tough choices to honor AHS's obligations to the County to produce a balanced budget, which includes continuing to meet AHS's debt payment to the County, through a combination of cutting wages and/or benefits, reducing or even eliminating vital community services, and even closing facilities....The Board will be considering these service eliminations for the FY20 budget to take effect as of January 2020 if we are unable to secure additional financial support from our funding partners.*

Two days later, on June 12, 2019, AHS went public with its position and published a trustee-authored editorial in the local press. The editorial echoed much of the AHS chief executive officer's email to AHS employees:

*[The county's] support has always been necessary for AHS to survive, but it has become increasingly insufficient as other reimbursement programs decline or grow at a pace that hasn't kept up with the inflationary growth in expenses.... In other counties, public health systems receive substantial county general funds to help cover these costs. Alameda Health System does not....*

*The AHS Board welcomes the opportunity to partner with the county to find creative solutions to shore up the fiscal foundation for AHS. Options could include debt forgiveness, state and federal advocacy to increase funding for AHS, and strategic investments in services that address social factors such as adequate housing and nutrition that disproportionately impact a number of our patients...*

*Now, more than ever, it is imperative that we look to our county partners to help to identify additional funding that will help Alameda Health System continue fulfilling this mission next year and for the years to come.*

The county reacted quickly with responses reflecting its long-standing claims about AHS's lack of transparency, inaccurate financial reporting, and blame-shifting. On June 13, 2019, a county supervisor and the HCSA director each had statements read to the AHS Finance Committee. The supervisor's statement said, in part:

*...at this critical time, instead of working together, the [AHS] administration's foremost purpose seems to be to shift the blame [and] create dissension between its employees and its board with the county. I also question the administration's lack of transparency and the unwillingness to acknowledge its own past errors and ongoing operational issues which have cost the system millions of dollars. In fact, while the CEO was advocating [at the] June 10 Health Committee for cooperation, he was sending the memo...to everyone but the county and blaming [the county] for the current crisis.*

Similarly, the HCSA director's statement said, in part:

*[W]e are concerned about recent communications to the employees and physicians at AHS and the broader community through this week's media efforts to cast blame on the county...these challenges require partnership, not provocation...I am disappointed and deeply concerned by the budget proposal before you today....*

*Last year, [the AHS Chief Executive Officer] and I initiated regular meetings between AHS and HCSA executive teams to align on key initiatives and problem-solve on issues that arise. AHS financial issues have not been the topic of these conversations...none of the other proposals before you have been the topic of our joint conversations....We've held comprehensive conversations about these*

*initiatives [to reduce unnecessarily long hospital stays] and [are surprised] to hear that we are being held out as the problem....*

*HCSA has engaged [an outside “HCSA consultant”] to assess the situation at AHS. We believe we can find ways to improve financial performance and are investing in this health check to reach a diagnosis that will keep our valuable public health system in service to our community.*

A day later, on June 14, at a BOS town hall meeting, two county supervisors publicly condemned AHS’s lack of transparency and timely information and implied that AHS executive salaries were excessive.

On June 27, 2019, the county auditor-controller wrote AHS saying, in part:

*As AHS is aware, the County has contracted with [the HCSA consultant] to conduct an independent assessment of AHS due to the serious concerns the County has regarding the accuracy of the financial information provided by AHS, and the reported structural financial crisis that AHS predicts will continue to worsen over the upcoming fiscal years.... My office is retaining the services of [an outside “Auditor-Controller consultant”]...to provide a separate review...of AHS’s overall fiscal condition.*

Finally, also on June 27, the BOS wrote to the AHS trustees, saying “As you know the County has engaged [the HCSA consultant] to help us assess the financial situation at AHS. ... We feel strongly that the Board of Trustees should retain its own outside health care consultant and that this consultant should report directly to the Board of Trustees.”

### Themes Defining the Relationship

As exemplified by the communications detailed above and expanded by witness testimony before the grand jury, AHS and the county consistently reiterate long-standing differences of perspective on their relationship and sources of AHS’s financial problems.

AHS themes include:

- AHS’s outstanding debts arose long ago and were not incurred by current AHS management;
- Alameda County has an obligation to support AHS financially through good times and bad, like most other counties do for their public hospitals;
- Unlike other counties, Alameda County does not provide general fund support to AHS;



- The long-standing debtor-creditor financial structure for county support does not work: AHS desires to renegotiate the terms of the Permanent Agreement; and
- The political agenda of some county supervisors has interfered with AHS’s ability to efficiently manage its operations.

The county’s themes include:

- A strong distrust of the accuracy, transparency and timeliness of AHS’s financial information resulting in the retention of multiple outside consultants “to figure out what is going on”;
- A belief that AHS administration is not always up to par, is resistant to change and engages in sloppy business practices;
- An unwillingness by certain county supervisors to consider AHS’s proposals to reduce operational costs if that reduction is opposed by those supervisors’ constituencies; and
- A conviction that AHS’s share of Measure A funds is equivalent to general fund support of AHS and should be used to address specific AHS cash deficits and supplemental revenue needs.

One theme on which AHS and the county seem to agree, perhaps for different reasons, emerged through witness testimony: the governance structure of AHS is problematic and needs to be revisited and strengthened in order for the parties to better understand and respect each other’s governance and operational roles.

*Evidence considered raised the question for the grand jury: Can AHS ever fully repay its debt to the county? Even with transparent and efficient management, an average annual EBIDA Margin of 3% to 5% does not appear sufficient to pay off AHS’s outstanding debt and buffer against any future financial crises.*

### **What’s Happened Since the FY2020 Budget Was Approved in September 2019?**

The HCSA consultant report on AHS’s financial situation was released in October 2019 and focused on John George Psychiatric Hospital. The report stated that AHS’s initial and revised estimates of FY2019 operating losses at John George Psychiatric Hospital (\$42.1 million and \$31.2 million, respectively) significantly overstated the likely shortfall at the hospital. The consultant estimated the loss to be approximately \$12 million. AHS disagreed with the consultant’s estimate and the assumptions on which it was founded.

The Auditor-Controller consultant report on AHS’s overall financial condition, originally due in January 2020, was not



yet available to the grand jury in April 2020. The county claims that AHS has not provided all data requested by the consultant. AHS agrees, saying they have provided substantial and pertinent information; that is, the data the consultant needs, not necessarily all it wants. The grand jury understands that no effort has been made by the county or its consultant to resolve this issue.

Prompted by the BOS, the AHS trustees hired their own outside consultant to assess AHS's financial situation (Phase I) and evaluate and make recommendations regarding governance structure (Phase II). A draft Phase I final report was under review but not available to the grand jury at the time of this report.

In December 2019, the county HCSA with approval of the BOS proactively provided AHS \$23 million for adjusted AHS contractual rates for FY2014 through FY2018 and is negotiating a similar rate-adjustment payment of \$18 million to AHS for FY2019 and FY2020.

In March 2020, organized labor contacted the BOS complaining about AHS's negotiating practices and requesting that the BOS reexamine the governance and management of AHS. The grand jury was told that the BOS Health Committee intends to take up the request once the Coronavirus pandemic subsides.

In April 2020, the county and AHS each created a task force to assess Coronavirus-related concerns raised by labor unions and AHS health workers. Miscommunication and antagonism prevented cooperation between the task forces.

Finally, the grand jury learned that AHS is again facing an all-too-familiar financial situation as it initiates FY2021 budget planning: needing to close a significant projected budget gap and expecting over \$100 million in liabilities to come due without the cash to pay them. Déjà vu all over again.

The good news is that both AHS and the county say they are still negotiating a path forward for a sustainable future for AHS. On the other hand, the grand jury heard testimony that all such negotiations are informal, taking place between random members of the BOS and AHS trustees as well as members of the county and AHS staffs, and that no formal meetings between the parties have been scheduled.

*AHS and the county agree: the governance structure of AHS is problematic and needs to be revisited and strengthened in order for the parties to better understand and respect each other's governance and operational roles.*

## CONCLUSION

AHS and Alameda County have a complicated relationship that reflects the inherent complexities of operating a public health care system. In its investigation, the grand jury did not delve into and report on every detail of this relationship. Rather, we focused on broader patterns of interaction that reflect long-standing sources of tension in the relationship.

AHS faced a financial crisis heading into FY2020, with a projected lack of operational profitability and no cash to pay for substantial liabilities from previous years. The AHS trustees and administration addressed the budget shortfall head-on and seemed to be back on track. Diligent financial oversight by the AHS trustees and budget management by the AHS administration needs to continue. Better transparency and efficiency of operations must also occur. Nevertheless, AHS and the county have not yet determined how to resolve the current cash and debt crisis. Long-standing issues of distrust and posturing around those issues continue to slow the effort to do so.

Evidence considered raised the question for the grand jury: Can AHS ever fully repay its debt to the county? Even with transparent and efficient management, an average annual EBIDA Margin of 3% to 5% does not appear sufficient to pay off AHS's outstanding debt and buffer against any future financial crises. Alameda County and AHS must collaboratively resolve how to pay for AHS's long-term debts with the county.

The county must meet its statutory obligation to provide medical care to indigent county residents. AHS must operate the hospital system to provide that medical care as efficiently and transparently as possible. If resources prove insufficient, AHS and the county need to identify and agree on the scope of services to be provided. If that scope is determined to be less than currently offered, AHS and the county need to agree on the least damaging way to provide health services—by cutting back on services, increasing the county's financial support, or some combination of the two. Both parties then will need to present a uniform public face in support of that decision.

As one witness aptly stated, "It's not about the money. It's about the political will and competency to make the tough decisions." An improved relationship between the county and AHS is necessary to focus on defining a reasonable scope of the care to be offered by AHS, along with AHS reducing expenses and achieving revenue targets. Put another way, resolution will require the parties to make difficult decisions which appear to have been avoided or delayed to please special interests. These decisions cannot continue to be "kicked down the road." The future of a critical county safety net is at stake.

## ADDENDUM

This time of COVID-19 pandemic is creating unprecedented demands on the finances, services and operations of both Alameda County and AHS. Nevertheless, the pandemic should not be an excuse to “kick the can down the road.” Alameda County and AHS should make a concerted effort to address the long-standing matters presented in this report. The pandemic takes highest priority, but the review and implementation of these findings and recommendations also must be of high priority. Otherwise, history most assuredly will repeat itself.

### FINDINGS

#### Finding 20-7:

The friction between AHS’s responsibility for operational control and Alameda County’s health service mandate and allegiance to other constituencies continues to frustrate both parties, exacerbate their mutual distrust, and interfere with their ability to communicate and implement long-lasting solutions to AHS’s financial crises.

#### Finding 20-8:

AHS’s narrow focus on a balanced operating budget and EBIDA does not adequately represent the actual financial position of AHS.

#### Finding 20-9:

Even with transparent and efficient management, an average annual EBIDA Margin of 3% to 5% is not sufficient for AHS to pay off its outstanding debt and buffer against any future financial crises.

#### Finding 20-10:

AHS and Alameda County do not agree on whether AHS can establish a cash reserve to pay prior-year liabilities. The lack of a cash reserve exacerbates the long-term financial stability of AHS and its ability to comply with the Permanent Agreement, leading to further distrust between AHS and Alameda County.

#### Finding 20-11:

AHS does not provide its financial reports to county supervisors and staff sufficiently in advance of regularly scheduled meetings between the parties to allow county supervisors and staff time to familiarize themselves with those reports prior to being presented by AHS.

**Finding 20-12:**

AHS and Alameda County acknowledge the need for flexibility in the use of Measure A funds to take advantage of matching-fund opportunities. However, they often disagree on how AHS should specifically allocate Measure A funds to support its operations. This disagreement magnifies and exacerbates the distrust between AHS and Alameda County.

**Finding 20-13:**

Political pressure from some Alameda County supervisors has interfered with AHS operations and efforts to control costs.

**Finding 20-14:**

Negotiating separate contracts with 18 different labor unions is both time consuming and expensive for AHS and limits AHS's negotiating flexibility. AHS's negotiations with labor have been further compromised by public support of negotiating labor unions from some county supervisors.

**Finding 20-15:**

AHS and Alameda County agree that the governance structure of AHS is problematic and needs to be revisited and strengthened in order for the parties to better understand and respect each other's governance and operational roles.

## **RECOMMENDATIONS**

**Recommendation 20-6:**

If resources prove insufficient to adopt and maintain a balanced AHS budget, AHS and the county must identify and agree on the scope of services and on the least politically damaging way to provide them—by cutting back on services, increasing the county's financial support, or some combination of the two. Both parties then must present a uniform public face in support of that decision.

**Recommendation 20-7:**

Beginning with its FY2021 budget and continuing with its presentation of financial results, AHS must include all revenue and expense accounts in accordance with pronouncements of the Governmental Accounting Standards Board (GASB). The budget and presentation of financial results must not exclude accounts, believed by AHS, to be outside its control.

**Recommendation 20-8:**

AHS must, by September 30, 2020 and in consultation with Alameda County supervisors and staff, develop and regularly report a cash flow statement of sufficient scope and detail to provide an early warning system as to the approach of another cash crisis.

**Recommendation 20-9:**

Alameda County and AHS must collaboratively resolve how to pay for AHS's long-term debts with the county.

**Recommendation 20-10:**

AHS and Alameda County must develop a procedure whereby AHS has the ability to set aside cash to pay prior-year liabilities.

**Recommendation 20-11:**

AHS must provide financial reports to county supervisors and staff at least one calendar week prior to any regularly scheduled meeting at which those reports are to be presented.

**Recommendation 20-12:**

AHS and Alameda County must agree on how AHS allocates its share of Measure A funds as part of its budget.

**Recommendation 20-13:**

Individual members of the Board of Supervisors must not interfere in the day-to-day operations and management of AHS including labor negotiations and structure of service delivery.

**REQUEST FOR RESPONSES**

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

**Responses to Findings shall be either:**

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

**Responses to Recommendations shall be one the following:**

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

**RESPONSES REQUIRED**

Alameda Health System Board of Trustees	Findings 20-7 through 20-15 Recommendations 20-6 through 20-12
Alameda County Board of Supervisors	Findings 20-7 through 20-15 Recommendations 20-6, 8, 9, 10, 12 and 13



## **OAKLAND 9-1-1 COMMUNICATIONS CENTER – A CENTER IN CRISIS**

### **EXECUTIVE SUMMARY**

#### ***“9-1-1, what is your emergency?”***

In an emergency, we expect our 9-1-1 call to be answered quickly and to speak with a person. Unfortunately, that is often not the case in the City of Oakland.

Last year, the grand jury received a complaint about the Oakland Police Emergency Communications Center’s inability to process 9-1-1 calls within the state mandated times. The complaint alleged that many emergency callers in Oakland had to wait for minutes, wading through unnecessary recordings, in hopes of reaching immediate assistance.

In 2019, nearly 40% of Oakland’s 9-1-1 callers could not get through to operators within the state standard time of 15 seconds. More concerning, over 18,000 callers had to wait over two minutes for their call to be answered. This long wait time contributed to 13,800 emergency callers abandoning the line before their calls were answered.

The communications center is the first point of contact for the public to access emergency services. The failure to answer 9-1-1 calls promptly is not acceptable. Steps to improve the center’s response time must be taken immediately.

Both the Oakland Police Department (OPD) and the Oakland City Council are aware of the issues with the communications center. In 2017, the Oakland City Auditor issued a report critical of the communications center’s failure to answer calls within state and federal standards due, in large part, to understaffing. The auditor’s 2017 report made specific recommendations for improvement. The City of Oakland committed to address the issues.

In 2018, OPD hired a consultant to assess and study the communications center’s operations. The consultant issued a report in February 2019 that determined the center is understaffed and needs to hire an additional 16 dispatchers and eight supervisors to manage the call volume, provide appropriate supervision, and meet training needs for the communications center.

This year’s grand jury sought to determine what steps Oakland has taken to address deficiencies in its 9-1-1 system and whether these steps worked. Unfortunately, the grand jury learned that Oakland’s 9-1-1 problems have only intensified.

The grand jury's conclusions are:

- Current staffing levels simply cannot competently handle the 200,000 emergency calls the center receives each year. OPD's consultant exposed this critical understaffing 18 months ago.
- Staff is hindered by the reliance on outdated technology installed 18 years ago. Funding for a Computer Aided Dispatch system was approved three years ago but has yet to be installed.
- The communications center does not staff enough dispatchers during peak periods from 9 a.m. to 9 p.m.
- Oakland's hiring process is slow, tedious, and hiring policies are antiquated.
- The communications center continues to be underfunded.

The grand jury is disappointed that these issues continue to threaten the safety of the citizens of Oakland. City leaders must take immediate actions to rectify this negligent oversight of public safety service and operations.

## BACKGROUND

*In 2019, nearly 40% of Oakland's 9-1-1 callers could not get through to operators within the state standard time of 15 seconds. More concerning, over 18,000 callers had to wait over two minutes for their call to be answered.*

In April 2019, an off-duty Oakland police officer was walking to his car, two blocks from the police station, when he was stabbed in the neck by an unknown assailant. After disarming his attacker, the profusely bleeding officer used his cell phone to call 9-1-1. After repeated calls failed to connect, he called another police officer working in a county building a mile away. Rather than call 9-1-1 from his cell phone, that officer chose to run to his car to radio OPD's emergency communications center for help. At the same time, a garbage truck operator drove past the crime scene and heard the victim officer calling for help. The truck operator used his phone to call 9-1-1 but could not get through. He ultimately called his employer who in turn called and got through to 9-1-1. By the time other officers

arrived at the scene, they feared the injured officer might not survive if they waited for an ambulance. They placed the injured officer in the back of a patrol car and sped off to a trauma

center where life-saving aid was rendered. The 9-1-1 system's multiple failures in this situation almost cost the stricken officer his life.

The ability of a city's emergency communications center to quickly answer 9-1-1 and other emergency calls can be the difference between life and death. A person's survivability in a cardiac arrest is the highest when emergency medical care is started within four minutes. Structure fires grow exponentially during the first few minutes after ignition. Stopping crimes in progress, especially crimes of violence, require that law enforcement be notified immediately to increase the chances of intervening and apprehending the suspect.

### State Emergency Call Answering Requirements

The Governor's Office of Emergency Services, Public Safety Communications, and California 9-1-1 Emergency Communications Branch (CA 9-1-1 Branch) have established mandatory standards for emergency communication systems to ensure fast, reliable, and cost-effective telephone access to emergency services for any 9-1-1 caller in California. The mandatory standard for emergency call answering, as stated in the 2016 State of California 9-1-1 Operations Manual (CalOES), is that all Public Safety Answering Points (PSAPs) answer 95% of all incoming 9-1-1 calls within fifteen seconds.<sup>1</sup> The CA 9-1-1 Branch has auditing authority and monitors the handling of 9-1-1 calls by emergency communications systems to ensure all systems comply with the standards.

*The California Office of  
Emergency Services 9-1-1  
call answering policy  
states 95% of all calls  
should be answered  
within 15 seconds.*

### National Call Answering Standard

The National Emergency Number Association (NENA) is the only professional organization solely focused on 9-1-1 dispatch policies, technology, operations, and education issues across North America. NENA promotes the implementation and awareness of 9-1-1 and international three-digit emergency communications systems. NENA publishes best practices and standards for the management, operation, and training of 9-1-1 dispatch centers and dispatchers. The NENA standard states that 90% of all 9-1-1 calls shall be answered within 10 seconds during the hour with the greatest call volume and 95% of all calls should be answered within 20 seconds.

### Oakland Police Emergency Communications Center

The Oakland Police Emergency Communications Center, located in East Oakland, employs dispatchers to answer emergency, non-emergency, and some administrative calls for the Oakland Police Department. The communications center has 20 dispatch consoles for handling

---

<sup>1</sup> <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/002-CHAPTERIStandards.pdf>

calls as well as large screens scattered throughout the facility that allow the dispatchers to monitor relevant news and active calls for service.

### 2017 City Auditor's Report

The Oakland City Auditor is responsible for ensuring that city government operates with transparency and is accountable to city residents by conducting performance audits of local government services. When auditing city operations, the auditor works independently to identify areas within Oakland's operations most vulnerable to fraud, waste, abuse, and mismanagement. The audit reports are filed with the city administrator, the mayor, and the city council.

In 2017, the communications center was audited to determine the efficiency and timeliness of answering emergency calls. The grand jury examined the city auditor's findings related to call answering performance, staffing, and recruitment practices. The auditor's findings included:

- The communications center fails to meet state and national standards.
- The communications center consistently has unfilled positions and staffing is not aligned with the call volume.
- The continual reliance on overtime exacerbates turnover.
- The city's hiring and onboarding process is protracted.

### Federal Engineering Inc. Consultant Report

In February 2019, Federal Engineering, Inc., under contract to the Oakland Police Department, completed an assessment and analysis of the communications center's operations. The consultant performed a comprehensive analysis on the communications center's staffing ratios, radio procedures, work processes, and call volume. It provided 15 recommendations to improve the communications center's performance.

Of particular interest to the grand jury were the consultant's recommendations related to staffing and call answering procedures, as follows:

- That OPD find an alternative elsewhere in the department for the time-consuming, and yet understandably important, officer complaint intake task.
- That OPD consider moving maintenance responsibility for the Pursuit Log and Use of Force Log elsewhere to a more appropriate area within OPD.

- That OPD add a communications center technology manager with specific knowledge and expertise in public safety technology and operations to effectively oversee critical PSAP systems and ensure the technology needs of the communications center are met.
- That dedicated supervision be increased to 15 communications supervisors, and that the communications center’s supervisors not be routinely tasked with any call-taking or dispatching responsibilities.
- That OPD add a dedicated training manager position to effectively and consistently manage the communications center’s training program and oversee the delivery of high-quality training for new hire and on-the-job training for communications division personnel.
- That the minimum number of required active (staffed) positions needed to handle the projected workload is 21 during peak time hours, consisting of three supervisors, and 18 dispatchers.

## INVESTIGATION

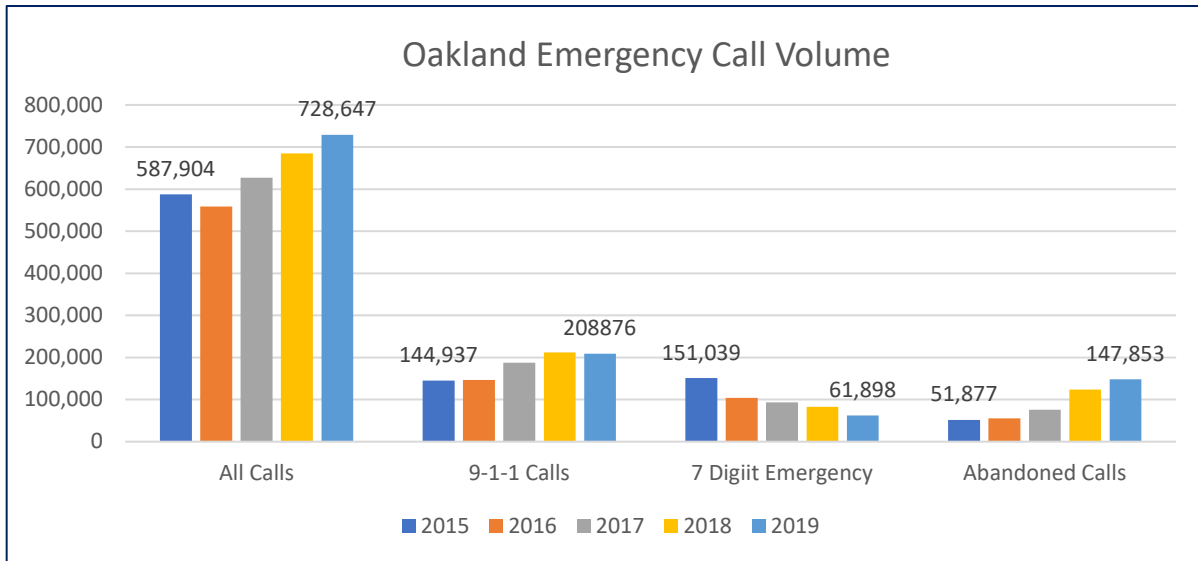
The grand jury examined the communications center’s operations in response to a public complaint it received regarding long delays with answering emergency calls. During the investigation, the grand jury examined state requirements and national standards for emergency call response, the 2017 Oakland City Auditor’s report on the 9-1-1 communications center, the 2019 Federal Engineering, Inc. Communications Center Report, 2017-2020 Oakland budget reports, city staff reports, city council agendas and minutes, and emergency and non-emergency call data. The grand jury also spoke with emergency communications experts, public officials within the region, as well as managers in Oakland’s communications center, and the city’s human resources and information technology departments. The grand jury investigation focused on call answering performance, communications center staffing, and technology issues.

*The total number of calls to the emergency communication center, including emergency, non-emergency and administrative calls, increased by 24% over the past five years, from 587,904 calls in 2015 to 728,647 calls in 2019.*

The grand jury examined 2019 performance data provided by Oakland and compared it to the data from the 2017 city auditor’s report and 2019 Federal Engineering, Inc. consultant’s report.

## Call Volume

The total number of calls to the emergency communication center, including emergency, non-emergency and administrative calls, increased by 24% over the past five years, from 587,904 calls in 2015 to 728,647 calls in 2019 (see the following chart).



In 2019, the estimated population of Oakland was 432,879.<sup>2</sup> With 74 budgeted dispatchers, there was one dispatcher for every 5,850 residents, and for every 9,846 calls. As of January 2020, operating with only 59 of the authorized 74 dispatchers, the communications center has one dispatcher for every 12,349 calls.

*In 2019 there were over 1,100 calls each month that took over two minutes to answer. The grand jury heard testimony that these occurred during peak call volume periods.*

### 9-1-1 and 7-Digit Emergency Calls

The number of emergency calls to 9-1-1 jumped 44% over the past five years, from 144,937 calls in 2015, to 208,876 calls in 2019. This significant increase in call volume was due, in part, to Oakland receiving most of the mobile 9-1-1 calls that in the past were covered by the California Highway Patrol (CHP). As of January of 2020, the CHP was still receiving Oakland's mobile 9-1-1 calls from Metro by T-Mobile subscribers. The number of calls to Oakland's seven-digit emergency number decreased between 2015 (151,039) and 2019 (61,898) reflecting a higher number of calls to 9-1-1.

<sup>2</sup> According to the California Department of Finance



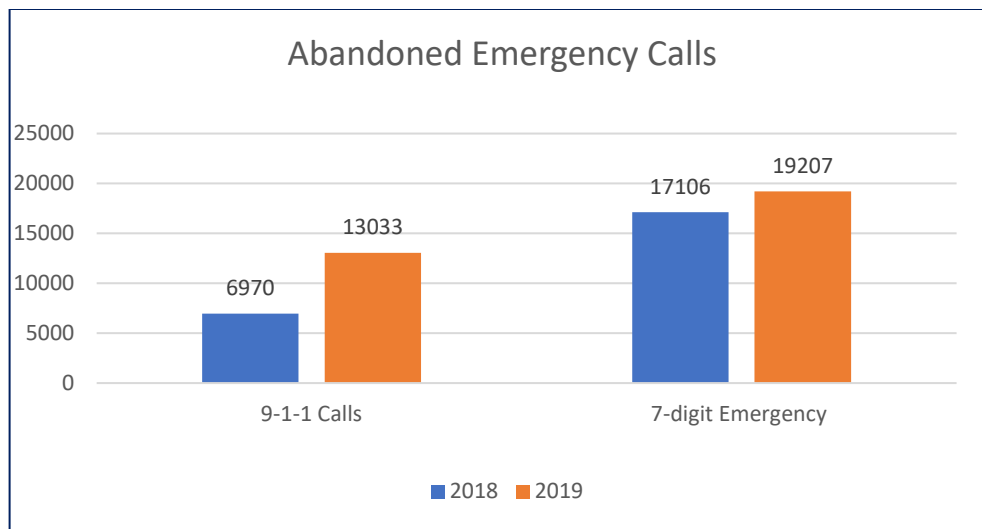
Oakland does not have an internal policy on how quickly dispatchers must answer 9-1-1 calls. In contrast, the Fremont Police Communications Center has a three-ring policy and the Alameda County Sheriff's Office has a seven-ring policy. The average 9-1-1 call-answering time has not changed from 2015 (27.2 seconds) to 2019 (27.5 seconds) and remains longer than the state standard of 15 seconds. Performance standards data shows 37% of 9-1-1 calls were answered within 15 seconds in 2015 and 55% of 9-1-1 calls were answered within 15 seconds in 2019. While there was some improvement since 2015, the communication center's call-answering time remains far below the federal and state standards of 95% of calls answered within 15 seconds.

In 2019, there were over 1,100 calls monthly that took over two minutes to answer. The grand jury heard testimony that these occurred during peak call volume periods.

### Abandoned Emergency Calls

When no dispatcher is available to answer a 9-1-1 call, the caller hears a message saying, "all operators are busy, please stay on the line," followed by a message in Spanish to press 9 for an operator, and finally a loud tone alerting TTD/TTY users to transmit their message. These pre-recorded messages simply cover up the fact that the center is understaffed and dispatchers are not available to answer emergency calls. The recordings related to Spanish and TTD/TTY calls are unnecessary due to technology improvements. Traditional TTD/TTY callers who previously used that system prefer to use other technology to communicate with emergency dispatchers. Other dispatch centers in the region do not use recordings to answer 9-1-1 calls.

Due to delays in answering 9-1-1 calls, callers may hang-up, abandoning the call. In 2019, the communications center had 13,033 abandoned 9-1-1 calls and 19,207 abandoned seven-digit emergency calls (see chart, below). Abandoned calls require additional work for dispatchers, who must call each number back to determine if there is an emergency.



The data on abandoned calls also show that:

- The number of abandoned emergency and non-emergency calls increased by 185% between 2015 (51,887) and 2019 (147,853).
- The number of abandoned 9-1-1 calls between 2018 and 2019 nearly doubled, from 6,970 to 13,033 calls.
- The number of abandoned seven-digit calls also increased between 2018 and 2019 from 17,106 calls to 19,207 calls.

### Non-Emergency Calls

The communications center’s dispatchers also are required to answer a 24-hour complaint line about police department services. In 2019, the center fielded 24,107 complaint-line calls.

In addition, communications supervisors spend an inordinate amount of hours processing public records requests. This often prevents supervisors from providing necessary training and oversight of dispatchers. It also contributes to longer times to answer emergency calls.

*The grand jury learned that understaffing issues have persisted for years. As a result, the communications center required dispatchers to work up to 80 overtime hours a month. In 2018, the communications center’s overtime costs reached \$2 million.*

### **Budget and Staffing**

The Oakland Police Department’s FY2019–20 total operating budget was \$290 million. OPD allocated approximately \$15.7 million (5.4% of its budget) to fund the communications center. The communication center’s FY2019–20 budget authorized a total of 74 dispatchers, one communications manager, and seven supervisors.

As of January 2020, there were only 59 dispatchers staffing the communication center. The city administrator authorized OPD to hire an additional 10 unbudgeted positions so the communications center, if fully staffed, would have 84 dispatchers.<sup>3</sup> Despite the increase in call

volume and expansion of authorized positions, the communications center continues to be understaffed. As of March 2020, it had eleven vacancies, six personnel in training that could not yet function as a dispatcher or operator, and five personnel on extended leave.

The grand jury learned that understaffing issues have persisted for years. As a result, the communications center required dispatchers to work up to 80 overtime hours a month. In 2018, the communications center’s overtime costs reached \$2 million. The high dependency on

overtime leads to burnout, fatigue, and performance issues of dispatchers. The grand jury also heard testimony that these overtime mandates likely contribute to disproportionately high sick leave and disability claims.

Understaffing is the reason the communications center is forced to depend on outside support to answer some mobile 9-1-1 calls. While the communications center now answers mobile calls from AT&T, Verizon, and T-Mobile phone subscribers, it still must rely on CHP to answer mobile 9-1-1 calls from Metro by T-Mobile. The communications center's managers believe the high number of Metro by T-Mobile subscribers in Oakland would further overwhelm the available dispatchers.

### Recruitment Process and Hiring Barriers

The city's cumbersome hiring policies and civil service rules are formidable to navigate and pose unnecessary roadblocks to filling open positions.

The grand jury learned that it takes a minimum of eight months to hire a 9-1-1 dispatcher in Oakland. The 32-step city hiring process requires, among other things, the police and human resource departments to complete a requisition for approval to hire, conduct a job analysis, establish an application period, review applications for minimum qualifications, set up pre-employment testing, establish an eligibility list, conduct multiple panel interviews, notify candidates of conditional job offers, conduct psychological, polygraph, and drug testing, background checks, and job offer processing.

The training of a dispatcher takes 35–38 weeks. The training includes a three-week academy, eighteen weeks of call-taking procedures, six weeks of radio procedures, and ten weeks of training on primary police channels. It was reported that the failure rate of the entry-level candidates is approximately 50%.

The City of Oakland Human Resources Department (HRD) supports OPD with the recruitment, testing, and establishment of the police dispatcher eligibility list. The city's 32-step hiring process relies, in part, on civil service

*The city's cumbersome hiring policies and civil service rules are formidable to navigate and pose unnecessary roadblocks to filling open positions. Many candidates withdraw or find other jobs long before they are interviewed. During the most recent recruitment process in June 2018, entry level testing did not even take place until four months into the process. By then, 40% of candidates had withdrawn.*

rules to establish the job specifications, application process, and scoring of applicant test results. The HRD has one senior human resources analyst assigned to the police department to support all of the police department's recruitment and promotional examination processes.

For a given hiring event, the pool of applicants who meet the minimum qualifications for police dispatcher are invited to take a written dispatcher selection test. The test measures cognitive abilities and performance of a candidate, and identifies if a candidate has the capabilities to be a dispatcher. The test does not require any special dispatcher training or knowledge. Once the testing is completed, the HRD establishes a pass point based on the distribution of test scores and those candidates who have a passing score of 70 or higher are placed on an eligibility list.

Many candidates withdraw or find other jobs long before they are interviewed. During the most recent recruitment process in June 2018, entry level testing did not even take place until four months into the process. By then, 40% of candidates had withdrawn.

Amending the city's antiquated civil service rules to meet the needs of today's technology and labor force necessitates political courage from labor, management, and elected officials. There have been many failed efforts in the past to update Oakland's civil service hiring rules.

Other policies can be changed internally. For example, Oakland has traditionally conducted in-house testing for the dispatcher position on a single date. The grand jury learned that many applicants are disqualified because they cannot appear on the test date chosen by the city. Other jurisdictions have avoided this problem by accepting test results from outside agencies or regional testing centers. These outside testing centers provide many test date options, and potential applicants that use them can provide their test scores shortly after they apply avoiding long delays waiting to take the city's version of the test. While the Oakland's human resources department indicated it is open to using tests from outside agencies or regional testing centers, they contend further research is needed before change is adopted.

The human resources department's own staffing issues provide additional obstacles for the communications center's hiring. New job classifications (newly created positions) can take two years to process through the civil service commission. Amending job descriptions can take well over six months and required going through the meet-and-confer process with labor signoff as well as civil service commission approval. As a result of the HRD workload, HRD asks city departments to prioritize recruitments and job classification changes. The police department has ranked dispatcher recruitment ninth in order of priority behind other police position recruitments. This is, in part, because labor agreements require that promotional exams take priority causing the communications center to wait in line.

## **Technology**

### Telephone System

The communications center upgraded its phone system in 2019 to better manage incoming emergency calls and track call data. The previous phone system was reported to have frequent technical issues resulting in dropped calls.

### Computer-Aided Dispatch (CAD) System

The CAD system is a specialized software and records management system used by dispatchers to track and dispatch emergency calls as well as to send information to the responding police units. The communication center's current computer-aided dispatch (CAD) system has been in place since 2002 and is outdated and inefficient at data and report generation.

In July 2017, the city council authorized \$12.8 million dollars to install a new 9-1-1 public safety IT system including next-generation CAD and court-mandated reporting systems. A vendor contract to install the new CAD system was finalized in October 2018 but has been delayed since April 2019. The additional delays with the configuration of the CAD system are expected to push project completion well into 2021. The delays have been caused in part by the communications center not having a dedicated team to coordinate with the vendor building the CAD system and help move the project forward. The system configuration requires input from the dispatchers and first responders. The dispatchers assigned to the project team are frequently not available because they are needed to staff the communications center. Additional training will be required of the dispatchers prior to the implementation of the new CAD and technology systems, which will impact staffing levels.

The communications center plans to begin receiving text-to-9-1-1 calls in 2020. Callers will be able to send text messages requesting help when the caller needs to be discrete, for instance, in an active shooting scenario or when the caller is hearing impaired.

## **CONCLUSION**

The City of Oakland Emergency Communication Center does not meet the national or state standards to answer emergency calls. As a result, each year thousands of 9-1-1 callers abandon their attempts to reach out for help from first responders. Even more callers wait for over two minutes before being connected to a live 9-1-1 operator. Simply put, Oakland's underfunded and understaffed 9-1-1 communications center cannot manage the volume of emergency and non-emergency calls it receives, placing the public's safety at risk.

While the grand jury acknowledges that Oakland faces an on-going financial crisis now exacerbated by the COVID-19 pandemic, the city's failure to address staffing shortages within the communications center is inexcusable. The city was advised twice in recent years of these shortfalls in separate independent reports. The 2017 city auditor's report and a city-sponsored consultant's report in 2019 both concluded that the communications center was woefully understaffed. They both made comprehensive recommendations, many of which the city has ignored. The grand jury is disappointed that the city has done so little to address these persistent problems. City leaders must take immediate actions to rectify this negligent oversight of public safety service and operations.

## **FINDINGS**

### *Finding 20-16:*

Oakland's communications center fails to meet the CalOES Standard of answering 95% of all emergency calls within 15 seconds, jeopardizing public safety.

### *Finding-20-17:*

The communications center continues to operate under-staffed and has not conducted a dispatcher recruitment since June 2018, placing an unacceptable burden on dispatchers working excessive overtime hours.

### *Finding 20-18:*

The amount of overtime paid to dispatchers in 2019 reached \$2 million. This amount of money could be used to fund up to 15 permanent dispatcher positions.

### *Finding 20-19:*

Delays in completing the new CAD project are due, in part, to lack of available staff dedicated to provide project management and comprehensive configuration input to the vendor.

### *Finding 20-20:*

The responsibilities to manage Public Records Acts requests and staff the Oakland Police Department's complaint line creates an unacceptable burden on an understaffed communications center and diverts staff away from answering emergency calls.

### *Finding 20-21:*

The communications center's failure to establish a call-answering policy or standard contributes to a lack of accountability to the Oakland community.



*Finding 20-22:*

The communications center's recorded messages that callers are greeted with when call takers are busy unnecessarily increases the number of abandoned calls.

*Finding 20-23:*

Hiring of communications center staff has lagged because of an overly complicated hiring process.

*Finding 20-24:*

The recruitment of dispatchers is set as an unacceptably low priority by OPD.

## **RECOMMENDATIONS**

*Recommendation 20-14:*

The City of Oakland must establish a call-answering policy for the communications center to meet the CalOES requirement to answer 95% of all incoming 9-1-1 calls within fifteen seconds.

*Recommendation 20-15:*

The City of Oakland must conduct dispatcher recruitments on a continuous basis until dispatcher vacancies are filled.

*Recommendation 20-16:*

The City of Oakland must modify human resource and department policies to accept regional or allied agency dispatch testing scores to meet pre-employment requirements.

*Recommendation 20-17:*

The City of Oakland must increase the authorized and budgeted number of dispatchers and supervisors to meet state call answering standards as recommended by the city's consultant.

*Recommendation 20-18:*

The City of Oakland must publish on the city's website quarterly communications center performance data relating to emergency call processing.

*Recommendation 20-19:*

The Oakland Police Department must assign the responsibilities of managing Public Records Act requests and staffing of the OPD complaint line to another division as recommended by the 2019 consultant's report.

**Recommendation 20-20:**

The Oakland Police Department must assign a senior dispatcher or supervisor full-time to work on the CAD configuration until the CAD system is operational.

**Recommendation 20-21:**

The Oakland Police Department must change the outgoing recorded message to one that informs 9-1-1 callers that all available dispatchers are busy answering other 9-1-1 calls, when callers are on hold.

**REQUEST FOR RESPONSES**

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

**Responses to Findings shall be either:**

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

**Responses to Recommendations shall be one the following:**

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

**RESPONSES REQUIRED**

City Council, City of Oakland

Findings 20-16 through 20-24

Recommendations 20-14 through 20-21

Mayor, City of Oakland

Findings 20-16 through 20-24

Recommendation 20-14 through 20-21

## **DISASTER PREPAREDNESS: HOW READY IS ALAMEDA COUNTY?**

### **EXECUTIVE SUMMARY**

The history of California is in large part a history of its disasters. Earthquakes are frequent and often destructive; catastrophic wildfires are a constant threat; and there are floods, landslides, even volcanic eruptions and tsunamis. Alameda County has seen more than its share of these, including the 1923 Berkeley hills fire that destroyed over 600 structures, and the 1991 Oakland firestorm that destroyed 2,843 houses and killed 25 people. Even as this report is being written, the county and the world are confronting the coronavirus pandemic (COVID-19). The future looks no more promising than the past: with the advent of climate change, wildfires are predicted to be more frequent and destructive; and the Hayward Fault Zone, which lies under six cities in Alameda County, is overdue for what might be a catastrophic earthquake.

The California State Emergency Plan was created to prepare for such disasters and directs cities, counties, and other agencies to create their own individual emergency operations plans following state and federal guidelines. The purpose of these plans is to respond to emergencies, reduce loss of lives and property, and to recover from catastrophic events.

In order to assess the efforts being made in Alameda County to prepare for disasters, the grand jury investigated how the 14 cities in the county and the county itself comply with the emergency planning directive. Our intent was to investigate whether these jurisdictions have emergency plans in place as well as their readiness to implement their plans. We sought information from all jurisdictions within Alameda County inquiring about the readiness of their various emergency operation plans, emergency operations centers, regular exercises, employee training, follow-up reports (also known as after-action reports), and related preparations.

The responses, most of which were received in early December 2019, indicated a wide range of achievement. All the jurisdictions have emergency operations plans but only a handful have designated lines of succession for their elected officials in the case of an emergency or have trained these officials in disaster preparedness. The county of Alameda and the city of Berkeley are far ahead of the others in the number of exercises conducted and the training of employees and officials. Other cities admitted that they would be overwhelmed in the case of a major disaster and would be relying on the county for leadership and aid.

## BACKGROUND

The disasters that have struck California during its history have been many and varied: the 1906 earthquake and fire that devastated San Francisco; the Loma Prieta earthquake in 1989 that destroyed freeways and buildings; the 1918 influenza pandemic; countless wildfires; and the floods that regularly swell rivers and flood valleys. Perhaps less well known was the tsunami that occurred after the 1964 Alaska earthquake that killed 12 people and destroyed 30 blocks in Crescent City, California; the volcanic eruptions of Mount Lassen from 1914 to 1917; and the Great Flood of 1862, when the equivalent of 10 feet of precipitation fell over several weeks, submerging the Central Valley in up to 30 feet of water and covering an area 300 miles long and 20 miles wide.

*The grand jury undertook this investigation in order to determine just how well-prepared local jurisdictions are to respond to disasters.*

Several things inspired the grand jury to look at how local jurisdictions are prepared for future emergencies and disasters. One was the recent fires in Northern California, which consisted of a series of devastating fires in Napa, Lake, Sonoma, Mendocino and Butte counties. The county of Sonoma prepared an after-action report and improvement plan, assessing the response of its various emergency services during the 2017 Complex fires. The report made numerous findings, noting confusion about the role of public officials, inadequate staffing of the

emergency operations center, and insufficient training and exercise programs. One consequence of these wildfires was the initiation of a Public Safety Power Shutoff (PSPS) plan by PG&E, an attempt to preempt the possibility of fires caused by power lines and failing equipment by shutting off power to certain fire-prone areas when fire danger is high. These shutoffs in 2019 left many without electricity for days, and residents with medical needs were forced to find emergency shelters equipped to power their medical devices.

Another motivation for the grand jury's investigation was the 2018 U.S. Geological Survey report entitled "The HayWired Earthquake Scenario," which imagined a hypothetical magnitude 7.0 earthquake on the Hayward Fault. The predictions of the HayWired report were dire: 800 deaths, 18,000 non-fatal injuries, 77,000 households displaced, and up to 210 days without water service in some areas in Alameda County.

Finally, in early 2020, the coronavirus threat brought home to all of us how quickly an emergency can arise, and how dramatically it can change our lives. Store shelves are empty and emergency rooms are overwhelmed, and the need for supplies and accurate information becomes a matter of life or death. The United States Department of Health and Human Services conducted exercises from January to August of 2019, code-named "Crimson Contagion," that simulated an influenza pandemic that started in China and spread throughout the world, ultimately sickening

110 million Americans with 7.7 million hospitalized and 586,000 dead. An unreleased draft report of the exercise’s findings concluded that there was insufficient funding for a response to the pandemic, confusion regarding the roles of various federal agencies, and a lack of production capacity for protective equipment and medical devices.

In response to the COVID-19 pandemic, all the surveyed cities and the county activated their emergency operations centers or participated in daily conference calls in order to obtain information or provide resources to the Alameda County Public Health Department, the city of Berkeley Public Health Division, hospitals, and local first responders.

The grand jury undertook this investigation in order to determine just how well-prepared local jurisdictions are to respond to disasters.

### Emergency or Disaster

The Federal Emergency Management Agency (FEMA) defines an emergency as any incident, whether natural, technological, or human-caused that requires responsive action to protect life or property. A disaster is an occurrence of a natural catastrophe, technological accident, or human-caused event resulting in injuries, deaths, or severe property damage.

When an emergency occurs, a local jurisdiction may be able to handle that emergency event with its own resources (staffing, supplies, facilities, expertise, funding, etc.) and will not seek federal or state assistance. When a disaster occurs, a local jurisdiction will not have the resources available to respond or recover from the event. In such cases, a local jurisdiction will have to rely on mutual aid and support from other local, county, state or federal agencies, or from private businesses.

### The California State Emergency Plan, SEMS, and NIMS

In 1970, the state enacted the California Emergency Services Act which established the Governor’s Office of Emergency Services (Cal OES). Cal OES is responsible for the coordination of statewide emergency preparedness, post-emergency recovery and mitigation efforts, and for the development of emergency plans.

Central to this are the requirements of California’s Standardized Emergency Management System (SEMS) and the federal National Incident Management System (NIMS). SEMS sets out the requirements for emergency preparation in California, and local government entities must use SEMS in order to be eligible for any reimbursement of costs under the state’s disaster assistance programs. NIMS has similar requirements for coordinating the efforts of the various entities in disasters anywhere in the United States. It is important to recognize that compliance

with SEMS and NIMS is also necessary in order to receive state and federal funding, respectively, for preparedness and expenses incurred responding to disasters.

### Emergency Operations Centers

An emergency operations center is a centralized location for emergency management coordination and decision-making by a city, county or other public entity during a critical incident or disaster. The mission of an emergency operations center is to support field responders, collect and disseminate information, track and order resources, and coordinate response and recovery efforts.

*The mission of an emergency operations center is to support field responders, collect and disseminate information, track and order resources, and coordinate response and recovery efforts.*

Emergency centers are staffed by personnel from multiple departments including police, fire, planning, public works, and health. It is vital that personnel assigned to these centers receive training and regular exercises to keep their skills up-to-date and allow them to function effectively when the center is activated in an emergency. The state of California maintains and operates the state operations center and three regional emergency operations centers.

When an emergency or disaster occurs or has the potential to occur, Cal OES can activate the state center and affected regional centers to support the operational area where the emergency is taking place. An operational area is simply a county and its political subdivisions, such as cities, utility districts, etc. Alameda County is the operational area coordinator responsible for all jurisdictions within the county, including the 14 cities and all unincorporated areas. A description of its emergency operations center can be found later in this report.

### Local Governments

The California Emergency Services Act states “counties, cities and counties, and cities may create disaster councils by ordinance. A disaster council shall develop plans for meeting any condition constituting a local emergency or state of emergency, including but not limited to, earthquakes, natural or manmade disasters....” While creating a disaster council is optional, once it is created an emergency operations plan is mandatory. All the cities in Alameda County and the county itself have created these councils; therefore, all are required to have emergency plans. During an emergency, local governments implement their plans, which may include deploying emergency response personnel, activating emergency operations centers, and issuing orders to protect the public.



## INVESTIGATION

In order to assess the state of preparedness of the cities and county of Alameda, the grand jury selected eight assessment criteria that we believed would indicate a jurisdiction's state of readiness:

1. The existence and latest date of its emergency operations plan.
2. Emergency operations center exercises that have taken place during the previous two years.
3. Emergency operations center activations that have taken place during the previous two years.
4. Emergency operations center training that have taken place during the previous two years.
5. After-action reports pertaining to the above.
6. Designation of standby officers.
7. Elected officials training.
8. Direct line of succession for the director of emergency services.

The grand jury reached out to the county of Alameda and the 14 cities in the county requesting this information in November of 2019 and received responses in December from all but one of the jurisdictions, with Oakland responding in February 2020.

### Emergency Operations Plans

To help local governments prepare their own emergency operations plans, Cal OES prepared a checklist of emergency plan elements referred to as a “crosswalk,” which is designed to ensure that the requirements of SEMS and NIMS are met. These requirements include an overview of the steps taken to prepare for disasters; an emergency organization chart; communication protocols; the organization and operation of the emergency operations centers; a description of the persons who would succeed key government officials; the submission of after-action reports; and a description of the necessary training and exercise programs. Local plans should address response activities that are specific to all hazards that pose a threat to the jurisdiction, such as earthquakes, floods, tsunamis, and terrorism. It should also name a director of emergency services and identify successors to that director.

For its part, FEMA also publishes a guide on developing and maintaining emergency operations plans. This guide provides background and resources for creating plans and recommends that each component of the plans be reviewed and revised regularly, at a minimum of every two years. The grand jury took this two-year recommendation as a basis for our investigation and in framing our questions to the cities and county.

The grand jury found that all jurisdictions in Alameda County have existing emergency operations plans. The cities of Dublin, Piedmont, San Leandro, and Hayward, along with Alameda County, are either in the process of updating their emergency operations plans or should take steps to update their plans, as they may be outdated.

- Alameda County adopted its plan in 2012 and is projected to update its plan in 2020.
- The city of Dublin adopted its plan in 2004 and is projected to update its plan in 2020.
- The city of Hayward does not state when its plan was drafted.
- The city of Piedmont adopted its plan in 2015 and is planning to update it in 2020.
- The city of San Leandro adopted their plan in 2015 and is in the process of updating it with no specific timeline.

### Emergency Operations Exercises

Emergency exercises are important in order to test capabilities, familiarize personnel with roles and responsibilities, and establish interaction and communication with other organizations. Exercises can also bring together and strengthen the whole community to prevent, protect against, mitigate, respond to, and recover from all hazards.

Two types of exercises are used for emergency center training:

- 1) Discussion-based exercises are tabletop simulations, seminars, or workshops. They are used to familiarize participants with plans and procedures.
- 2) Operations-based exercises are drills, which can be either functional or full-scale. These test plans, policies, agreements and procedures, clarify roles and responsibilities, and identify resource gaps in an operational environment.

There are three types of operations-based exercises:

- *Drills*: A coordinated, supervised activity usually employed to test a single, specific operation or function within a single entity, such as a fire department conducting a decontamination drill.
- *Functional Exercises*: These exercises examine the coordination, command, and control between various multi-agency centers such as an emergency operation center or a joint field office. A functional exercise does not involve first responders or emergency officials responding to an incident in real time but does allow participants to physically run through elements of the response to become familiar with it.
- *Full-Scale Exercises*: A multi-agency, multi-jurisdictional, multi-discipline exercise involving both emergency operations centers and rehearsed emergency responses (e.g., multiple departments in the field doing live activities and communicating results and resource needs to their emergency operation centers).

Many of the exercises, especially if funded by federal grants, are required to be conducted in accordance with FEMA’s Homeland Security Exercise and Evaluation Program. In order for a jurisdiction to be considered compliant with these principles it must conduct annual training and exercises, submit after-action reports, and take corrective actions.

The grand jury found that the cities of Alameda, Hayward, Newark, Piedmont, San Leandro and Union City performed no emergency training exercises within the last two years. Other cities, including Albany, Emeryville, and Pleasanton only performed tabletop exercises. The city of Berkeley conducted the most exercises (27), both functional and tabletop, and the county of Alameda conducted 18 exercises, both functional and tabletop. It should be noted some exercises included numerous jurisdictions. Notably, the Urban Shield multi-jurisdictional exercises conducted in September of 2018 included a full-scale earthquake and other emergency scenarios. Participants included Cal OES, various state departments, the county of Alameda, and five of the 14 cities in the county: Berkeley, Dublin, Fremont, Livermore, and Oakland. It should be noted, however, that funding for these exercises, provided by the Department of Homeland Security, was lost when the county board of supervisors ignored warnings of the Alameda County Sheriff’s Office and set conditions in its application that were unacceptable to the grant funders.<sup>1</sup>

Other exercises, such as “The Great Shakeout,” the “Big Wave” (for tsunamis), and “Mass Care” (to deal with the care of the displaced) were also attended by a number of cities. The Alameda County Public Health Department sponsored two exercises anticipating an emerging infectious disease outbreak: a tabletop exercise in October of 2018 and a functional exercise in November 2018. The purpose was to understand individual and coordinated response roles for the public health department and other local agencies and healthcare providers. Participants included various county agencies including the department of emergency services and a large number of healthcare providers, including Kaiser Permanente, Sutter Health, and a number of assisted and senior care centers. The only city to participate was Berkeley, which alone among the cities in Alameda County has its own public health agency. As we have seen with the coronavirus pandemic, the public response to the outbreak (such as ordering citizens to shelter-in-place) was made at the county level by the county public health department, as well as by the city of Berkeley public health office.

The after-action reports for both of these outbreak exercises found strengths and areas in need of improvement and recommended further free FEMA courses for healthcare providers. The grand jury recommends that these exercises be repeated on a regular basis and after-action reports be prepared to assess the readiness of what would be a wide-ranging collection of healthcare providers responding to an outbreak.

---

<sup>1</sup> *The Alameda County Grand Jury did an investigation into the loss of this funding in its 2018-2019 report: “County Mismanagement Loses Millions for Terrorism and Disaster Training.”*

## Emergency Operations Center Activation

Activation of an emergency operations center occurs when an emergency or civic event requires a response or monitoring. Such activation gives the jurisdiction a chance to test the system and see its capabilities and the need for any changes.

The level of activation is determined by the director of emergency services in consultation with field responders or emergency management staff. There are three levels of activation:

- Full activation (Level One) involves a full activation of all organizational elements likely requiring help from the state or Federal government, such as a major earthquake resulting in significant damage.
- Partial activation (Level Two) is for emergencies or planned events requiring greater staffing, such as during PG&E's planned power outages in 2019. Representatives from other jurisdictions may be requested to assist or provide mutual aid in some aspects of a partial activation.
- Minimum activation (Level Three) is for situations which initially require minimal staffing, e.g., alerts of anticipated storms or tsunamis; or monitoring of a low-risk planned event such as a parade.

No jurisdiction in Alameda County had a full activation of its operations centers during the last two years. Ten jurisdictions conducted partial activations and two conducted minimal activations.

Three cities, Emeryville, Newark, and Piedmont have not performed any activations at any level over the last two years, again because there were no emergencies that triggered them. This emphasizes the need for training and exercises, specifically functional and full-scale exercises for emergency centers and staff.

However, in 2020, Alameda County and Berkeley initiated a full activation to deal with the COVID-19 crisis to support their public health officers and departments. For the other jurisdictions, some had partial activations to support the care and sheltering operations. All agencies, special districts, and other state and federal agencies participated in a daily conference call with the public health officers and Alameda County Office of Emergency Services.

## Emergency Operation Training Courses

Cal OES states that training, tests, and exercises are essential to ensure that officials, emergency responders, and the public are operationally ready, and recommends that personnel with emergency responsibilities complete courses described by SEMS and NIMS. Cal OES provides courses for emergency managers and first responders. Some of these courses are available online

for free. Advanced courses are available through FEMA’s Emergency Management Institute, Bay Area Urban Area Security Initiative, and the California Specialized Training Institute.

The following agencies were identified as having participated in limited training in SEMS or NIMS in the last two years:

- Hayward had one training on violent intruder response in 2017 and one all-hazards incident leadership class in 2018.
- Oakland had two training sessions on mass care and sheltering in 2019.

### Grant Funding and Support for Training and Exercises

The grand jury recognizes that disaster preparedness programs require financial resources and staff support to plan, develop, and implement. All jurisdictions have limited resources and each jurisdiction should take advantage of grant opportunities to enhance their emergency operations training and exercises. For example, in 2018 some of the Alameda County jurisdictions participated in the Urban Shield training that provided a rare opportunity to test the care and sheltering plans and emergency operations centers in the county. Examples of available grants that could assist each local agency include:

- Emergency Management Grant
- Urban Area Security Initiative Grant (as noted above, the county has lost this funding)
- State Homeland Security Program
- Homeland Security National Training Program
- Hazard Mitigation Grant

### After-Action Reports

California regulations require that an after-action report be completed whenever the local agency has declared a state of emergency. These reports should make recommendations for correcting problems discovered during a response/recovery effort, or during exercises and training. The Sonoma County Complex Fires report is a good example of this. After a comprehensive review of the fires, the response by emergency personnel, and an overview of the emergency operations center organization, the report made 68 detailed findings and 55 recommendations ranging from changes to the operation of the emergency centers, to increased training and preparation, to clarification of roles of elected officials.

The grand jury found that not all entities in Alameda County provided documentation for the lessons learned from their exercises or Emergency Operations Center (EOC) activations. Six cities reported completing no reports at all despite numerous activations and exercises. Only the city of Emeryville provided after-action reports and improvement plans for all their exercises.

The grand jury strongly recommends that all jurisdictions prepare after-action reports and corrective action plans. Templates for after-action and improvement plans are available from FEMA’s Homeland Security Exercise and Evaluation Program website.

<b>Table 1: Responses Regarding Emergency Operations Plans (EOP), Emergency Operations Center (EOC) Activations, Training and Exercises 2018–2019</b>						
<b>Jurisdiction</b>	<b>EOP Plan Date</b>	<b>EOC Exercises</b>	<b>EOC Activation</b>	<b>After- Action Reports (AAR)</b>	<b>EOC Training</b>	<b>Notes</b>
Alameda City	2019	4 notification drills	Several partial and monitoring	<b>None</b>	Yes	Notification drills for city staff.
Alameda County	2012	18 exercises, functional and tabletop	3 partial	Yes	26 Sessions	EOP will be updated in 2020; no AAR for partial activations; participated in 2018 statewide infectious disease functional exercise. Coordinated 2018 Urban Shield.
Albany	2018	1 tabletop; drill	3 partial	Yes	Yes	EOC monitor status for PGE shutoff (PSPS) and civic events.
Berkeley	2016	27 exercises functional and tabletop	5 partial and 3 monitoring	Yes	39 EOC training sessions	Participated in 2018 statewide infectious disease functional exercise and Urban Shield. Conducted drills and training for the health and public works departments.
Dublin	2004	2 functional 1 tabletop	2 partial and 1 monitoring	<b>None</b>	Yes	EOP to be updated 1 <sup>st</sup> quarter 2020. Participated in 2018 Urban Shield.
Emeryville	2014	4 tabletop	<b>None</b>	Yes	Yes	Established a disaster reserve fund of \$3.45 million
Fremont	2020	1 tabletop, 1 functional	2 partial and 1 “virtual”	Yes	Yes	One EOC communications training class in 2019, 12 classes from 2017–2018; Urban Shield.
Hayward	Un-dated	<b>None</b>	2 partial	Yes	Notes	Several exercises in 2016; training in violent intruder and all hazard incident leadership
Livermore	2018	2 tabletop, 1 full scale	10 partial	<b>None</b>	Yes	All employees required taking NIMS and SEMS training. Assigned staff receives advanced EOC training annually. 2018 Urban Shield.



**Table 1, Continued: Responses Regarding Emergency Operations Plans (EOP),  
Emergency Operations Center (EOC) Activations,  
Training and Exercises  
2018–2019**

<b>Jurisdiction</b>	<b>EOPP Plan Date</b>	<b>EOC Exercises</b>	<b>EOC Activation</b>	<b>After- Action Reports (AAR)</b>	<b>EOC Training</b>	<b>Notes</b>
Newark	2013	<b>None</b>	<b>None</b>	<b>None</b>	Yes	
Oakland	2012	1 functional	6 partial	<b>None</b>	Yes	Activation for PG&E PSPS, 2 civic activities; AAR for PG&E PSPS in development. 2018 Urban Shield.
Piedmont	2015	<b>None</b>	<b>None</b>	<b>None</b>	Yes	EOP to be updated in 2020. One EOC training class for all employees.
Pleasanton	2018	3 tabletop	2 partial	Yes	Yes	
San Leandro	2015	3 drills	2 partial	Yes	Yes	EOP in process of update; AAR for one drill. Drop, Cover and Hold and Evacuation drills.
Union City	2014	1 tabletop	1 partial	<b>None</b>	Yes	Activation for cyber outage and PG&E PSPS

### Standby Officers

Standby officers are officials designated to fill the post of any member of a governing body who is unavailable during a state of emergency. Such standby officers would serve either until the elected members return or until the next election. Although not mandatory by state law, it is prudent and a best practice to appoint standby officers for each member of a governing body in Alameda County before a disaster occurs to ensure continuity of government and representation of the electorate during a crisis. Having no standby officers means that should the regular members of the governing body be unable to fulfill their duties during an emergency (e.g., incapacitated during a pandemic, injured or burned out of their homes) there would be no one to take their places during that emergency.

In Alameda County, the cities of Berkeley and Emeryville have adopted resolutions designating standby officers for their elected governing bodies. The city of San Leandro identifies standby officers by assignment to specific commissions according to the elected official's date of appointment. San Leandro should modify their designated standby officer list to be specific to the individual councilmember in succeeding order. All other jurisdictions including the cities of Alameda, Albany, Dublin, Fremont, Hayward, Livermore, Oakland, Piedmont, Pleasanton,

Union City, and Alameda County should adopt resolutions designating up to three standby officers for each member of the governing body in succeeding order.

### Elected Official Training

To effectively deal with an emergency and for the proper management of an emergency operations center, it is important to have the governing body and standby officers trained in advance of a disaster. They will be better informed when making funding decisions related to stockpiling essential supplies (e.g., gloves, masks, ventilators), and they will know which experts to rely on when making emergency decisions such as closing schools and public areas. During any crisis, they will have the responsibility to communicate with the public. Inconsistent or false information can complicate relief efforts. As we have seen during the recent COVID-19 crisis, a slow response or misinformation by public officials can cause dangerous delays and even loss of life.

*The grand jury found that eight cities have not had emergency training for their elected officials during the past two years.*

FEMA and the state of California offer free training for elected officials. The Sonoma County Complex Fires report noted that “elected officials were not effectively integrated into the emergency management organization and emergency operations center functions” and recommended developing an elected official’s disaster handbook, along with training specifically for elected officials.

Given the turnover in elected officials, it is likely that numerous officials have had no training at all and would presumably not know what actions to take in a disaster.

### Director of Emergency Services Line of Succession

A line of succession for the director of emergency services needs to be identified in the emergency operations plans. The California Emergency Services Act recommends that a line of succession of three persons be identified in succeeding order to ensure a designated person can provide direction should the director be unavailable. Without a line of succession for the director of emergency services, the emergency operations center staff could be left leaderless. The grand jury recommends that since Dublin, San Leandro, and Union City do not have established lists for their directors of emergency services identified in their emergency operations plans, they need to identify alternates. Albany identifies the line of succession as the “police chief or fire chief” but this should be amended to designate a specific line of succession for alternates. Hayward lists only one alternate (fire chief) to succeed the city manager, and the city should therefore modify their emergency operations plan to identify three individuals in succeeding order.

**Table 2: Responses regarding Standby Officer List, Elected Official Training, and Director of Emergency Services Lines of Succession**

<b>Jurisdiction</b>	<b>Standby Officers</b>	<b>Elected Officials Training</b>	<b>Director Line of Succession</b>	<b>Notes</b>
Alameda City	<b>No</b>	<b>No</b>	Yes	Succession plan for mayor only.
Alameda County	<b>No</b>	Yes	Yes	
Albany	<b>No</b>	Yes	Yes	Line of Succession is not in specific order for Director of Emergency Services (Police <i>or</i> Fire Chief)
Berkeley	Yes	February 2018	Yes	
Dublin	<b>No</b>	April 2018 and April 2019	<b>No</b>	
Emeryville	Yes	2015	Yes	City Council training scheduled for 2020
Fremont	<b>No</b>	Yes	Yes	Standby Officers to be addressed in Spring of 2020
Hayward	<b>No</b>	<b>No</b>	Yes	Only 1 Director alternate – Fire Chief
Livermore	<b>No</b>	Yes	Yes	Elected officials required to take SEMS training
Newark	<b>No</b>	<b>No</b>	Yes	
Oakland	<b>No</b>	<b>No</b>	Yes	
Piedmont	<b>No</b>	<b>No</b>	Yes	
Pleasanton	<b>No</b>	<b>No</b>	Yes	
San Leandro	Yes	<b>No</b>	<b>No</b>	Lists standby officers using commission; need to modify
Union City	<b>No</b>	<b>No</b>	<b>No</b>	

### Alameda County Emergency Operations Center

The grand jury visited the Alameda County Emergency Operations Center in February of 2020 to see what is in place to be activated in the event of an emergency or disaster requiring an immediate response.

The Alameda County Sheriff's Office operates the center in Dublin, California. Created in 1996, the center maintains a two-hour response capability. The center consists of a central operations room with tiers of desks, phones, and computers for such stakeholders as Cal OES, public works, volunteer organizations (such as the Red Cross), and PG&E (which also has its own emergency center). The center also has a wall of TVs showing news, weather, and other strategic information. This room is surrounded by other rooms dealing with such things as fire rescue, public works, social services, and logistics, as well as a media room that keeps track of ongoing public information such as TV news and social media. A radio dispatch center provides a backup radio system that may be used in an emergency. The center also has a backup power generator.

In addition to its standby status for emergencies, the county emergency center also conducts training and information sessions. According to the Alameda County Sheriff's Office, it is one of the busiest emergency centers in the state.



*Alameda County Emergency Operations Center*

The Alameda County Emergency Operations Center is important to local emergency and disaster response for two reasons. First, the county's center will coordinate with the state and regional emergency operations centers in responding to an emergency, as well as with other entities such as cities and water districts within its jurisdiction. Second, as noted by several of the smaller cities in their responses to the grand jury inquiry, a major disaster may overwhelm local emergency centers and responses, and those jurisdictions may rely heavily on the county for support and resources to respond to the emergency.

### Public Preparedness

The grand jury emphasizes the public's role in all emergency preparation, whatever the anticipated disaster. Residents play an important role in emergency management by ensuring they and their families are well-prepared. Before an emergency occurs, citizens can assist the emergency management effort by taking first aid, Ham radio or Community Emergency Response Team training, maintaining home emergency supplies, and being prepared to evacuate or shelter-in-place for several days or weeks.

During an emergency, citizens should monitor emergency communications by signing up for the Alameda County Emergency Alert Notification System (AC Alert) and carefully follow directions from authorities. By being prepared, citizens can better serve their families and communities and reduce demands on first responders. Many local government agencies, particularly county offices of emergency services, have individual, family, and community preparedness initiatives. California Volunteers is a state office that provides information and tools to support individual and community emergency planning and matches volunteers to opportunities.

Cities can also prepare their communities by creating community-based emergency scenarios. For example, the cities of Berkeley and Albany conducted a drill with residents in 2019 to develop and test their evacuation plans. The public health departments of Alameda County and Berkeley conducted mass vaccination and point-of-distribution drills simulating the delivery of supplies in the case of a pandemic event.

## CONCLUSION

We are all aware that disasters can happen, but most of us are unaware of how an emergency can affect our daily lives. Emergencies range in unpredictability and in the amount of time they allow us to prepare ourselves. We can see epidemics start overseas, develop into worldwide pandemics, and when it reaches our shores, we can only hope that the government is prepared to help us deal with it. We know that wildfires are endemic to our region, but we forget the speed with which they can move and that they can leap eight-lane freeways with ease and wipe out neighborhoods in minutes. And the earthquake that will wreak massive destruction, cause a large loss of life, and change our cities and our way of life for years, will be the last thing on anyone's mind moments before it happens. Faced with these potential disasters, the one thing that can help us is preparation.

The jurisdiction that will have the greatest responsibility to deal with any disaster or emergency is the County of Alameda itself. As the operational area coordinator, they will have to support not only the unincorporated areas of the county, but also the 14 cities in the event of a regional disaster. Alameda County has a state-of-the-art emergency operations center and coordinates training programs that are attended by not just local cities, but also by water and utility districts, hospitals, and other stakeholders. Two cities—Emeryville and Newark—indicated they will likely be overwhelmed by any large disaster and intend to rely on the county in an emergency. In truth, major disasters will require all the jurisdictions to rely on the State and Federal government to provide resources and staff to respond to and recover from an emergency.

*Faced with these potential disasters, the one thing that can help us is preparation.*

Prior to the COVID-19 pandemic there had not been an emergency or disaster of sufficient magnitude in the last several years to require a full level activation of any local emergency operations center. Furthermore, as our investigation showed, three cities—Emeryville, Newark, and Piedmont—had no activations at all in the last two years. Eight cities conducted no training of their elected officials who will be called upon to make decisions in times of crisis. It is imperative that all jurisdictions hold frequent exercises and training, involving not just employees but also elected officials. Decisions that they make during their time in office must be informed by an understanding of what can happen when disaster strikes and what we must do to prepare for a major emergency.

Only two cities in Alameda County have designated standby officers, and while this is optional, it is an easy step to take. The emergency director line of succession is also easy to establish, and although only three cities failed here, one city was less than clear on the actual order of succession, and another city only had one alternate. Given the relative simplicity of these

matters, it is surprising that all the cities and the county have not designated emergency standby officers and a line of succession for their directors of emergency services.

The grand jury calls upon individual cities and the county to update emergency plans; conduct regular exercises; establish standby officers for elected officials; and create lines of succession for the directors of emergency services. In addition, the grand jury recommends that the cities and county make available online all emergency operations plans, after-action reports for activations and exercises, and other materials related to emergency preparation.

<b>FINDINGS:</b>	<i>None</i>
<b>RECOMMENDATIONS:</b>	<i>None</i>
<b>RESPONSES REQUIRED:</b>	<i>None</i>

## REFERENCES

State of California Emergency Plan (2017) with Crosswalk (attachment D):

[https://www.caloes.ca.gov/PlanningPreparednessSite/Documents/California\\_State\\_Emergency\\_Plan\\_2017.pdf](https://www.caloes.ca.gov/PlanningPreparednessSite/Documents/California_State_Emergency_Plan_2017.pdf)

State of California Standardized Emergency Management System Regulations (SEMS):

<https://www.caloes.ca.gov/cal-oes-divisions/planning-preparedness/standardized-emergency-management-system>

California Emergency Services Act (Yellow Book):

<https://www.caloes.ca.gov/LegalAffairsSite/Documents/Cal%20OES%20Yellow%20Book.pdf>

National Incident Management System (NIMS):

<https://www.fema.gov/national-incident-management-system>

HayWired Report:

[https://pubs.usgs.gov/fs/2018/3016/fs20183016\\_.pdf](https://pubs.usgs.gov/fs/2018/3016/fs20183016_.pdf)

Sonoma County October 2017 Complex Fires After-Action Report:

<https://www.sonomacity.org/october-2017-fires-after-action-report/>

Complex Fire After-Action Report – Recommendations:

<https://srcity.org/DocumentCenter/View/24160/Tubbs-Nuns-Fire-After-Action-Review-Findings-and-Recommendations-Improvement-Plan>

2018 Sonoma County Grand Jury Report on the October Firestorm Emergency Response:

<http://sonoma.courts.ca.gov/sites/all/assets/pdfs/general-info/grand-jury/2017-2018/GrandJuryOctoberFireEmergencyReport6-05-18.pdf>

Homeland Security Exercise and Evaluation Program (HSEEP):

<https://www.fema.gov/hseep>

California Volunteers:

<https://californiavolunteers.ca.gov/>



## **ALAMEDA COUNTY’S GENERAL SERVICES AGENCY TOO OFTEN FAILS AT CAPITAL PROJECT MANAGEMENT**

### **EXECUTIVE SUMMARY**

Alameda County’s General Services Agency (GSA) is responsible for supporting county operations by maintaining county-owned buildings, managing the county purchasing and procurement services and its motor vehicle fleet, and helping other departments contract for goods and services.

In Alameda County, GSA is also responsible for delivering capital improvement projects to other county agencies through its Capital Programs Department (Capital Programs) by planning, designing, and constructing county-owned buildings. GSA’s procurement group works with its Capital Programs staff to find qualified designers and contractors to build projects in compliance with California codes and regulations and with county policies.

The grand jury’s interest in GSA-managed capital projects came about as a result of our annual tour of Santa Rita Jail in Dublin. During the tour, the grand jury questioned jail staff about the timelines and delivery method of major projects, including those related to inmate and employee safety and security. The grand jury learned that these projects, along with others—some mandated by court orders—have been in the works for years and are caught in a quagmire of delays and cost overruns.

The grand jury examined how GSA manages these projects and if the problem with delays was unique to the complexities of jail construction. The grand jury reached out to multiple county departments, GSA administrators, and elected leaders to gain insight into why capital projects within county government move so slowly.

As a result of our investigation, the grand jury found that many Alameda County projects, exemplified by long-delayed Santa Rita Jail projects, suffered from project management failures which contributed greatly to delays and cost overruns. Over the past decade, GSA faced a significant exodus of its professional staff and in its efforts to reorganize did not replace them. This resulted in overworked staff with insufficient guidance, poor training, and few policies to guide them. It left its clients (various departments of county government) feeling left out of the process and not understanding why their key capital projects stalled and costs skyrocketed.

The grand jury determined that GSA's mismanagement of planning and constructing capital projects potentially cost the county millions. We suggest steps GSA can take to improve its capital project management:

- Implement a staff retention strategy
- Improve training in project management
- Begin a disciplined project planning system
- Make client communication and coordination a priority

## BACKGROUND

GSA is a county agency headed by a director who reports to the Alameda County Board of Supervisors (BOS) in coordination with the county administrator. The county's final budget for Fiscal Year (FY) 2020 authorized 427 full-time equivalent positions in GSA, of which 104 (24%) were management positions. Most other GSA positions—313 (or 73%) of the 427—are in the Building Maintenance Department. Other departments include Capital Programs, Real Property Management, and Procurement. Approximately five project managers and one architect are currently assigned to the Capital Programs department.



*Alameda County Administration Bldg.*

Capital Programs provides professional program, project, and management services to all county agencies. These services include feasibility studies, capital project design, project budget estimates, and construction management, among others. Capital improvement projects are generally new or replacement buildings or facilities, or major renovations of existing buildings. Sometimes a requesting department plans and designs its own improvements, often with the help of consultants, then turns that information over to GSA's procurement staff to manage the public bidding and contract award process. In other cases, GSA staff manage the entire project through design, contracting, and construction, often with the help of outside consultants and contractors.

To plan for future repairs and replacement of county facilities, GSA is preparing two master plans: A Facilities Condition Assessment and an update to the 2009 Real Estate Master Plan. The aim of these documents is to provide up-to-date direction and investment justification for county decision-makers and the public. For example, the Facilities Condition Assessment will identify needed maintenance, repairs, and replacement strategies for county-owned or leased facilities and help set spending priorities according to life-safety and other criteria. The Capital

Programs group and other county agencies will depend on this up-to-date information for their departmental work plans and capital budget decisions.

The grand jury received comments from multiple sources from throughout the county that capital projects managed by GSA often encountered substantial delays and cost overruns. This prompted the grand jury to investigate further.

## INVESTIGATION

The grand jury interviewed multiple elected county officials and current and former employees of several county departments, including GSA. The grand jury also examined on-line county budgets, board of supervisors meeting agendas and minutes, requests for design services and construction bids, and other relevant documents.<sup>1</sup>

Throughout our investigation, the same GSA-related issues cropped up repeatedly:

- Poor communication with client departments in the county
- Inconsistent responsiveness of GSA project managers and procurement staff
- Some GSA staff unfamiliar with state and local codes, policies, and procedures
- Delays with procurement (e.g., cancelled requests for services and construction bids)
- Cost overruns
- The need to return to the BOS for repeated bids and budget overruns
- Management disengagement when difficulties occur with capital projects

We investigated three capital projects managed by GSA at Santa Rita Jail: a security system upgrade, Americans with Disabilities Act (ADA) improvements, and a new mental health and medical building. These were emblematic of GSA capital project management and showed the scale of the problem as well as possible solutions. Projects for other county departments that experienced management problems were also investigated.

---

<sup>1</sup> The difficulty of finding relevant documents on the county website ([acgov.org](http://acgov.org)) hampered our investigation. The website does not allow the public to search all county departments using the home page search feature or to search for terms within written reports such as BOS agendas, attachments, presentations, and minutes.

*The security technology, including the video camera system, is long past its useful life and parts are difficult to obtain. Numerous lawsuits against the county could be resolved and even prevented with a robust video camera system. Eight years after its initial request to GSA, the sheriff's office was so frustrated that it purchased and installed in limited areas a retail video camera system from Costco.*

### Santa Rita Jail Security System Upgrade

The Santa Rita Jail Security System Upgrade, also known as the Network Infrastructure Upgrade, was initiated in 2008 but construction is still not complete 12 years later. This is a high priority project because it involves life-safety issues for both inmates and staff.

The current jail, opened in 1989, is one of the largest county jails in California with capacity to accommodate approximately 4,000 inmates. Its security technology, including the video camera system, is long past its useful life and parts are difficult to obtain.<sup>2</sup> Numerous lawsuits against the county have resulted from complaints relating to inmate and staff conduct, many of which could be resolved and even prevented with a robust video camera system. In 2016, after allegations that staff had encouraged prisoners to throw bodily fluids at other prisoners, the sheriff demanded that GSA expedite the

delayed project. At that time, eight years after its initial request to GSA, the sheriff's office was so frustrated that it purchased and installed in limited areas a retail video camera system from Costco.

In 2008 GSA hired a consultant to determine the necessary security upgrades and estimate the cost. However, the \$24 million project was not added to the county's Capital Improvement Plan until 2012, with plans to finish construction by 2016. The project did not proceed as planned and the cost estimate rose by 40% to \$33.7 million. In 2016 GSA decided to change its contracting strategy by combining the security improvements with other jail projects, but later changed direction again. Between 2017 and 2018 GSA hired a firm to manage the project's construction and split the security work into phases to prioritize the camera installation. The 2019 camera construction bids were rejected because a GSA staff member inappropriately communicated with applicants during the bidding process. A construction contract was finally approved in December 2019.

---

<sup>2</sup> A joint letter from the GSA Director and the Alameda County Sheriff (GSA's client) to the BOS in 2012 emphasized the urgency of the security improvements: "As the system continues to age, the seriousness of the malfunctions may worsen and could result in further operational impacts, require ongoing budgetary expenditures, and create serious compromises in the safety of staff and inmates."

**TABLE 1. Chronology of GSA Management of Santa Rita Jail Security System Upgrade**

2008	GSA requested that the BOS authorize a contract with a consultant to assess the existing security system, determine the necessary retrofit or upgrade, and estimate the cost.
2009	The consultant submitted a final assessment report.
2012	GSA requested that the BOS add the security upgrade project to the county's FY2011–2016 Capital Improvement Plan as an approved project and issue a public request for project design services. The total budget of the multi-phase jail security project was estimated at \$24 million. GSA set no targeted completion date.
2013	The BOS approved a contract to design improvements to the aging security system. GSA staff projected that construction would be completed by late summer 2016.
2015	GSA reported in the Capital Improvement Plan that design was completed and procurement of construction bids was underway with completion of the project's first phase scheduled for 2017. The budget was still \$24 million but only \$2.5 million was funded.
2016	GSA's budget estimate rose to \$33.7 million, with a "to be determined" construction start date. GSA decided to combine these upgrades with two other jail projects (ADA upgrades and construction of medical and mental health buildings) "to optimize economies of scale and cost savings associated with coordinated delivery of three projects in a single building program." This further delayed the construction bidding process, but GSA proposed a Request for Qualifications covering all three projects to ensure that prospective contractors were qualified and compliant with county policies.
2017	GSA staff requested bids for project and construction management services for the security upgrade and medical and mental health buildings, along with another project; the ADA work was excluded. Scheduled completion of the security upgrades was changed to late 2021: 13 years and counting from when GSA first began this jail security work.
2018	The BOS awarded a \$1 million contract for project and construction management services during phase one of the security upgrade. GSA staff issued a Request for Pre-Qualification for contractors to bid on construction of phase one to install new cameras and microphones in five housing unit areas and in the jail's intake and release area, and related work. The budget for this phase was not to exceed \$2.4 million with construction completion scheduled for January 2019. GSA reported in the Capital Improvement Plan that construction would start in summer 2018 with completion of all phases in summer 2022.
2019	GSA recommended that the BOS reject all bids for phase one construction because a bid protest revealed that GSA staff had inappropriately communicated with applicants during the bidding process. The project was later re-bid, and the BOS awarded a \$1.83 million phase one contract for camera replacement on December 17, 2019.
2020	GSA anticipates awarding a design-build contract in summer 2020 for the remainder of the security work (phase two), which will be a more complex project than phase one.



Given the urgent need for the security improvements, it is irresponsible for GSA to have allowed this project to languish for so long, with numerous starts and stops and little real progress for over a decade. Meanwhile, lawsuits, law enforcement and community complaints persisted. There were many causes for the delays, including poor training and practices. At times, the project needed GSA leadership, but no one took on that responsibility. As time passed, costs increased and GSA managers were reluctant to ask the BOS for more money, so the project was split into smaller pieces and phased, so that some portions could be completed using the limited funding already allocated.

### Santa Rita Jail—Americans with Disabilities Act (ADA) Upgrades

In a 2016 lawsuit settlement, the county agreed to make \$21.6 million in improvements by December 2019 to ensure Santa Rita Jail was accessible for disabled persons. Now, four years since the court approved the settlement, there is still no definitive timetable regarding completion of this GSA project—a project rife with miscommunication and poor project management decisions.

An attempt to bid a part of the project failed because GSA did not pre-qualify contractors for compliance with county requirements and ended up with a single non-responsive (unqualified) bid. GSA had to start over with a new bidding process. GSA re-bid the project with pre-qualification requirements for all bidders and awarded a contract in 2018. Senior county staff testified that some vendors initially selected did not have detention facility experience, which also caused delays.

The sheriff's office became frustrated with the progress of the job and the poor communication by the GSA project manager. At one point, a portion of the project was built and later had to be torn out due to design problems. The grand jury heard testimony that a contractor was told not to speak with sheriff's office employees who were inquiring about specifications that might not meet jail standards. The grand jury learned that GSA project management had been reassigned to different staff multiple times and proceeded for some time with no manager at all.

*According to one witness, this project lost focus in its early years due to project manager turnover at GSA and lack of continuity with little or no transfer of project history and status to new project managers.*

Including the initial bid rejection, this project has been under GSA's management for two and a half years and GSA still cannot say when it will be completed.

### Santa Rita Jail Health Program and Services Unit

A project to build a new mental health and medical building at Santa Rita Jail was awarded state grant funds in 2015. The grant would cover up to 88% of the \$61.6 million project and



help pay for construction of a building to house OB/GYN medical facilities, inmate counseling, and behavioral and medical health care services, as well as classrooms that would increase inmate access to re-entry services provided by community-based organizations and case managers.

According to one witness, this project lost focus in its early years due to project manager turnover at GSA and lack of continuity with little or no transfer of project history and status to new project managers. GSA staff and the sheriff's office initially disagreed on the project site, with GSA suggesting a location so close to existing inmate facilities it would have required additional infrastructure work.

### Other Delayed Projects

- The Santa Rita Jail nurses' station was not compliant with federal standards for patient privacy. As a result, the sheriff's office submitted a request to GSA in 2016 for minor upgrades. The project was added to the FY2017–18 Capital Improvement Plan with a budget of \$220,000. Inexplicably, GSA project managers allowed the original plans to fall short of detention-facility construction standards, resulting in the need to redesign and restart the project. The delays increased the construction estimates to \$506,000, forcing the department to seek reauthorization from the BOS. Unfortunately, the lowest bid of \$774,000 exceeded GSA's revised estimate by 53%, so GSA and the sheriff were obliged to return to the BOS seven months later for yet another approval for additional funds. Delays and project mismanagement resulted in a 250% increase over the original budgeted amount and prolonged a one-year project into a three-year project.
- The Alameda County Fire Department's new Cherryland fire station replacement was initially budgeted at \$6.6 million when it was first proposed in 2013, but ended up costing \$12.2 million upon completion in 2017, an 85% increase over the original estimate. Other fire stations need to be rebuilt throughout the county, but one witness testified about concerns that GSA planning and management would not be up to the job when funding is eventually secured. A witness noted that the original 2018 estimate of \$97 million to rebuild six fire stations and a training center was increased by GSA a year later to \$150 million due to incorrect information provided by the GSA project manager to the consultant.
- A project at the Alameda County Sheriff's Regional Training Center in Dublin was delayed for eight months in 2017 due to GSA's insistence that a storm water pollution plan be prepared before proceeding with the project. However, the project architect ultimately determined that the plan was not necessary. A witness testified that this controversy occurred in part because GSA staff admitted that they had not read the architect's report.

*The Capital Programs group lost five senior project managers and architects, representing a 63% reduction. Four staff remained to handle 24 capital projects totaling \$1.1 billion.*

### Complaints About Staffing and Management

Numerous witnesses mentioned the inconsistent quality of work by some within the Capital Programs and Procurement groups at GSA. One witness stated that county departments expect technical competence and customer service from GSA, but perceives that certain staff too often were unresponsive and unconcerned with timelines. Another witness testified that a project was not assigned to a GSA staff person and, as a result, was ultimately abandoned by the requesting department due to delays. Witnesses ascribed these and similar failures over the last several years to a number of factors:

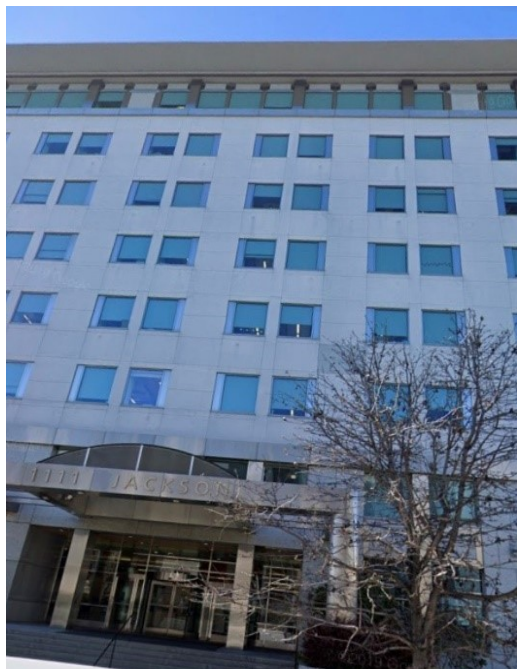
- *Staff turnover.* Turnover is especially high in the Capital Programs group partly due to economics (better pay elsewhere), dissatisfaction with management, and retirements. A January 2020 report from GSA requesting the BOS' retroactive approval of temporary staffing assistance noted that in July–October 2018, the Capital Programs group lost five senior project managers and architects, representing a 63% reduction. Four staff remained to handle 24 capital projects totaling \$1.1 billion. To compound these problems, project managers are sometimes reassigned during a project, which leads to delays in scheduling while the client department helps the new manager get up to speed. These internal obstacles lead to overworked employees and further loss of talent. New undertrained staff are forced to cobble together project management strategies that can lead to mistakes, delays, and skyrocketing costs.
- *Staff experience.* GSA is reevaluating the project management team, with a move away from architect project managers to construction managers, who have different levels of education and experience. The number of licensed architects in Capital Programs fell from six a few years ago to just one in February 2020. By comparison, San Francisco Public Works, which handles their capital projects, employs over 80 architects. GSA now relies on outside consultants to estimate costs, design improvements, and manage construction.

*Departments using GSA's services claim they were not being treated like clients of GSA and consistently perceived that GSA staff and management were not taking ownership of some projects.*

The apparent inexperience of some GSA procurement staff was brought up by most of the witnesses. A senior manager testified

that the average tenure of GSA procurement staff is short; at one point it was only 2.5 years. Inexperience often resulted in delays in preparing and advertising requests for proposals from consultants and contractors to bid for design and construction services.

- *Lack of supervision and oversight.* Many witnesses recommended that staff be better supervised and trained in the technical aspects of their jobs and learn more about the needs of their client departments. It appeared to some witnesses that staff were not adequately trained in GSA's policies and procedures and in state and local building codes. Closer supervision of staff and management oversight of the entire operation is recommended. Some client departments are encouraged by a recent GSA management hire.
- *Management decision-making.* Departments using GSA's services claim they were not being treated like clients of GSA and consistently perceived that GSA staff and management were not taking ownership of some projects. Witnesses complained about too many management layers within GSA, and a sense that the real decision-makers were not accessible, causing disagreements and delay at the staff level. One witness emphasized that GSA management should step in to push important projects forward to prevent them from lagging.
- *Cost overruns.* Witnesses expressed concerns about cost overruns on GSA managed projects. Some departments have the perception that GSA is not always cost conscious and does not attempt to find more economical alternatives. For example, the sheriff's office sought to expand its educational facilities at Santa Rita Jail by adding two additional portable classrooms. GSA proposed a design-build project at a cost of \$793,000. The sheriff's office rejected the proposal and instead purchased two used portable classrooms at the cost of \$80,000. While these portable buildings did not have the restroom facilities of the GSA project, the sheriff's office was able to move forward at a huge savings with additional facilities to expand inmates' educational needs.
- *Insufficient as-needed contracts.* Contributing to unnecessary delays, GSA admitted that it did not have a sufficient number of as-needed (on-call) contracts in place with prequalified contractors and consultants for planning, design, and environmental expertise. These types of contracts are both commonplace and essential in the capital projects world. Rather than quickly reaching out to an expert who is already contracted to provide design or other specialized expertise as needed, the department must too often issue bids for the work on each individual project, causing extensive delays. The grand jury was told that GSA made two or three failed attempts in the past five years to issue requests for as-needed architects and engineers. The most recent solicitation for as-needed architectural and engineering services is currently (April 2020) on the county's website.



*1111 Jackson Street, Oakland*

- *Lack of updated master plans.* Master planning helps prioritize upcoming projects and improve decision-making efficiency. Adopted plans would allow the Capital Programs group to initiate feasibility studies and design so that projects are shovel-ready when construction funding becomes available. It is encouraging that GSA is updating the 11-year-old Facilities Condition Assessment and the 2009 Real Estate Master Plan. However, such plans need to be updated more often to guide capital acquisitions and leasing. For example, the Real Estate Master Plan excluded 1111 Jackson Street from consideration and the county vacated its leased offices there. Yet, the county decided to purchase the building the following year and remodeled it to accommodate the Alameda County Probation and Social Services departments before discovering that the presence of a school nearby prevented probation services from using the building.

The county also purchased the Arena Center/Zhone properties on Oakport Street in Oakland for \$32.5 million in 2014 to use for offices. Subsequently, county departments balked at moving into the space, and the buildings continue to be left mostly vacant after six years. The county is now again considering moving county offices into these buildings.

### Failures of Communication and Engagement

The grand jury heard from witnesses that some projects were repeatedly delayed due in large part to lack of communication among GSA, client departments, design, and construction personnel. Witnesses perceived that GSA staff were too far removed from operational issues within client departments to feel a sense of urgency to work through roadblocks to timely project completion. GSA could better manage such obstacles by improving client communication, whether through weekly team meetings, frequent status emails from GSA program managers, or embedded GSA staff within a client department. Another suggestion was to train GSA staff as liaisons with specific departments. Project managers who emailed, called, and met frequently with client departments were valued and had a better chance of working together as a team to achieve a successful project.



*The Zhone Building, Oakland*

## CONCLUSION

Our investigation found that high priority capital projects often moved slowly when GSA held the lead role. The grand jury identified staff retention and training, improved project planning, communication and coordination, and management's attention to clients' needs as the most important steps GSA must take to improve its capital project management and delivery.

The grand jury heard from witnesses that GSA's upper management must be more engaged; they should be front and center when explaining important delays or significant cost overruns to client departments or when key project manager turnover occurs. Such developments can be huge setbacks for capital projects, and clients need the assurance that GSA cares, understands, and possesses the capability to fix them.

When staff turnover or increased workload threatens GSA's ability to deliver quality services, management needs to acknowledge those complications, inform client departments, and work creatively to find alternatives solutions, such as contracting with outside project management firms.

GSA must also be more disciplined and transparent in communicating the status of its capital projects. One technique is to share with clients a weekly GSA report card on all active capital projects listing next steps, key milestones, responsible parties, and deadlines. Sometimes the reason for a client's dissatisfaction is a lack of understanding of the planning, design, bidding, or award policies and procedures.

Finally, GSA must lead with more robust planning for the county's infrastructure with the guidance of the Alameda County Board of Supervisors. This would help the General Services Agency better manage current projects and anticipate future workloads and secure the necessary resources.

## FINDINGS

### Finding 20-25:

GSA has a culture of poor communication with its client departments which contributes to unnecessary delays and increased project costs.

### Finding 20-26:

Poorly developed and disseminated Capital Program and procurement procedures result in inconsistent project management within GSA.



*Finding 20-27:*

GSA's redefinition of professional requirements for project managers and its inability to sufficiently staff project manager positions contribute to poor control over the delivery of capital projects.

*Finding 20-28:*

GSA's failure to update as-needed professional contracts results in unnecessary bidding which contributes to unwarranted delays in project delivery.

*Finding 20-29:*

Alameda County's failure to prioritize long-range planning and site safety assessments has set county government capital construction on a rudderless course oftentimes guided by litigation and emergency needs.

## **RECOMMENDATIONS**

*Recommendation 20-22:*

The Alameda County General Services Agency must provide sufficient staff or consultant resources to accomplish its capital program workload efficiently.

*Recommendation 20-23:*

The Alameda County General Services Agency must improve communication with clients throughout all stages of a project to build a strong and informed project team. GSA should place staff within client departments as needed during the project planning and design stages.

*Recommendation 20-24:*

The Alameda County General Services Agency must establish well-defined policies and procedures to guide staff work and to help clients understand the capital project development and bidding processes. Both existing and new staff and managers must be trained in these procedures.

*Recommendation 20-25:*

The Alameda County General Services Agency management must provide staff with work plans to track workload, progress, schedules, budgets to timely project completion.

*Recommendation 20-26:*

The Alameda County General Services Agency must establish or renew as-needed professional services contracts to ensure that project managers can quickly access a variety of expert services.



**Recommendation 20-27:**

The Alameda County Board of Supervisors and the General Services Agency must complete updates to long-range and master plans, such as the Facilities Condition Assessment and Real Estate Master Plan, to better manage competing capital investment demands for staffing and funds.

**REQUEST FOR RESPONSES**

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

**Responses to Findings shall be either:**

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

**Responses to Recommendations shall be one the following:**

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

**RESPONSES REQUIRED**

Alameda County Board of Supervisors

Findings 20-25 through 20-29

Recommendations 20-22 through 20-27

*[This page intentionally left blank.]*

## **JAIL INSPECTIONS**

Each year under its civil oversight authority within the California Penal Code, the grand jury inspects jails and holding facilities of local law enforcement agencies in Alameda County. To determine which facilities to visit, the 2019–2020 Alameda County Grand Jury chose jails that had not been recently inspected. This year, the grand jury inspected jails located at the Fremont and Berkeley police departments, as well as the holding facility located at the Alameda County Sheriff's Office Eden Township Substation.

### **Fremont Detention Facility**

On December 3, 2019, the grand jury performed an unannounced inspection of the Fremont Detention Facility, operated by the Fremont Police Department at 1990 Stevenson Boulevard. Opened in 2002, this facility provides booking, intake and temporary custody to persons arrested by the Fremont, Newark, and Union City police departments. It is also used by the California Highway Patrol, BART Police, and the East Bay Regional Park Police. Fremont Detention is a Type I facility which means, in part, that a detainee can only be held for up to four days. This facility has 54 beds and can hold a maximum of 96 people at one time.

Unique to the Fremont facility is its “pay-to-stay” program. This is an alternative to serving jail time at larger, more crowded county jail facilities. Individuals sentenced to thirty days or less can elect to serve their time at this facility by paying \$155 a day. These individuals can serve up to ninety-six-hours in blocks of time at Fremont Detention until they complete their sentence. These detainees stay in a smaller, quieter area than those available to other detainees. This smaller section has a capacity for only a limited number of detainees and offers the detainee additional benefits such as the use of a microwave, magazines, television and a shower.

The grand jury met with the Fremont jail facility staff for a briefing regarding the facility's operations and then inspected the entry and exit areas, the pre-booking and booking areas, followed by the holding cells and movement corridors. The facility appeared to be in overall good condition. It was generally clean with no visible graffiti or debris.

The facility processes approximately 6,500 detainees annually. Fremont Detention is staffed by 16 non-sworn detention officers, eight men and eight women, split between multiple shifts.

Each detainee enters and exits through a secure controlled receiving area. No firearms are allowed past the secure receiving area. Visiting officers who are delivering detainees must secure their firearms in lockers outside the receiving area. Jail staff has access to pepper spray.

An arriving detainee is brought into the pre-booking and booking areas and can be placed in one of nine temporary cells, which include four detox cells for individuals temporarily impaired by alcohol or drug use.

There is no medical facility on-site. Upon booking, all detainees are screened and observed for mental and physical health issues. Detainees requiring immediate medical care are transferred to Washington Hospital in Fremont. Those with acute mental health issues are transferred to John George Psychiatric Hospital in San Leandro.

Upon booking, detainees' personal items are inventoried, logged in the presence of the detainee and locked in a secured property room. The facility provides detainees with toiletries, fresh towels daily, as well as a change of clothes if needed. Belongings not held for evidentiary

*The Fremont Detention Facility processes approximately 6,500 detainees annually and is staffed by 16 non-sworn detention officers.*

purposes are returned to each detainee when the detainee is released from the facility. Finally, each detainee is given a written set of Fremont Detention's procedures, including those on how to file a grievance.

There are separate sections for males and females and several single cells for those inmates who need to be isolated for their own or the general jail population's safety. Each cell has a sink, toilet, and emergency button to call a detention officer. Common areas are also

monitored by detention officers. Additionally, officers conduct inspections of the common areas and individual cells. The facility has full-time central video monitoring by approximately 20 cameras covering all entries and exits, passageways, and areas around single cells. Each common area includes a television, tables with built-in seating and telephones. Visits are conducted in booths equipped with telephone handsets and a glass partition that separates the detainee from visitors.

Fremont Detention has a kitchen giving staff the ability to prepare meals for detainees. The kitchen has such features as a walk-in freezer and commercial gas cooking range. The facility has its own separate laundry facility for bedding, towels and jail clothes. Both the kitchen and laundry areas appeared neat, clean and well-maintained.

The California Board of State and Community Corrections conducted an annual inspection in November 2019 and found the jail to be compliant with state standards. Fremont Detention was also inspected by the Alameda County Health Officer and the Fire Marshal in 2019 and found to be compliant with relevant state and local regulations.

The grand jury found Fremont Detention to be clean and well-managed. The grand jury commends the Fremont Detention staff for contributing to a positive environment at this facility.

## Berkeley City Jail

On October 22, 2019, the grand jury inspected the Berkeley City Jail. The facility, located at 2100 Martin Luther King Jr. Way, is in the city's public safety building which houses the police and fire department's administration. The grand jury inspected the jail facility including cells, kitchen area, intake, booking, and the jail's control center. In addition, the grand jury discussed the jail's policies and procedures with the sergeant in charge of the facility.

The Berkeley Jail is a Type 1 facility per California's state jail classification standards. Type 1 facilities limit a detainee's stay to a maximum of 96 hours. The Berkeley Jail also provides booking and temporary detention for other local police departments, which include: Alameda, Emeryville, Piedmont, Bay Area Rapid Transit, California Highway Patrol, East Bay Regional Parks, and the University of California at Berkeley.

The Berkeley Jail holds up to 30 arrestees until their release or transfer to Santa Rita Jail in Dublin. The holding facility consists of a total of 24 cells, 16 cells for men and three cells for women, two detoxification cells, and three safety cells. There is a separate booking area and two holding cells for juveniles. No firearms are allowed past a secure receiving area. Visiting officers who are delivering prisoners must secure their firearms in lockers outside the receiving area of the jail. There are cameras located inside the hallways of the jail, and the main booking area camera is monitored by the Berkeley Police dispatch center.

The jail is staffed by one police sergeant and 12 community services officers (CSOs) and is managed under the Professional Standards Division of the Berkeley Police Department. Three of the CSOs are supervisors. The CSOs are trained as jailers at a California training corrections academy. Minimum staffing is three CSOs during any one shift. Each cell contains a bed, sink, and a toilet, along with an emergency alarm button.

Additionally, there are cameras located in hallways and other common areas and are monitored by jail staff and in the dispatch center. Pre-packaged food from the Santa Rita Jail food preparation contractor is stored in the freezer and heated in a microwave onsite.

An inspection report dated October 18, 2019, by the California Board of State and Community Corrections noted that some of Berkeley's policies and procedures were incomplete. At the time of the grand jury's inspection, we were informed that jail policies were being reviewed and

*The Berkeley City Jail also provides booking and temporary detention for other local police departments, which include: Alameda, Emeryville, Piedmont, Bay Area Rapid Transit, California Highway Patrol, East Bay Regional Parks, and the University of California at Berkeley.*

updated with the help of LEXIPOL, a company that provides software solutions to assist police agencies to formulate and train on best practices and policies.

Inside the south entry hall of the jail building, the grand jury observed sandbags on the floor. These were intended to prevent water intrusion from the base of the building into the hallway during heavy rains. We were told that this has been a problem since the opening of the building in the year 2002.

A control room is located inside the jail and contains a control board that electronically operates all doors in the jail, as well as the intercom system. At the time of the grand jury's inspection, the control board would not work during power outages because it had no auxiliary power. During those circumstances, cell doors would have to be opened with keys and sally port doors would be opened using a manual crank. Additionally, during power outages, the intercom system would not work, hampering communications within the facility. The grand jury was notified after our inspection that these electrical issues had been corrected.

The grand jury noted no deficiencies relative to jail cells, security, or arrestee processing. Overall, the Berkeley City Jail facility was clean, well-maintained and in good order.

### **Eden Township Substation**

The Alameda County Sheriff's Office (ACSO) provides traditional police services to unincorporated areas in Alameda County. Similar to a city police station, the Eden Township Substation (ETS) is the patrol and investigative hub for ACSO and unincorporated Alameda County.



*Eden Township Substation, San Leandro*

On December 10, 2019, the grand jury inspected the Eden Township Substation's holding cells located at 15001 Foothill Boulevard in San Leandro. Subsequent to arrest and pending investigation, detainees can be held in one of three holding cells at ETS (one cell on the upper level and two on the lower level). The upper level cell has a steel door with a glass window, while the two lower level cells have traditional jail bars. Each cell has a bench, sink, and toilet. These cells are used to temporarily hold detainees during on-going investigations.

There is a stated holding time limit of up to four hours at ETS. If a detainee spends more than four hours at the facility, they are provided with food purchased from nearby fast food restaurants. Detainees are not booked at this facility, but they are searched and their property is secured for later return, or for transfer to Santa Rita Jail in Dublin.



ACSO deputies provide close supervision of juveniles in order to prevent contact with adult detainees. If an adult detainee is in a holding cell in the lower holding area, juveniles will be held separately in the upper holding area. Juveniles can also be held in non-secure detention in a report-writing room or a briefing room located at the facility.

*Similar to a city police station, the Eden Township Substation (ETS) is the patrol and investigative hub for ACSO and unincorporated Alameda County.*

Each holding cell is equipped with an intercom system and video monitoring. The cells are monitored from the sergeant's office. The grand jury also observed secure storage for officers' weapons, as well as a First Aid kit, CPR masks, and an automated external defibrillator (AED) device near the cells.

No deficiencies were noted by the grand jury. All cells were in excellent condition.

<b>FINDINGS:</b>	<i>None</i>
<b>RECOMMENDATIONS:</b>	<i>None</i>
<b>RESPONSES REQUIRED:</b>	<i>None</i>



*Lake Merritt, Oakland, CA – Winter 2019*

## ABOUT THE ALAMEDA COUNTY GRAND JURY

The Alameda County Grand Jury is mandated by Article 1, Section 23 of the California Constitution. It operates under Title 4 of the California Penal Code, Sections 3060–3074 of the California Government Code, and Section 17006 of the California Welfare and Institutions Code. All 58 counties in California are required to have grand juries.

In California, grand juries have several functions:

- 1) To act as the public watchdog by investigating and reporting on the affairs of local government;
- 2) To make an annual examination of the operations, accounts and records of officers, departments or functions of the county, including any special districts;
- 3) To inquire into the condition and management of jails and prisons within the county;
- 4) To weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and,
- 5) To weigh criminal charges and determine if indictments should be returned.

Additionally, the grand jury has the authority to investigate the following:

- 1) All public records within the county;
- 2) Books and records of any incorporated city or joint powers authority located in the county;
- 3) Certain housing authorities;
- 4) Special purpose assessing or taxing agencies wholly or partly within the county;
- 5) Nonprofit corporations established by or operated on behalf of a public entity;
- 6) All aspects of county and city government, including over 100 special districts; and
- 7) The books, records and financial expenditures of any government agency including cities, schools, boards, and commissions.

Many people have trouble distinguishing between the grand jury and a trial (or petit) jury. Trial juries are impaneled for the length of a single case. In California, most *civil* grand juries consist of 19 citizen volunteers who serve for one year and consider a number of issues. Most people are familiar with *criminal* grand juries, which only hear individual cases and whose mandate is to determine whether there is enough evidence to proceed with a trial.

This report was prepared by a *civil* grand jury whose role is to investigate all aspects of local government and municipalities to ensure government is being run efficiently, and that government monies are being handled appropriately. While these jurors are nominated by a Superior Court judge based on a review of applications, it is not necessary to know a judge in order to apply. From a pool of 25–30 accepted applications (an even number from each supervisorial district), 19 members are randomly selected to serve.

## **History of Grand Juries**

One of the earliest concepts of a grand jury dates back to ancient Greece where the Athenians used an accusatory body. Others claim the Saxons initiated the grand jury system. By the year 1290, the accusing jury was given authority to inquire into the maintenance of bridges and highways, the defects of jails, and whether the sheriff had kept in jail anyone who should have been brought before the justices.

The Massachusetts Bay Colony impaneled the first American grand jury in 1635 to consider cases of murder, robbery, and wife beating. Colonial grand juries expressed their independence from the crown by refusing in 1765 to indict leaders of the Stamp Act or bring libel charges against the editors of the *Boston Gazette*. The union with other colonies to oppose British taxes was supported by a Philadelphia grand jury in 1770. By the end of the colonial period, the grand jury had become an indispensable adjunct of government.

## **Grand Jury Duties**

The Alameda County Grand Jury is a constituent part of the Superior Court, created for the protection of society and the enforcement of law. It is not a separate political body or an individual entity of government, but is a part of the judicial system and, as such, each grand juror is an officer of the court. Much of the grand jury's effectiveness is derived from the fact that the viewpoint of its members is fresh and unencumbered by prior conceptions about government. With respect to the subjects it is authorized to investigate, the grand jury is free to follow its own inclinations in investigating local government affairs.

The grand jury may act only as a whole body. An individual grand juror has no more authority than any private citizen. Duties of the grand jury can generally be set forth, in part, as follows:

1. To inquire into all public offenses committed or triable within the county (Penal Code §917);
2. To inquire into the case of any person imprisoned and not indicted (Penal Code §919(a));
3. To inquire into the willful or corrupt misconduct in office of public officers of every description within the county (Penal Code §919(c));
4. To inquire into sales, transfers, and ownership of lands which might or should revert to the state by operation of law (Penal Code §920);

5. To examine, if it chooses, the books and records of a special purpose, assessing or taxing district located wholly or partly in the county and the methods or systems of performing the duties of such district or commission. (Penal Code §933.5);
6. To submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to the county government (Penal Code §933), with a copy transmitted to each member of the Board of Supervisors of the county (Penal Code §928); and,
7. To submit its findings on the operation of any public agency subject to its reviewing authority. The governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elective county officer or agency head for which the grand jury has responsibility (Penal Code §914.1) and shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the Board of Supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. (Penal Code §933(c)).

## **Secrecy/Confidentiality**

Members of the grand jury are sworn to secrecy and all grand jury proceedings are secret. This secrecy guards the public interest and protects the confidentiality of sources. The minutes and records of grand jury meetings cannot be subpoenaed or inspected by anyone.

Each grand juror must keep secret all evidence presented before the grand jury, anything said within the grand jury, or the manner in which any grand juror may have voted on a matter (Penal Code §924.1). *The grand juror's promise or oath of secrecy is binding for life.* It is a misdemeanor to violate the secrecy of the grand jury room. Successful performance of grand jury duties depends upon the secrecy of all proceedings. A grand juror must not divulge any information concerning the testimony of witnesses or comments made by other grand jurors. The confidentiality of interviewees and complainants is critical.

## **Legal Advisors**

In the performance of its duties, the grand jury may ask the advice (including legal opinions) of the district attorney, the presiding judge of the superior court, or the county counsel. This can be done by telephone, in writing, or the person may be asked to attend a grand jury session. The district attorney may appear before the grand jury at all times for the purpose of giving information or advice.

Under Penal Code section 936, the California Attorney General may also be consulted when the grand jury's usual advisor is disqualified. The grand jury has no inherent investigatory powers beyond those granted by the legislature.



## **Annual Final Report**

At the end of its year of service, a grand jury is required to submit a final report to the superior court. This report contains an account of its activities, together with findings and recommendations. The final report represents the investigations of the entire grand jury.

## **Citizen Complaints**

As part of its civil function, the grand jury receives complaints from citizens alleging government inefficiencies, suspicion of misconduct or mistreatment by officials, or misuse of taxpayer money. Complaints are acknowledged and may be investigated for their validity. All complaints are confidential. If the situation warrants and corrective action falls within the jurisdiction of the grand jury, appropriate solutions are recommended.

The grand jury receives dozens of complaints each year. With many investigations and the time constraint of only one year, it is necessary for each grand jury to make difficult decisions as to what it wishes to investigate during its term. When the grand jury receives a complaint, it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request.

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints in writing. Complaints should include the name of the persons or agency in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received. Complainants should include their names and addresses in the event the grand jury wishes to contact them for further information. A complaint form can be obtained from the grand jury's website at: <http://grandjury.acgov.org/complaints.page>. Complaints are accepted electronically via the website, by email ([grandjury@acgov.org](mailto:grandjury@acgov.org)), or by US Mail.

Mail complaints to:  
Alameda County Grand Jury  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612

An acknowledgment letter is routinely sent within one week of receipt of a complaint.

## **How to Become a Grand Juror**

Citizens who are qualified and able to provide one year of service, and who desire to be nominated for grand jury duty, may apply online at the grand jury website at <http://grandjury.acgov.org/join-us.page?> An acknowledgment email will be sent to you once your application is accepted. On the basis of supervisory district, six members from each district



for a total of 30 nominees are assigned for grand jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will actually be impaneled to serve for the year are selected by a random drawing. This is done in late June before the jury begins its yearly term on July 1.

### **Qualification of Jurors**

Prospective grand jurors must possess the following qualifications pursuant to Penal Code section 893: be a citizen of the United States; at least 18 years of age; a resident of Alameda County for at least one year immediately before being selected; possess ordinary intelligence, sound judgement and fair character; and possess sufficient knowledge of the English language. Other desirable qualifications include: an open mind with concern for others' positions and views; the ability to work well with others in a group; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions and responsibilities of county and city government.

A person may not serve on the grand jury if any of the following apply: the person is serving as a trial juror in any court in the state; the person has been discharged as a grand juror in any court of this state within one year; the person has been convicted of malfeasance in office or any felony or other high crime; or the person is serving as an elected public officer.

### **Commitment**

Persons selected for grand jury service must make a commitment to serve a one-year term (July 1 through June 30). Grand jurors should be prepared, on average, to devote two days each week to grand jury meetings. Currently, the grand jury meets every Wednesday and Thursday from 9:00 a.m. to 1:00 p.m., with additional days if needed. Grand jurors are required to complete and file a Statement of Economic Interest as defined by the state's Fair Political Practices Commission, as well as a Conflict of Interest form. Grand jurors are paid \$15.00 per day for each day served, as well as a county mileage rate (currently 58 cents per mile) portal to portal, for personal vehicle usage.

Persons selected for grand jury duty are provided with an extensive, month-long orientation and training program in July. This training includes tours of county facilities and orientation by elected officials, county and department heads, and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland.

An application is contained in this report for interested citizens. Selection for grand jury service is a great honor and one that offers an opportunity to be of value to the community.

## **CITIZEN COMPLAINT GUIDELINES**

The Alameda County Grand Jury welcomes communication from the public as it can provide valuable information regarding matters for investigation. Receipt of all complaints will be acknowledged. The information provided will be carefully reviewed to assist the grand jury in deciding what action, if any, to take. If the grand jury determines that a matter is within the legally permissible scope of its investigative powers and would warrant further inquiry, additional information may be requested. If the matter is determined not to be within the grand jury's authority to investigate (e.g., a matter involving federal or state agencies or institutions, courts or court decisions, or a private dispute), there will be no further contact by the grand jury.

By law, the grand jury is precluded from communicating the results of its investigation, except in one of its formal public reports. All communications are considered but may not result in any action or report by the grand jury.

The jurisdiction of the Alameda County Grand Jury includes the following:

- Consideration of evidence of misconduct by officials within Alameda County.
- Investigation and reports on operations, accounts, and records of the officers, departments or functions of the county and cities, including special districts and joint powers agencies.
- Inquiry into the condition and management of jails within the county.

Complaints can be submitted via US Mail or on the grand jury's website at:

<http://grandjury.acgov.org/complaints.page?>

## **HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS IN THIS REPORT**

Pursuant to the California Penal Code sections 933 and 933.05, the person or entity responding to each grand jury finding shall indicate one of the following:

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

The person or entity responding to each grand jury recommendation shall report one of the following actions:

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

### **SEND ALL RESPONSES TO:**

Presiding Judge Tara M. Desautels  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland, California 94612

### **A COPY MUST ALSO BE SENT TO:**

Cassie Barner  
c/o Alameda County Grand Jury  
1401 Lakeside Drive, Suite 1104  
Oakland, California 94612

All responses for the 2019–2020 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.



*Sunset over the San Francisco Bay, Western Alameda County - Fall 2019*