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December 7, 2010

Dear Friends:

On behalf of the Orange County Board of Supervisors, I am sending you a copy of the "County of Orange Legislative Platform for 2011," adopted by the Board on November 23, 2010. This document communicates the key legislative priorities and policies for the County in both Sacramento and Washington D.C., and provides policy direction and guidance to County departments and staff.

We hope that you will find the document helpful in understanding the County's perspective on the major issues facing us this year. My colleagues and I look forward to working with many of you in the coming months.

If you or your staff have any questions regarding the attached Platform, please contact Stephen Dunivent, Deputy CEO/Government and Public Services, at 714-834-3028, or Donna Grubaugh, Deputy Director, CEO/Legislative Affairs, at (714) 834-7218.

Sincerely,

JANET NGUYEN  
Chair, Orange County Board of Supervisors  
Supervisor, First District

Enclosure

cc: Members, Board of Supervisors  
Members, Orange County State and Federal Legislative Delegation  
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# **COUNTY OF ORANGE LEGISLATIVE PLATFORM FOR 2011**

Adopted by the Board of Supervisors  
November 23, 2010

**Janet Nguyen, Chair  
Supervisor, First District**

**Bill Campbell, Vice Chairman  
Supervisor, Third District**

**John M.W. Moorlach  
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Supervisor, Fifth District**

**COUNTY OF ORANGE  
LEGISLATIVE PLATFORM  
FOR 2011**

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# COUNTY OF ORANGE

2011 State and Federal  
Outlooks

**COUNTY OF ORANGE**  
**2011 STATE AND FEDERAL OUTLOOKS**

**STATE LEGISLATIVE OUTLOOK**

***Overview***

The election of a new Governor on November 2, 2010, and a slight widening of the Democratic majority in the Assembly set the stage for one party control in Sacramento in 2011. In addition, the Democrats will control the majority of statewide offices. The underlying economic conditions of the State and Country will be the focal point of activity in Sacramento in the upcoming 2011-2012 Legislative Session.

Along with the rest of the nation, California's economy continues to suffer significantly. Many Californians have lost their jobs and others remain under-employed, housing prices continue to be depressed throughout the State, and the costs of basic necessities like gas, food, and healthcare continue to rise. This situation continues to place a significant burden on the State's budget; many more families may be forced to increase their dependence on public assistance, putting increased pressure on a shrinking tax base. The hardest hit will continue to be county governments since they provide the majority of social and health services for California. The Democratic leadership finds they are once again in the difficult position of balancing the need to significantly reduce costs to the State budget, without significantly reducing "necessary" services.

On the November 2, 2010, State ballot were a number of initiatives. Once the electorate voted and the results were tallied, the most significant change to the political and legislative dynamic in Sacramento was the passage of Proposition 25. This proposition allows the State budget (without tax increases) to be passed with a simple majority vote. Additionally, the voters passed Proposition 20 (the Voters FIRST Act for Congress). This measure adds to the responsibilities of the Citizens Redistricting Commission the task of drawing Congressional districts. It is to be seen what impact the Citizens Redistricting Commission will have on the 2012 elections. Many pundits believe that along with the new open primary system (Proposition 14-June 8, 2010) this will bring about competitive races and more moderate leaning individuals into the political process. Proposition 14 requires that candidates run in a single primary open to all registered voters, with the top two vote-getters meeting in a runoff if necessary. This new system will take effect on June 12, 2012.

In addition to a new Governor, there will be over 30 new legislators in Sacramento in the 2011-2012 Legislative Session. The challenge for Orange County and other local government agencies in the upcoming legislative year will be to educate the new members of the Legislature on the services the County provides and the severe impact on services that will result from continued cuts to counties.

## **Budget**

According to the UCLA Anderson Forecast, the economy was "slightly weaker" in the second quarter than the first, with a bottoming not probable until the second quarter of 2011, as the jobs outlook continues to look "anemic." Some bright spots were noted, which signal some expansion in the State economy although very slow, such as growth in retail sales and trade and commerce through the major ports in the Los Angeles and Oakland regions. The State will grow more slowly than the U.S. economy and State unemployment will stay at an elevated average rate of 12.2 percent. The Anderson Forecast has said that, "job creation will not be fast enough to push the unemployment rate below double digits until the end of 2012." It is anticipated that the State will continue to face a serious fiscal crisis in 2011. Addressing this shortfall in a responsible way will likely require cooperation from the Governor, Republicans, and Democrats. Even if revenue increases were agreed upon or voted in, the impact of State expenditure reductions on the County and those they serve will likely be severe. However, the County is well positioned to advocate regarding an equitable distribution of reductions across programs and interest groups. In addition, the County will continue to seek full reimbursement for mandated programs, eliminate all unfunded and unnecessary state mandates, and support legislation that allows maximum flexibility to local governments to effectively and efficiently administer state-mandated programs.

Another unknown fiscal impact on the State budget is the instability of Federal funding due to the Republicans retaking the House of Representatives. The House Republicans included in their "Pledge to America" over \$100 billion in cuts to domestic spending. These unspecified cuts can come from non-defense domestic discretionary programs. This proposal is especially significant in California whereby 40 percent of the State budget solutions proposed by the Governor in January 2010 relied on Federal funding, which included \$6.9 billion of Federal funds, as well as \$1 billion in Federal actions to allow implementation of some other budget solutions.

Moreover, three propositions passed during the November 2010 election will have a significant impact on the State budget process; Proposition 22 (prohibition on taking funds used for transportation and local government services), Proposition 25 (majority vote budget), and Proposition 26 (requires a super majority for fees). Proposition 22 prohibits the State from shifting, taking, borrowing, or restricting the use of tax revenues dedicated by law to fund local government services, community development projects, or transportation projects and services. With Proposition 25 passing, the State budget can be passed with a simple majority – 41 votes in the Assembly and 21 votes in the Senate. At the same time, voters approved Proposition 26 to increase the vote threshold for some revenue sources to a two-thirds super majority. The County should expect a plethora of legal challenges in 2011 with the implementation of these initiatives.

## ***County Retirement Reform***

In recent years, the State and many local governments have experienced significant increases in pension costs, which have put enormous stress on local government budgets. The increases were caused in large by State legislation in 1999 that authorized the California Public Employees Retirement System (CalPERS) to offer enhanced “defined contribution” benefits, which included new retirement formulas.

Like many public entities, the County of Orange is concerned about the significant financial burden County taxpayers will bear in funding the County’s pension obligations. Both Orange County and its largest union, the Orange County Employees Association (OCEA), recognized this funding problem and through negotiations, agreed to allow both existing and new employees to elect a less favorable pension formula (1.62 percent at 65) for future service. At the State level, there have been a number of legislative and initiative proposals that seek to either share the financial risk or shift newly-hired public employees to defined contribution plans, where benefits are based on employee contributions and investment earnings.

## ***Elected Officials Retirement***

Orange County’s retirement system is established pursuant to the County Employees Retirement Law of 1937 (CERL). According to the provisions of CERL, once a retirement system is established all officers and employees of the participating County (other than employees which CERL expressly allows to be excluded) and all elected officials that choose to be members are to become members of the retirement system. Currently, there is no authority in CERL for the exclusion of elected officials. In absence of specific statutory authority permitting the exclusion of elected officers, neither the Board of Retirement nor the Board of Supervisors may take such an action.

Legislation will need to be drafted to provide statutory authorization to be added to CERL allowing the exclusion of elected officers from OCERS. Due to California constitutional limitations on decreasing or terminating retirement system benefits for current employees, such an amendment would not affect current County employees. The authorization the County may seek would, therefore, allow the exclusion from membership of future elected officers who are not participating in nor have the option to participate in OCERS both at the time the exclusion is adopted and immediately prior to taking elective office.

## ***State Corrections Reform***

The State Legislature is considering a range of proposals designed to reform the State prison system, control State costs of operating the system, improve health services provided to inmates, and improve outcomes for prisoners after their release. Many of the proposals could have significant impacts on counties, including the creation of regional prisons, shifts in prisoner populations into local jails, mandated levels of county health services to be provided to prisoners while incarcerated or post release, and shifts

in the allocation of limited county services and resources from the general public to persons in the criminal justice system. Several of these proposals include insufficient funding to cover the costs to counties if implemented.

### ***Healthcare Reform***

Many of the provisions of Federal health care reform will not be effective until January 2014. The finer details of health care reform will be resolved through Federal agencies, the Federal regulatory process, and commissions created in the measure. However, the new House Republican majority has vowed to try to repeal the health care reform legislation enacted in 2010.

At the same time, there is a separate, but parallel, dialogue within California on how to exercise the State options offered through the Federal health reform package. There now exists an opportunity for the County to weigh-in on the design of the State's health insurance program and how it will allow for individuals and small businesses to purchase health coverage, and interfacing with the existing Medi-Cal program.

Health reform may also bring opportunities for creativity in the County in designing the health coverage initiatives. On November 2, 2010, a new 1115 Waiver for California was approved by the Centers for Medicare and Medicaid (CMS). The Waiver provides \$10 billion in funding to the State over the next five years. The State may also use the 1115 waiver as an opportunity to create a bridge to the full Medicaid expansion effective in 2014. Given the significance of the emerging policy decisions, the County needs to continue to be at the forefront of the discussions with the State and provide input to the new Administration.

### ***Redistricting Commission Changes***

Every ten years, after the Federal census, California and every state in the union, must redraw the boundaries of its legislative and other political districts to reflect the new population data. How these boundaries are drawn affects how people are represented.

In California, the process of redrawing the boundaries—redistricting—was a duty of State elected officials. However, when voters passed Proposition 11 in the November 2008 general election, responsibility for redrawing the legislative and Board of Equalization district lines transferred to the people in the form of a new Citizens Redistricting Commission. Additionally, on November 2, 2010, voters passed Proposition 20 (the Voters FIRST Act for Congress), adding to the responsibilities of the Citizens Redistricting Commission the task of adjusting the boundary lines for the Congressional districts.

How will the new district boundaries get approved?

The Commission is required to define the geographic boundaries for 40 Senate districts, 80 Assembly districts, four State Board of Equalization districts, and all Congressional

districts, in accordance with the law. Once the Commission has agreed on the geographic boundaries of the districts, the districts will be displayed on four maps: one for the Congressional districts, a second for the State Senatorial districts, a third for Assembly districts, and a fourth for the State Board of Equalization districts. The Commission will vote on the four maps. To be approved, each map must receive the affirmative vote of at least three Commission members who are Democrats, three who are Republicans, and three who are neither a Democrat nor a Republican. Once the Commission has approved the four final maps, the maps are certified to the Secretary of State with a report explaining the basis on which the Commission made its decisions.

The Commission's primary redistricting duties will commence no later than January 1, 2011, and end no later than August 15, 2011.

### ***In-Home Supportive Service***

In-Home Supportive Services (IHSS) is a significant part of California's long term care continuum which includes both community-based services and institutional (nursing home) care. It is the only service in that continuum for which the counties are required to share in the cost. Due to this disparity, the Legislative Analyst's Office has concluded that the IHSS Program is cost effective for the state, at the expense of the counties. The County's share of the cost of this program is approximately 17.5 percent.

Increased costs, which are beyond the control of the counties due to state mandates, continue to be a major concern. These increased costs affect counties unevenly, as some counties experience dramatic growth and others do not. For example, for FY 2009/2010, the statewide caseload decreased, while Orange County's caseload increased by eight (8) percent. Since the state realizes significant savings in institutional care costs due to the IHSS Program, it should fund a larger share of the costs.

### ***Retirement Calculations/Ventura County Decision***

AB 1987 and SB 1425, bills on pension reform for 1937 Act systems and PERS, were approved by the Legislature and vetoed by the Governor in 2010. While the intent of these bills was to restrict items that are considered compensation earnable, they were written to have the opposite effect. For example, they expanded the definition of grade and class to include any grouping of employees that perform similar job duties. Presently, grade and class is determined by the employer in accordance with classification schedules. CEO is considering the roll back of the additional pay elements counted in the calculation of compensation earnable that were set in place by the Ventura County Court Decision. Restrict final compensational earnable to base salary or wage compensation only and to statutorily reverse the impacts of the Ventura County Court Decision and subsequent judicial decisions that have allowed certain collectively bargained types of pay to be included in the calculation of final compensation for purposes of determining a member's defined benefit.

## ***California Department of Child Support Services proposed Administrative Process for Setting and Modifying Child Support Orders***

The State Department of Child Support Services may propose legislation to create and implement a three-tier administrative process for establishing and modifying child support orders. This process would be in addition to the current judicial process, improving the timeliness of services and the efficiency and cost-effectiveness of child support operations. This legislation is expected to significantly reduce the number of cases that would require court intervention and reduce the amount of time it takes to get or modify a child support order. On average, it currently takes six to nine months to establish a court order. Under this administrative process it could take as little as 45 days to establish an order.

Recognizing the importance of timely child support orders and good customer service this proposal encourages the efficient, non-adversarial, and cost-effective establishment and modification of child support through the use of an innovative hybrid of judicial and administrative processes.

### ***Block Grants***

The County should attempt to seek changes in the block grant process, when Agencies/Departments bring to our attention the desire, when seeking more Federal and State program funds that they be converted into block grants with performance standards. Cash advances on these grants would help resolve cash flow problems associated with reimbursement claims. Focus on outcomes versus regulations and procedures could create efficiencies.

### ***New Regional Animal Shelter***

The County of Orange is engaged in an effort to replace the existing OC Animal Care Shelter. The current facility is comprised of approximately 4.5 acres in the City of Orange and built over 60 years ago. Although, it has been remodeled on multiple occasions, the facility has numerous problems due to age and is unable to accommodate further growth due to surrounding uses, which includes an easement the City of Orange has until the year 2020 for Metropolitan Drive, which would cut directly through the existing Shelter facility.

The estimated cost of the new regional animal shelter is \$25-\$30 million. The County of Orange set aside \$9 million for initial costs with the plan being that OC Animal Care's contract cities would pay debt service of the new shelter costs for construction based upon proportionate use. The County of Orange will continue to seek stable funding sources, through grants, appropriations or budget processes, to pay for operation, acquisition, and/or construction of a state of the art regional animal care shelter on the former Tustin Marine Base.

## ***DNA Testing***

DNA testing in Orange County has been performed since 1989 for local law enforcement agencies. The majority of testing has focused upon evidence taken from the scenes of violent crimes such as murder, violent assaults and sexual assaults. In the last few years, wider testing of DNA evidence from property crimes (robberies, breaking and entering, auto theft, etc.) has gained traction as crimes of this nature have risen. As a result, the County of Orange created of a high-volume DNA testing lab within existing facilities at the OC Crime Lab that will accommodate the increased demand for testing of DNA evidence collected from property crimes.

In FY 08-09, the five-year cost of expansion was approximately \$7.4 million. The County of Orange will continue to seek stable funding sources, through grants, budget augmentations or fines/fees, to pay purchase of new high-volume equipment, and the on-going operation and staffing needs for high volume testing, which is expected to rise to 34,000 samples in FY 12-13.

## ***Property Tax Administration Charge***

As part of the administration of the property tax system, counties under Revenue and Taxation Code Section 95.2 and 95.3, are allowed to reimburse their costs for assessing, billing, collecting, and distributing property taxes from tax receiving entities. The Property Tax Administration Charge (PTAC) is allocated to all tax receiving entities, however, it is not recovered from local schools and the Educational Revenue and Augmentation Fund (ERAF).

When the State implemented the Triple Flip and VLF Swap, cities and counties received an increased allocation of property taxes in lieu of sales tax and vehicle license fee revenue. Revenue and Taxation Code Section 97.75 provided cities with an exemption of PTAC associated with the increased property tax allocation for FY 2004-05 and FY 2005-06. Beginning in FY 2006-07 and beyond, counties may impose a fee or charge which shall not exceed the cost of providing services of calculating the Triple Flip and VLF Swap.

Although the counties' formula for calculation of PTAC follows the requirements of the Revenue and Taxation Code, cities argue that it was the intent of the Legislature that the Triple Flip and VLF Swap would be revenue neutral. Cities contend that the increase in PTAC should be limited to the fee or charge that is identified in Revenue and Taxation Code Section 97.75 - the cost of calculating the Triple Flip and VLF Swap.

The County requests Legislative clarification to reaffirm that the calculation of PTAC should be based on all property tax allocated, as identified in Revenue and Taxation Code Section 95.3.

**COUNTY OF ORANGE**  
**2011 STATE AND FEDERAL OUTLOOKS**

**FEDERAL LEGISLATIVE OUTLOOK, 112TH CONGRESS, 1ST SESSION**

The 2010 mid-term election resulted in the Republican Party re-establishing majority control in the House of Representatives. While Democrats retained control of the Senate, their margin was greatly reduced to a 53-47 majority. Given the nearly perpetual election cycle the country currently survives under, it is difficult to predict bipartisan cooperation on many of the fundamental issues awaiting the new 112<sup>th</sup> Congress.

In the 2012 Senate elections, the Democrats will have 23 seats to defend compared to just ten for Republicans, leading to the prospect of Republican majority control of the Senate in two years. Such a prospect does not portend for bipartisan cooperation in 2011. In addition, the Senate over the past two years has moved away from majority rule to a nearly perpetual state of filibuster requiring the concurrence of 60 Senators before almost any legislation can pass that chamber.

The 111<sup>th</sup> Congress has two huge matters remaining to address before the end 2010, or else punt the issues to the new Congress in January: finalization of the Fiscal Year 2011 appropriations financing the operations of the Federal Government and the extension, or expiration, of the Bush Administration tax cuts from 2001 and 2003. While House Republicans will not be supportive of a FY 11 omnibus bill, or even a year-long Continuing Resolution (CR) at FY 10 levels, the ultimate decision on how to proceed rests with the position of at least a few Senate Republicans supporting one solution or another in order to reach 60 votes. If a two-or-three month CR is enacted in the lame duck session of the 111<sup>th</sup> Congress, then the 112<sup>th</sup> Congress will face, as a first order of business, the decision on how to finalize the 2011 appropriations.

Secondly, is the issue of the expiring tax cuts, which if not addressed, will expire on December 31, 2010, thereby returning income and estate tax rates to their pre-2001 level. While the 112<sup>th</sup> Congress could re-establish the tax rates—all or in part—retroactively, it is always more difficult to do so after the fact than before. Despite some indication of a willingness to compromise on the part of the Obama Administration and Congressional Democrats, there remains a wide gulf separating the parties on this issue.

***National Issues***

Republicans were successful in the 2010 elections in large part due to the electorate's concern over the huge annual deficit of the Federal Government and the exploding National Debt resulting from the additional red ink each year. Therefore, the budget will be a major focus of majority Republicans in the House as the new Congress convenes. As has been discussed before, the current annual budget deficit is equivalent to the

total annual appropriations of all the domestic and defense discretionary spending of the Federal Government. Thus, the deficit cannot be eliminated without addressing entitlement programs. The Presidential commission charged with suggesting ways of doing this is scheduled to make its report before the end of 2010. Whether that report is taken up by the 112<sup>th</sup> Congress remains to be seen, but some attempt will be made to address how to stanch the Federal budget hemorrhaging.

The Fiscal Year 2012 budget and appropriations process will begin when the Administration submits its proposed budget to Congress at the beginning of February—regardless of whether the FY 11 process has been finalized or not. Concomitant with the budget process will be the process for addressing “earmarks” in legislation, both appropriations and authorizations. The House Republican Caucus is almost certain to continue the 2010 earmark moratorium in 2011, in part because of a failure of the caucus to develop a system for dealing with individual line items in legislation whether proposed by individual Members or groups of Members. Absent such a decision, all spending recommendations will rest with the Obama Administration.

Many Members of the Republican Caucus have also advocated a return to FY 2008 as a baseline for appropriations in FY 2012 as a way of trimming up to \$100 billion from the budget. (The amount of savings under such a scenario is dependent on whether the 2008 baseline would be applied to defense programs or not. The Department of Defense budget has increased 145 percent since 2000—greater than any other department of the Federal Government.) Even so, given a projected annual budget deficit of \$1.3 trillion in FY 11, a \$100 billion reduction would still leave a deficit in FY 12 of \$1.2 trillion.

The House Republican majority has vowed to try to repeal the health care reform legislation enacted in 2010, however, there are not 60 votes in the Senate for repeal, and the President has said he would veto any such legislation were it to pass Congress. That said, the politics of the past election dictate that time and effort will be expended on this matter in 2011.

With the Great Recession only modestly receding, there will be pressure to continue some sort of Federal stimulus to the economy. However, under the Republican House majority, this will not include additional monetary expenditures. Rather, the stimulus efforts will be directed towards tax policy as a way of spurring the private sector to create jobs and rejuvenate economic activity.

### ***Orange County Issues***

Funding for the Santa Ana River Mainstem Project, and other County priorities, will be dependent on what is proposed in the President’s FY 12 budget to Congress. Changes to the President’s budget are considered earmarks and thus will be banned by the House Republican majority, unless they agree to redefine what an “earmark” is. Even with such a redefinition, however, the amount of discretionary funding in FY 12 is likely to be severely restricted.

The tax status of the County's pension reform efforts may have been decided by the Internal Revenue Service before the end of calendar year 2010. If not, efforts will continue to address a solution through a legislative remedy. While Representative Sander Levin (D-MI) will not be chairman of the House Ways and Means Committee in the 112<sup>th</sup> Congress, the County's Congressional Delegation has been supportive of the County's pension reform efforts and the County will work with the new committee leadership, expected to be Congressman Dave Camp (R-MI). With the change in majorities, Democrats may have to reduce Ways and Means membership by one or two Members. As a result, Representative Linda Sanchez (D-Los Angeles) could lose her seat on the committee.

Congress will again try to address authorization of a new Water Resources Development Act (WRDA) in the 112<sup>th</sup> Congress. A Republican-led House Transportation and Infrastructure Committee, coupled with the defeat of previous chairman Representative James Oberstar (D-MN), may enhance the opportunity to include a modest, practical amendment to the 404 permit process to streamline routine maintenance projects either in WRDA or as amendments to the Clean Water Act. In addition, clarifying amendments to projects such as Aliso Creek may be in order as part of WRDA.

As with appropriations issues, however, the question of earmarks also exists with authorization legislation. If the bill contains specific project designations, those are classified as "earmarks" under the House Republican Caucus definition of the term. Without a clarification, therefore, all funding would have to be in the form of lump sum authorizations to the Army Corps of Engineers for distribution by the Executive Branch—presumably on a formula or discretionary grant basis.

The current surface transportation authorization—SAFETEA-LU—expired on September 30, 2009. Attempts to enact a full-scale reauthorization in the 111<sup>th</sup> Congress came to naught. The taxing authority of the Federal gas tax has been temporarily extended, but a long-term bill will once again attempt to be drafted in 2011, under the leadership of Senator Barbara Boxer and the presumed new House chair, Congressman John Mica (R-FL). In the 111<sup>th</sup> Congress, the principal stumbling block to reauthorization was how to fund Federal highway and transit programs. The current 18.4 cents-per-gallon Federal gas tax has proved insufficient for several years now to meet the demands of the highway and transit needs of the country. In addition, as with WRDA, absent a redefinition of earmarks, program funding would have to be made by the Department of Transportation on a grant basis without congressional input.

Continuing issues unresolved in 2010, which the County will be following in 2011 include reform of the Federal flood insurance program and its potential impact on reestablishing flood insurance requirements for large portions of Orange County. The Federal Aviation Administration's reauthorization once again did not make it through the legislative process in 2010 and will need to be reintroduced in the new Congress.

The change in majority parties in the House may reorder Orange County Congressional Delegation responsibilities and leadership positions. Representative Ed Royce is vying for the chairmanship of the House Financial Services Committee. Congressman Dana Rohrabacher is doing the same with the Science and Technology Committee. Congressman Ken Calvert, a member of the House Appropriations Committee, and its Energy and Water Subcommittee, will rise in seniority on the committee, as will Representative Gary Miller on the Transportation and Infrastructure Committee, which will be important in both the transportation and WRDA authorization processes likely to move forward in the 111<sup>th</sup> Congress. He is also a member of the Financial Services Committee which has jurisdiction over the flood insurance program. Representative Loretta Sanchez, number two in Democratic seniority on the Homeland Security Committee, will continue on that committee, as well as maintaining a senior minority position on the House Armed Services Committee.

Senator Barbara Boxer, as chair of the Environment and Public Works Committee, will have jurisdiction over both WRDA and the highway portion of the transportation authorization, making her one of the most influential Members of Congress on these bills. Senator Dianne Feinstein will remain as one of the Senate Appropriations Committee's 12 "cardinals" and may become chair of Energy and Water Development Subcommittee.

### ***Army Corps of Engineers Levee Vegetation Policy and Processes***

WRDA 1996 directed the Secretary of the Army to review and revise policy guidelines on vegetation management for levees. Consequently, the Army Corps of Engineering (Corps) is considering a new levee vegetation policy which would establish a vegetation free zone over levees and embankments, and flood walls plus fifteen feet on each land side and river side. Local governments across the country, including the Orange County Flood Control District, have been placed in a difficult position because of the Corps' desire to implement these new levee vegetation guidelines that create a conflict between environmental regulations, Corps policy, and FEMA's flood insurance program. The required removal of vegetation from levees across the County places a burden on already strapped resources and negatively impacts public safety by diverting much needed resources for flood protection to vegetation removal which has not been shown to be a significant hazard. The Corps did not adequately consider regional variations in levee types and management approaches; environmental considerations; and regulatory requirements. The results of Hurricane Katrina may have created a risk adverse culture during the development of the vegetation guideline and influenced the document to be singularly and overly focused on minimizing risks. However, this proposed policy would impact many of the County's flood control facilities including the Santa Ana River project and other leveed flood control facilities.

Staff will work with our Congressional delegation and other stakeholders to encourage the Corps to facilitate resolution of conflicts created at multiple levels by the Corps' actions, such that levee owners in California can comply with Federal and State

environmental laws, be provided adequate time to comply with Corps requirements, and receive financial assistance. For reference, this issue of levee vegetation is independent of our current efforts for 404 streamlining.



# COUNTY OF ORANGE

## 2011 Legislative Priorities and Policy Statements

**COUNTY OF ORANGE**  
**2011 LEGISLATIVE PRIORITIES AND POLICY STATEMENTS**

The County of Orange recognizes the need to protect its interests in Sacramento and Washington, DC. To be effective in this mission, the County of Orange reviews and establishes priorities and policy statements at the beginning of each legislative year. The Legislative Priorities set forth the County's goals for the current Legislative Session and the Policy Statements provide general direction to the Legislative advocates as they advance County interests during the year.

**LEGISLATIVE PRIORITIES**

**1. LOCAL GOVERNMENT FUNDING**

In the event local revenue is jeopardized or reallocated, the State must provide alternative funding sources to local governments. For example, Orange County would be opposed to the State borrowing from local governments using Proposition 1A, or any other source of funding from the State.

**2. FISCAL EQUITY**

Establish an equitable, dependable and predictable revenue stream with distribution formulas for local revenues that address equity with other counties, and that any formula be based on one or more of the following factors:

- Per capita
- Caseload
- Situs (dedicated taxes)
- Realignment Equity
- Cost of Living in High Cost Counties
- Other Objective Measures of Need

**3. COST RECOVERY**

Local governments shall receive full cost reimbursement for all federal and/or state mandated programs. Unfunded or under-funded mandates are a burden which local government cannot afford. The County of Orange will pursue full cost recovery for all expenditures related to natural disasters.

## **POLICY STATEMENTS**

1. Increasing taxes is an inappropriate means of balancing the State's budget.
2. The establishment of equitable, consistent, dependable, and predictable revenue streams with distribution formulas for local revenues that address equity are necessary for the stability of services provided by local government. Proposed funding allocations to counties must be based upon common factors (population, poverty statistics, caseload, or other objective measures of need) applied evenly among counties.
3. The shifting of tax revenues from the County to the State or other local entities harms Orange County's ability to serve its residents.
4. Counties must be given the authority, flexibility, and adequate funding to administer programs and service client needs within their local jurisdictions (no unfunded mandates). As examples, In-Home Supportive Services should be fully funded by the State and Federal governments to lessen the financial burden on local governments; and funding for property tax administration should be reinstated.
5. Realignment proposals must only include programs where counties have control over costs and program operations.
6. Federal maintenance of effort requirements as well as federal penalties and sanctions must remain the responsibility of the State and not passed on to local governments.
7. Homeland security and emergency response efforts shall be coordinated among the federal, state, and local governments with clearly defined roles and responsibilities for each.
8. The State and/or federal government shall provide full cost recovery for counties and cities for all mandates. State/or federally funded programs (such as Santa Ana River Project, State Child Health Insurance program (S-CHIP), medical research, housing, law enforcement, older adults and workforce investment, etc.) require adequate and continuous funding.
9. Support collaborative solutions in addressing regional issues and completion of vital flood control, beach erosion control, and watershed projects such as the Santa Ana River Mainstem Project (including Prado Dam), Santa Ana River Interceptor Line (SARI) relocation, Aliso Creek Mainstem Project, Orange County Beach Erosion Control Project, and other projects as may be appropriate.

10. Orange County will support measures that protect the public against disease and disability and promote health.
11. Funding for alternatives to incarceration, including probation monitoring, that are cost effective and do not endanger the general public shall be pursued.
12. Housing:
  - a. Adequate housing is necessary for economic stability. Parity should be sought between the number of jobs and the availability of housing. The Regional Housing Needs Assessment (RHNA) should identify realistically the housing elements needed to achieve fair distribution of housing requirements and should provide for the transfer of housing allocations when annexation or incorporation occur. RHNA should never be used to punitively impact the funding of local government.
  - b. Support removal or minimization of barriers to housing production, including fiscal reform for local government to address disincentives for residential development.
  - c. Support the efforts of County water agencies to insure that an adequate water supply exists for potential development in unincorporated areas and the incorporated cities of Orange County.
  - d. Support the removal of barriers to local flexibility in the administration and allocation of federal homeless assistance funding, so as to allow the County to direct these funds toward innovative programs that will meet the specific needs of its homeless population.
13. Water Resources:
  - a. State – promote coordinated effort between state, County and regional agencies to allow for increased local control for project implementation.
  - b. Federal – increase programs and funding opportunities for purchasing of coastal habitat and resource conservation, preservation and maintenance. Support federal funding for beach nourishment and erosion control for all Orange County shoreline from the mouth of the San Gabriel River to San Mateo Creek. Support sharing of Federal Outer Continental Shelf (OCS) revenues with coastal states to support conservation and wildlife protection programs.
  - c. Local, State and Federal – support state and federal grants for Clean Water Act and Porter-Cologne Act and collaborate on watershed management strategies.
  - d. Support consistent regulatory efforts and oversight within Orange County boundaries.
14. Promote business retention (through insurance, healthcare, and workers' compensation reform) and consider incentives to attract new business.

15. Protect local decision-making and accountability for County Proposition 10 Commissions when statewide financial reporting and fiscal practices are established.
16. El Toro – The local land use decision made regarding MCAS, El Toro and its reuse should be upheld. The County of Orange is opposed to any attempt to change the land use and to the creation of a regional airport authority to place an airport at MCAS, El Toro.
17. Support policies that maximize local control over solid waste management and solid waste facilities, and minimize burdensome and duplicative regulation by the state.
18. Implementation of the reauthorized Voting Rights Act should reexamine multilingual ballot requirements to ease unfunded mandates on counties. The regulations should have specific and reasonable fluency thresholds.
19. Support a public safety system that includes local law enforcement services, crime prevention, prosecution of crime, confinement of high-risk and juvenile offenders, and supervision of adults and juveniles placed on court ordered formal probation.
20. Support measures that enhance the quality, affordability, capacity, accessibility, and safety of child care and development programs.
21. Support Completion of the 241 Tollroad, as it affects all transportation decisions as well as Air Quality Management Districts (AQMD) measurements for the County.
22. Support legislative or administrative changes to clarify the requirements for regulatory permits for the maintenance of flood control and drainage facilities, including mitigation requirements; and for streamlining the process when maintenance permits are required.
23. Support legislation that educates, promotes incentives, and provides information to the residents, builders, and businesses of Orange County regarding the adoption, use, and economic benefits of green technology, recycled products and eco-friendly products.
24. Support legislation that ensures Health Care Reform is revenue-neutral to the Health Care Agency and allows HCA to continue to carry out its mandated services and County responsibilities with no increase in Net County Cost.



# COUNTY OF ORANGE

2011 County-Sponsored  
State Legislative Proposals

**COUNTY OF ORANGE**  
**2011 COUNTY-SPONSORED STATE LEGISLATIVE PROPOSALS**  
**EXECUTIVE SUMMARY**

**STATE PROPOSALS – NEW**

**RDA ISSUES RELATED TO PASS-THROUGH PAYMENTS**

This proposal seeks to clarify the proper methodology for calculating pass-through payments, and consequently, whether the redevelopment agencies (RDAs) or pass-through agencies should bear the burden of funding the extra ten (10) percent housing set-aside (increase from 20 percent to 30 percent) when a redevelopment agency increases the life of a project area for ten years. When an agency uses the higher percentage to calculate pass-through payments, the net result is that it decreases the pass-through amounts to other taxing entities.

**GRAND JURY – CONFLICT OF INTEREST**

There are no statutes that pertain to grand jury conflicts of interest or bias in the context of a grand jury's civil investigative function. Existing law has left it up to each grand jury to adopt its own rules on how to handle such conflicts. This bill would require a grand juror to abstain from participating in an investigation due to a conflict of interest arising from prior or current employment.

**ACCESS TO CERTIFIED VITAL RECORDS**

This proposal would make two additions to Health & Safety Code 103526. It would specify that all requesters must be adults (or emancipated minors), and it would require those requesting records in person to show a government-issued photo ID before the certified copy of the record is provided. The bill would stipulate that adults (or emancipated minors) would be authorized to obtain a copy of a certified record; the current law allows minors to sign the affidavits, even though the signing is unenforceable, and obtain records. The requirement for a government-issued photo I.D. is reasonable, since requesters in person currently are not required to prove their identity but are required to sign an affidavit under penalty of perjury. Adding this layer of protection for those requesting records in person standardizes the requirements already in place for those requesting by mail. Government-issued photo identification assures the requester's identity for the purpose of combating both fraud and identity theft.

## MEDI-CAL REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS (FQHC)

This proposal is to authorize Medi-Cal reimbursement to FQHCs for a maximum of two medical visits for one patient on the same day. Current law only allows multiple billable visits in a single day if they are for medical and dental services. Mental health visits are currently coded for Medi-Cal billing purposes as a medical visit for which only one visit per patient per day is allowed. Prohibiting same-day services billing for separate practitioners has been identified as a barrier to improved access to mental health services for persons with public insurance. This proposal is to allow clinic primary care providers to make same day referrals for mental health treatment, thus increasing the chances that patients will actually make the appointments and get the services they need.

## EXTEND SUNSET IN THE HEALTH AND SAFETY CODE FOR ADMINISTRATION OF PUBLIC HEALTH EMERGENCY PREPAREDNESS FUNDS

The proposed legislation would extend the sunset date in Section 101320 to September 1, 2017. This section of statute is necessary for the timely and efficient administration of county public health emergency preparedness programs. A five-year sunset period would increase the stability of the program.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION

This proposal would add certain additional statutory exemptions for public park projects which will either replace existing park-related facilities or remove non-park facilities with park-related improvements.

## EMERGENCY ACCESS FOR FIRE SUPPRESSION EFFORTS

Upon a declaration of a state of local emergency as a result of locally heavy rainfall or flood, the Board of Supervisors can expend Road Funds for the purpose of emergency repairs on a public road, which are not County maintained highways, without the need to obtain a grant of right-of-way from a private property owner, if the repairs are necessary to provide minimum public access necessary for the protection or preservation of health and safety of residents. The proposed change would allow for road repairs consistent with the section to be made upon a declaration of a state of local emergency for fire suppression purposes.

## ALLOWING NET METERING FROM COGENERATION (COGEN) ENERGY PRODUCTION

Current Public Utilities Code law does not allow customer generators of cogen energy to participate in net energy metering or net surplus compensation programs, even though cogen energy is considered “clean energy.” Current law only allows owners of cogeneration plants to enter into qualifying facility contracts that are individually approved by the California Public Utilities Commission. This proposal is to change this law to allow the County to receive credit for the excess power the cogen facility produces.

## CHILD CARE FUNDING

This proposal would change Section 11410(c) and Section 15200.5 of the Welfare and Institutions Code to allow State General Child Care and Development Funds or County funds to be used for the match to Title IV-E for child care purposes. It would allow the use State California Department of Education (CDE) un-encumbered General Child Care and Development funds as the non-federal match to federal Title IV-E child care funding for children who are recipients of protective services, or those children who have been identified as at risk of neglect, abuse, or exploitation.

## CHILD ABUSE CENTRAL INDEX (CACI)

This proposal is to amend the California Penal Code to eliminate the current requirement to report investigations of child abuse or severe neglect that result in inconclusive findings to the California Department of Justice.

Eliminate the requirement for submission of inconclusive findings to the Child Abuse Central Index. Allow child welfare agencies to maintain a record of inconclusive findings for review by child welfare staff and law enforcement, upon request, in cases of child abuse or neglect investigation.

## GROUP HOME RATES FOR COUNTIES

Current code allows only the County of San Mateo to operate a group home using the established rate classification level (RCL). This proposal would amend California Welfare and Institutions Code to include Orange County as a county approved to operate a Level 12-14 group home using the RCLs established by the California Department of Social Services (CDSS) Foster Care Rates Bureau (FCRB).

## LEGISLATION TO CONTINUE AND EXPAND ELECTRONIC FILING OF CONFLICT OF INTEREST (COI) FORM 700 TO ALL FILING OFFICERS

This legislation adds permissive language to the Government Code to authorize electronic filing of Conflict of Interest - Statements of Economic Interest (Form 700s) to all Filing Officers throughout the State. This proposal would create legislation to expand electronic filing to 87200 filers and to eliminate the Pilot Program sunset date of January 1, 2012, and authorize continued use of current practices here in Orange County. It would also authorize the use of electronic filing to other county, city, and state filing officers; providing them the same benefits that the Pilot jurisdictions have experienced during the Pilot period.

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: COUNTY EXECUTIVE OFFICE  
CONTACT PERSON: John Abbott, Deputy County Counsel  
Phone: 834-4379 Fax: 714-834-4588  
email address: john.abbott@coco.ocgov.com

**SUBJECT: RDA ISSUES RELATED TO PASS-THROUGH PAYMENTS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Auditor-Controller, Orange County Development Agency, OC Flood, OC Parks

CODE SECTION AFFECTED:

Health and Safety Code Section 33607.7

DESCRIPTION OF CURRENT LAW:

Current Redevelopment Law allows redevelopment agencies (RDAs) to amend redevelopment plans for pre-1994 projects to extend the effectiveness and tax increments time limits by ten (10) years, giving RDAs the benefit of ten additional years of redevelopment activity and tax increment revenue. In exchange for this benefit, Redevelopment Law requires an increase in the Low-Moderate Housing Set-Aside from 20 percent to 30 percent of all tax increment collected by an RDA.

However, as amended by Senate Bill 211 (Chapter 741, Statutes of 2001), there exists legal ambiguity with respect to the proper methodology by which to calculate pass-through payments to affected local agencies. One method calculates pass-through payments by first subtracting the pre-amendment 20 percent Low-Moderate Housing Set-Aside (the full 30 percent Low-Moderate Housing Set-Aside would still have to be made). The second method subtracts the full 30 percent Low-Moderate Housing Set-Aside prior to calculating pass-through payments.

PROPOSAL:

This proposal seeks to clarify the proper methodology for calculating pass-through payments, and consequently, whether the RDAs or pass-through agencies should bear

the burden of funding the extra 10 percent housing set-aside (increase from 20 percent to 30 percent) when a redevelopment agency increases the life of a project area for 10 years. When an agency uses the higher percentage to calculate pass-through payments, the net result is that it decreases the pass-through amounts to other taxing entities.

#### DISCUSSION:

**Question:** What is the correct methodology to use when calculating statutory pass-through payments to affected entities when a redevelopment agency adopts an amendment, which triggers a mandatory 30 percent housing set-aside?

**Short Answer:** Interpretation of the relevant statutes, legislative history and consideration of the policies and purposes of the Community Redevelopment Act suggest that the statutory pass-through payments to affected taxing entities, including school districts, should be calculated based upon the total tax increment less a 20 percent Low-Moderate Housing Set-Aside, irrespective of whether a redevelopment agency adopts an amendment triggering a 30 percent Low-Moderate Housing Set-Aside. Current law is ambiguous and leads to alternative reasonable interpretations.

#### FISCAL IMPACT:

Unknown

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

#### **PROPOSED AMENDMENT**

Health and Safety Code section 33607.7 marked to show the addition of subdivision (d), addressing the pass-through issue.

#### **Health and Safety Code Section 33607.7**

##### **§ 33607.7. Payments relating to certain amended plans adopted prior to January 1, 1994**

(a) This section shall apply to a redevelopment plan amendment for any redevelopment plans adopted prior to January 1, 1994, that increases the limitation on the number of dollars to be allocated to the redevelopment agency or that increases, or eliminates pursuant to paragraph (1) of subdivision (e) of Section 33333.6, the time limit on the establishing of loans, advances, and indebtedness established pursuant to paragraphs (1) and (2) of subdivision (a) of Section 33333.6, as those paragraphs read on December 31, 2001, or that lengthens the period during which the redevelopment plan is effective if the redevelopment plan being amended contains the provisions required by subdivision (b) of Section 33670. However, this section shall not apply to those redevelopment plans that add new territory.

(b) If a redevelopment agency adopts an amendment that is governed by the provisions of this section, it shall pay to each affected taxing entity either of the following:

(1) If an agreement exists that requires payments to the taxing entity, the amount required to be paid by an agreement between the agency and an affected taxing entity entered into prior to January 1, 1994.

(2) If an agreement does not exist, the amounts required pursuant to subdivisions (b), (c), (d), and (e) of Section 33607.5, until termination of the redevelopment plan, calculated against the amount of assessed value by which the current year assessed value exceeds an adjusted base year assessed value. The amounts shall be allocated between property taxes and educational facilities according to the appropriate formula in paragraph (3) of subdivision (a) of Section 33607.5. In determining the applicable amount under Section 33607.5, the first fiscal year shall be the first fiscal year following the fiscal year in which the adjusted base year value is determined.

(c) The adjusted base year assessed value shall be the assessed value of the project area in the year in which the limitation being amended would have taken effect without the amendment or, if more than one limitation is being amended, the first year in which one or more of the limitations would have taken effect without the amendment. The agency shall commence making these payments pursuant to the terms of the agreement, if applicable, or, if an agreement does not exist, in the first fiscal year following the fiscal year in which the adjusted base year value is determined.

**(d) For the sole purpose of calculating the payment to each affected taxing entity under subdivision (b)(2) of this section, the amounts calculated shall be determined after the amount required to be deposited into the Low and Moderate Income Housing Fund, not to exceed twenty percent (20%), has been deducted from the total amount of tax increment funds received by the agency in the applicable fiscal year. In no event shall this subdivision (d) limit the actual deposits in the Low and Moderate Income Housing Fund to less than that required by subdivision (g) of Section 33333.10.**

Approved as to form:  
Orange County Counsel

by John H. Abbott  
Deputy County Counsel

POTENTIAL SUPPORT:

Orange County Department of Education (including school districts), Other Affected Taxing Entities

POTENTIAL OPPOSITION:

Cities and Redevelopment Agencies, Sacramento County Auditor-Controller

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None

PERSONS RESPONSIBLE FOR TESTIMONY:

John Abbott  
Mark Servino

Deputy County Counsel  
Deputy County Counsel

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: COUNTY EXECUTIVE OFFICE

CONTACT PERSON: Donna Grubaugh

Phone: 714-834-7218 Fax: 714-834-7650

email address: donna.grubaugh@ocgov.com

SUBJECT: **GRAND JURY – CONFLICT OF INTEREST**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Grand Jury

CODE SECTION AFFECTED:

Penal Code 916

DESCRIPTION OF CURRENT LAW:

There are no statutes that pertain to grand jury conflicts of interest or bias in the context of a grand jury's civil investigative function. Existing law has left it up to each grand jury to adopt its own rules on how to handle such conflicts.

PROPOSAL:

This bill would require a grand juror to abstain from participating in an investigation due to a conflict of interest arising from prior or current employment.

DISCUSSION:

The grand jury is constitutionally founded. It is an arm of the Superior Court and part of the judicial system, although its attributes and powers are controlled by the legislature.

The Grand Jury has three basic functions:

1. To act as the "public watchdog" by investigating and reporting upon the affairs of local government.

2. To weigh criminal charges and determine whether indictments should be returned.
3. To weigh allegations of misconduct against public officials and determine whether indictments should be returned.

In its “public watchdog” capacity, California grand juries have been granted authority to investigate local government and to file reports on their investigations after a report is approved by the Superior Court.

Penal Code 916 requires each grand jury to adopt rules of procedures. The Legislature has left it up to each grand jury to adopt its own rules as to how to handle conflicts of interest.

There are no statutes that pertain to grand jury conflicts of interests or bias as it relates to a grand jury’s civil investigative function.

Recently, a concern arose where grand jurors, who were former employees of an agency being investigated, participated in the investigation. This created a perception that there was a possible bias in the outcome of the investigation. Whether the bias is founded or unfounded, it taints the public’s perception of the grand jury as a neutral, unbiased arm of the judiciary. The addition of Section 916.2 pertaining to conflicts of interest would help alleviate some of that concern.

**FISCAL IMPACT:**

None.

**PROPOSED SPECIFIC LANGUAGE:** (As approved by County Counsel)

**An act to add Section 916.2 to the Penal Code, relating to conflicts of interest of grand jurors.**

**The people of the State of California do enact as follows:**

**A grand juror who is a current employee or former employee, within the last three years, of an agency within the investigative jurisdiction of the grand jury, shall inform the foreman and shall recuse himself or herself from participating in the grand jury civil investigation of that agency including abstaining from any discussion or vote concerning the investigation.**

Approved as to form:  
Orange County Counsel

by Karen R. Prather  
Deputy County Counsel

POTENTIAL SUPPORT:

Unsure

POTENTIAL OPPOSITION:

Grand Jury Association. The Grand Jury Association is made up of past grand jury members who stay abreast of all grand jury matters across the State. They may feel that this legislation takes autonomy away from the various grand juries.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None known.

PERSONS RESPONSIBLE FOR TESTIMONY:

Donna Grubaugh                      Deputy Director, CEO/Legislative Affairs

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: CLERK RECORDER

CONTACT PERSON: Jean Pasco Phone: 714-834-2083

Fax: 714-834-2675 email address: jean.pasco@rec.ocgov.com

**SUBJECT: ACCESS TO CERTIFIED VITAL RECORDS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Clerk-Recorder, Health Care Agency

CODE SECTION AFFECTED:

Health & Safety Code Section 103526

DESCRIPTION OF CURRENT LAW:

Current law lays out requirements for who is legally authorized to obtain certified copies of birth, death and marriage records. Individuals appearing in person are permitted to receive a certified copy after signing a statement sworn under penalty of perjury that the requester is an authorized person under state law. Those who are not authorized to receive an authorized certified copy will receive a copy with certain information redacted by the state. The redacted copy will be marked INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY.

The law describes an authorized person as:

- The registrant, a parent or legal guardian of the registrant.
- A party entitled to receive the record as a result of a court order, or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code.
- A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.
- A child, grandparent, grandchild, sibling, spouse, or domestic partner of the registrant.
- An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

- Any funeral director that orders certified copies of a death certificate on behalf of any individual specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100 of the Health and Safety Code.

#### PROPOSAL:

The proposal would make two additions to Health & Safety Code 103526. It would specify that all requesters must be adults (or emancipated minors), and it would require those requesting records in person to show a government-issued photo ID before the certified copy of the record is provided.

#### DISCUSSION:

The requirement for a government-issued photo I.D. is reasonable, since requesters in person currently are not required to prove their identity but are required to sign an affidavit under penalty of perjury. Those requesting certified copies of vital records by mail must provide a notarized copy of the signed affidavit, which does require proof of identity. For signatures to be notarized, requesters must present a driver's license or ID card issued in the U.S., a U.S. passport, U.S. military ID, a Matricula Consular card or a foreign passport if stamped by U.S. Immigration and Customs Enforcement. Adding this layer of protection for those requesting records in person standardizes the requirements already in place for those requesting by mail. Government-issued photo identification assures the requester's identity for the purpose of combating both fraud and identity theft. Finally, the bill would stipulate that adults (or emancipated minors) would be authorized to obtain a copy of a certified record; the current law allows minors to sign the affidavits, even though the signing is unenforceable, and obtain records.

#### FISCAL IMPACT:

None.

#### PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

Health & Safety Code Section 103526 would be amended to read (:

103526. (a) If the State Registrar, local registrar, or county recorder receives a written or faxed request for a certified copy of a birth, death, or marriage record pursuant to Section 103525, or a military service record pursuant to Section 6107 of the Government Code, that is accompanied by a notarized statement sworn under penalty of perjury, or a faxed copy of a notarized statement sworn under penalty of perjury, that the requester is an authorized person, as defined in this section, that official may furnish a certified copy to the applicant in accordance with Section 103525 and in accordance with Section 6107 of the Government Code. If a written request for a certified copy of a military service record is

submitted to a county recorder by fax, the county recorder may furnish a certified copy of the military record to the applicant in accordance with Section 103525. A faxed notary acknowledgment accompanying a faxed request received pursuant to this subdivision for a certified copy of a birth, death, or marriage record or a military service record shall be legible and, if the notary's seal is not photographically reproducible, show the name of the notary, the county of the notary's principal place of business, the notary's telephone number, the notary's registration number, and the notary's commission expiration date typed or printed in a manner that is photographically reproducible below, or immediately adjacent to, the notary's signature in the acknowledgment. If a request for a certified copy of a birth, death, or marriage record is made in person, the **requester shall produce government-issued photo identification** and the official shall take a statement sworn under penalty of perjury that the requester is signing his or her own legal name and is an authorized person, and that official may then furnish a certified copy to the applicant.

(b) (1) If the person requesting a certified copy of a birth, death, or nonconfidential marriage record is not an authorized person or is an authorized person who is otherwise unable to satisfy the requirements of subdivision (a), the certified copy provided to the applicant shall be an informational certified copy and shall display a legend that states "INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY." The legend shall be placed on the certificate in a manner that will not conceal information.

(2) If the person requesting a certified copy of a confidential marriage record is not an authorized person or is an authorized person who is otherwise unable to satisfy the requirements of subdivision (a), the official shall not release a certified copy of the confidential marriage record unless otherwise authorized by law.

(c) For purposes of this section, an "authorized person" means:

(1) For purposes of requests for certified copies of confidential marriage records, only a party to the confidential marriage.

(2) For purposes of requests for certified copies of birth, death, or nonconfidential marriage records, a person who is any of the following:

(A) The registrant or a parent or legal guardian of the registrant.

(B) A party entitled to receive the record as a result of a court order, or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code.

(C) A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.

(D) **An emancipated minor or adult** child, grandparent, grandchild, sibling, spouse, or domestic partner of the registrant.

(E) An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

(F) An agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders certified copies of a death certificate on behalf of any individual specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100.

(d) A person who asks the agent or employee of a funeral establishment to request a death certificate on his or her behalf warrants the truthfulness of his or her relationship to the decedent, and is personally liable for all damages occasioned by, or resulting from, a breach of that warranty.

(e) Notwithstanding any other law:

(1) A member of a law enforcement agency or a representative of a state or local government agency, as provided by law, who orders a copy of a record to which subdivision (a) applies in conducting official business shall not be required to provide the notarized statement required by subdivision (a).

(2) An agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders death certificates on behalf of individuals specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100 shall not be required to provide the notarized statement required by subdivision (a).

(f) Informational certified copies of birth and death certificates issued pursuant to subdivision (b) shall only be printed from the single statewide database prepared by the State Registrar and shall be electronically redacted to remove any signatures for purposes of compliance with this section. Local registrars and county recorders shall not issue informational certified copies of birth and death certificates from a source other than the statewide database prepared by the State Registrar. This subdivision shall become operative on July 1, 2007, but only after the statewide database becomes operational and the full calendar year of the birth and death indices and images is entered into the statewide database and is available for the respective year of the birth or death certificate for which an informational copy is requested. The State Registrar shall provide written notification to local registrars and county recorders as soon as a year becomes available for issuance from the statewide database.

Approved as to form:  
Orange County Counsel

by Karen R. Prather  
Deputy County Counsel

**POTENTIAL SUPPORT:**

This proposal has not yet been reviewed by the County Records Association of California but has received favorable response from members of the association's legislative committee.

**POTENTIAL OPPOSITION:**

Potential opposition could come from those worried that the amendments could increase the workload of county employees providing certified copies of vital records. We would counter that combating potential fraud and identity theft is well worth the extra minute it would take for someone to be asked to produce government-issued photo ID. County employees must obtain signed affidavits to complete these requests anyway so they already entail a bit more effort. Additionally, asking for government-issued photo identification is an accepted practice; in fact, requesters applying for copies by mail must present government-issued photo ID for the required notarization.

**RECENT LEGISLATIVE ACTION ON THIS ISSUE:**

This idea has not been proposed before in bill form to our knowledge.

**PERSONS RESPONSIBLE FOR TESTIMONY:**

Tom Daly                      Clerk-Recorder

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: HEALTH CARE AGENCY

CONTACT PERSON: David Thiessen Phone: 714-834-7652

Fax: 714-834-7644 email address: dthiessen@ochca.com

**SUBJECT: MEDI-CAL REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS (FQHC)**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

HCA and local community based providers.

CODE SECTION AFFECTED:

Section 14132.100 in the Welfare & Institutions Code

DESCRIPTION OF CURRENT LAW:

FQHC services are reimbursed by Medi-Cal on a fixed "per visit" rate rather than by individual services. Current law only allows billing for one medical visit per day.

PROPOSAL:

This proposal is to authorize Medi-Cal reimbursement to FQHCs for a maximum of two medical visits for one patient on the same day.

DISCUSSION:

Research has shown that individuals living with severe and persistent mental illness (SPMI) have, on the average, a 25+ year shorter life span due to multiple health conditions and risk factors. We also know that only one in four individuals with SPMI referred by primary care physicians to mental health setting ever make it to their appointment.

Integration of primary care and behavioral health care is the model of services for individuals living with SPMI. Current law only allows multiple billable visits in a single day if they are for medical and dental services. Mental health visits are currently coded for Medi-Cal billing purposes as a medical visit for which only one visit per patient per

day is allowed. Prohibiting same-day services billing for separate practitioners has been identified as a barrier to improved access to mental health services for persons with public insurance. This proposal is to allow clinic primary care providers to make same day referrals for mental health treatment, thus increasing the chances that patients will actually make the appointments and get the services they need.

#### FISCAL IMPACT:

This proposal would improve revenue for community clinics designated as FQHC's. With SPMI clients receiving more frequent and more appropriate care through community clinics, there would be reduced incidence of hospitalization, emergency services, and high levels of care. HCA would realize cost savings from these reductions.

#### PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

As proposed in AB 1445 (Chesbro) – June 1, 2009 version

Approved as to form:  
Orange County Counsel

by Massoud Shameh  
Deputy County Counsel

#### POTENTIAL SUPPORT:

This concept as proposed in AB 1445 (Chesbro) has the following organizations as registered supporters: California Primary Care Association (Sponsor)' Alliance for Rural Health, AltaMed Health Services, American College of Obstetricians and Gynecologists, California Association of Marriage and Family Therapists, California Association of Rural Health Clinics, California Chiropractic Association, California Hospital Association, California Psychiatric Association, California Psychological Association, California School Centers Association, California School Health Centers Association, California Society for Clinical Social Work, California State Association of Counties, California State Rural Health Association, Community Clinic Association, County of San Bernardino, County of Contra Costa, County of Santa Clara, Disability Rights California, Eisner Pediatric & Family Medical Center, North Coast Clinics Network, Six Rivers Planned Parenthood, Urban Counties Caucus, 46 community clinics

#### POTENTIAL OPPOSITION:

The Department of Finance has historically opposed this proposal due to the increased state matching cost associated with reimbursing additional visits.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

The proposal was previously advanced in AB 1445 (Chesbro).

PERSONS RESPONSIBLE FOR TESTIMONY:

Mark Refowitz, Deputy Agency Director          Health Care Agency

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: HEALTH CARE AGENCY

CONTACT PERSON: David Thiessen Phone: 714-834-7652

Fax: 714-834-7644 email address: dthiessen@ochca.com

**SUBJECT: EXTEND SUNSET IN THE HEALTH AND SAFETY CODE FOR  
ADMINISTRATION OF PUBLIC HEALTH EMERGENCY  
PREPAREDNESS FUNDS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Health Care Agency

CODE SECTION AFFECTED:

Health and Safety Code Section 101315 through 101320

DESCRIPTION OF CURRENT LAW:

Sections 101315 through 101317.2 govern how federal Public Health Emergency Preparedness (PHEP) funding is distributed to Local Health Jurisdictions (LHJs). Particularly important elements for LHJs include:

- Specifies an allocation methodology, which includes \$100,000 base funding per LHJ with the remainder of the funds distributed on a per capita basis.
- Directs that funds be distributed to LHJs quarterly according to certain milestones, including the LHJs submission of an application, plan and progress reports.

Section 101319 allows the California Department of Public Health (CDPH) to administer the funds through agreements which are exempt from the Public Contract Code. Section 101320 establishes a sunset date for all previous provisions of September 1, 2012.

PROPOSAL:

The proposed legislation would extend the sunset date in Section 101320 to September 1, 2017.

## DISCUSSION:

This section of statute is necessary for the timely and efficient administration of county public health emergency preparedness programs. It has two primary benefits to LHJs. First, it allows for distribution of funds through Allocation Agreements rather than contracts, which significantly decreases the amount of time necessary for CDPH to process agreements with LHJs. Second, it allows for prospective payments to LHJs which provides significant cash flow relief. Without this language LHJs would have to follow standard contract procedures with CDPH, under which LHJs would not be reimbursed until after work is completed and invoiced to CDPH, which can result in significant payment delays.

The sunset date in Section 101319 requires that new legislation be enacted every two years in order to prevent the program from reverting to the standard contracting process. This puts the program at risk every two years. A five year sunset period would increase the stability of the program.

## FISCAL IMPACT:

The Orange County LHJ has funding of approximately \$4.6 million. The proposed legislation will protect HCA from cash flow delays of several months or more which are inherent in standard state reimbursement methods.

## PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

**Health and Safety Code Section 101320 is amended to read:** This article shall become inoperative **on September 1, 2017, and, as of January 1, 2018**, is repealed, unless a later enacted statute that is enacted before January 1, **2018**, deletes or extends the dates on which it becomes inoperative and is repealed.

Approved as to form:  
Orange County Counsel

by Massoud Shamel  
Deputy County Counsel

## POTENTIAL SUPPORT:

The County Health Executives Association of California (CHEAC) and the Health Officers Association of California (HOAC) have either sponsored or supported all previous legislation that extended the sunset, and would be strong supporters of a five-year sunset extension, including writing letters and testifying at hearings. Other county organizations, including the California State Association of Counties (CSAC), Urban

Counties Caucus (UCC) and Regional Council of Rural Counties (RCRC) have also supported sunset extensions in the past and would be expected to support this proposal. It is also likely that CDPH would support the proposal.

**POTENTIAL OPPOSITION:**

In the past some legislators have expressed concern about the provision of statute exempting the program from the public contracting code, which is the primary reason the sunset provision has been limited to two years. This provision is not critical for administration of agreements with local health departments but is important to CDPH since it allows timely acquisition of supplies necessary to administer the program.

**RECENT LEGISLATIVE ACTION ON THIS ISSUE:**

The most recent legislation extending the sunset for two years is SB 769/Alquist, sponsored by HOAC.

**PERSONS RESPONSIBLE FOR TESTIMONY:**

David Souleles, Deputy Agency Director,

Health Care Agency/Public Health  
Services

Holly Veale, Division Manager

Health Care Agency/Health Disaster  
Management Division

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: OC COMMUNITY RESOURCES/OC PARKS

CONTACT PERSON: Mark Denny Phone: 949-923-3743

Fax: 714-667-6512 E-mail address: mark.denny@ocparks.com

**SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTIONS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

OC Community Resources/OC Parks

CODE SECTION AFFECTED:

Government Code 50400

DESCRIPTION OF CURRENT LAW:

Current law requires all public agencies to complete a review of environmental impacts for all park projects under the California Environmental Quality Act.

PROPOSAL:

This proposal would add certain additional statutory exemptions for public park projects which will either replace existing park-related facilities or remove non-park facilities with park-related improvements.

DISCUSSION:

Public agencies are required to assess environmental impacts of all projects, including those that improve parks and open space amenities which serve the public. Such analysis and, if necessary, mitigation, comes at substantial costs to public agencies whose projects generally improve conditions of parks and open space. This proposal seeks to reduce costs for park and open space projects by creating additional statutory exemptions for projects to replace existing park-related facilities and/or amenities and for those projects which seek to convert non-park related facilities or amenities into park-related facilities or amenities.

FISCAL IMPACT:

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

Add the new statutory exemption into Title 5, Division 1, Part 1, Chapter 2, Article 3 “Parks” of the Government Code, as new Section 50403:

**§ 50403. Park projects; California Environmental Quality Act Exemption**

**Any project by a city or county on property owned by that city or county that is devoted to, or to be devoted to, park purposes is exempt from the requirements of Section 21151 of the Public Resources Code and the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code) if the project involves any of the following:**

- (a) The replacement or construction of facilities to be utilized for park purposes that are included in an existing park’s general development plan, master plan or other governing document, and otherwise do not disturb the open space, conservation or park purposes of the property.**
- (b) Development of park facilities on property within an existing public park that is being used for non-park purposes, which will not disturb the open space, conservation or park purposes of the property.**
- (c) Development of park facilities on property that has been previously disturbed or developed with non-park uses, which will not disturb the open space, conservation or park purposes of the property.**

Approved as to form:  
Orange County Counsel

by Thomas Miller  
Deputy County Counsel

POTENTIAL SUPPORT:

California Department of Parks and Recreation  
County parks  
City parks

CARPOSA and CPRS have not been advised of this proposal

POTENTIAL OPPOSITION:

Environmental organizations

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

SBX8 56 (Hollingsworth) Environmental Quality: CEQA: exemption: critical infrastructure projects

PERSONS RESPONSIBLE FOR TESTIMONY:

Mark Denny            OC Community Resources/OC Parks

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: OC PUBLIC WORKS  
CONTACT PERSON: Ignacio Ochoa Phone: 714-667-3213  
Fax: 714-834-2395 email address: ignacio.ochoa@ocpw.ocgov.com

**SUBJECT: EMERGENCY ACCESS FOR FIRE SUPPRESSION EFFORTS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

OC Public Works

CODE SECTION AFFECTED:

Streets & Highways Code § 969.6

DESCRIPTION OF CURRENT LAW:

Upon a declaration of a state of local emergency as a result of locally heavy rainfall or flood, the Board of Supervisors can expend Road Funds for the purpose of emergency repairs on a public road which are not County maintained highways, without the need to obtain a grant of right-of-way from a private property owner, if the repairs are necessary to provide minimum public access necessary for the protection or preservation of health and safety of residents.

PROPOSAL:

The proposed change would allow for road repairs consistent with the section to be made upon a declaration of a state of local emergency for fire suppression purposes.

DISCUSSION:

In the County's efforts in repairing parts of Black Star Canyon Road, it was determined that the County could not expend road funds nor have easy access to certain roads without right-of-way permission. Having legislation that states a declaration of emergency, including for fire suppression purposes, would allow the County to expend Road Funds and/or have more immediate access on private streets in emergency situations to address this problem.

FISCAL IMPACT:

This legislation would give the County authority to include such a project in a capital improvement plan as part of the budget process for Board approval.

If this legislation is adopted, it would allow the County to rebuild three bridges and complete much needed roadway work in Black Star Canyon. We have a rough estimate of the costs and believe the total to be under \$1 million.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

CA Streets and Highways Code 969.6

Emergency repairs to public roads in case of locally heavy rainfall or flood

Notwithstanding Section 969.5 or any other provision of this code, if a state of local emergency is declared by the board of supervisors as a result of locally heavy rainfall or flood **or due to the necessity for fire suppression**, the board may authorize the expenditure of road funds for the purpose of emergency repairs to public roads which are not county highways and not in the county maintained system, without obtaining a grant or lease of right-of-way, if the repairs or fire suppression efforts are necessary to provide minimum public access necessary for the protection or preservation of health or safety of residents. The county shall not be responsible for the maintenance of any road so repaired, and it shall not be liable for the condition of the road after the emergency repairs are made.

Approved as to form:  
Orange County Counsel

by Ryan Baron  
Deputy County Counsel

POTENTIAL SUPPORT:

Potential supporters include all public safety entities and organizations as well as individual cities and counties that experience similar limitations.

POTENTIAL OPPOSITION:

Potential opposition may include private road owners that are uncomfortable with easier right-of-way access.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

PERSONS RESPONSIBLE FOR TESTIMONY:

Ignacio Ochoa, Director, OC Engineering      OC Public Works

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: OC PUBLIC WORKS

CONTACT PERSON: James Campbell Phone: 714-834-5736

Fax: 714-834-7522 email address: james.campbell@ocpw.ocgov.com

**SUBJECT: ALLOWING NET METERING FROM COGENERATION (COGEN)  
ENERGY PRODUCTION**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

OC Public Works and Civic Center Departments and Agencies.

CODE SECTION AFFECTED:

Public Utilities Code section 2827 and potentially CPUC decisions

DESCRIPTION OF CURRENT LAW:

Public Utilities Code section 2827 does not allow customer generators of cogen energy to participate in net energy metering or net surplus compensation programs, even though cogen energy is considered "clean energy." Current law only allows owners of cogeneration plants to enter into qualifying facility contracts that are individually approved by the CPUC.

PROPOSAL:

This proposal is to change the law to allow the County to receive credit for the excess power the cogen facility produces.

DISCUSSION:

Net metering law allows the customer generator to receive credit under an SCE agreement. Net metering will allow customer generators to receive compensation in the future. Current net metering law was recently amended in 2009 (AB 920) to include more renewable energy technologies but not cogen.

FISCAL IMPACT:

3.2 MW = \$X Annual revenue (current usage is 7.2 MW; total possible is 10.4)

And add Civic Center solar to further reduce SCE power usage and increase revenue.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

Amend PUC Code Section 2827 (b)(4) to read:

“Eligible customer-generator” means a residential, small commercial customer as defined in subdivision (h) of Section 331, commercial, industrial, or agricultural customer of an electric utility, who uses a solar or a wind turbine electrical generating facility, or a hybrid system of both, with a capacity of not more than one megawatt, **or a cogeneration facility** that is located on the customer's owned, leased, or rented premises, and is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electrical requirements.

Approved as to form:  
Orange County Counsel

by Ryan Baron  
Deputy County Counsel

POTENTIAL SUPPORT:

Other cogen facility owners

POTENTIAL OPPOSITION:

Utilities would be opposed to this legislation because it would allow competition with their energy sales.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None.

PERSONS RESPONSIBLE FOR TESTIMONY:

Jess Carbajal	OC Public Works
James Campbell	OC Public Works and/or
Tim Corbett	OC Public Works

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: SOCIAL SERVICES AGENCY  
CONTACT PERSON: Gary Taylor/Anne Broussard  
Phone: 714-541-7418 Fax: 714-245-6050  
email address: Gary.Taylor@ssa.ocgov.com/  
Anne.Broussard@ssa.ocgov.com

**SUBJECT: CHILD CARE FUNDING**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Social Services Agency

CODE SECTION AFFECTED:

The California Welfare and Institutions Code Section 11410 (c)

DESCRIPTION OF CURRENT LAW:

The California Welfare and Institutions Code Section 11410 (c) requires that any county who chooses to claim Title IV-E funding for child care must only use County funds for the required 43.8 percent non-federal match.

PROPOSAL:

Submit Legislation to change Section 11410(c) and Section 15200.5 of the Welfare and Institutions Code to allow State General Child Care and Development Funds or County funds to be used for the match to Title IV-E for child care purposes. Use State California Department of Education (CDE) un-encumbered General Child Care and Development funds as the non-federal match to federal Title IV-E child care funding for children who are recipients of protective services, or those children who have been identified as at risk of neglect, abuse, or exploitation.

## DISCUSSION:

Increasingly more Relative Caregivers, NREFM, and Foster Parents are working full time and cannot afford the high cost of quality child care.

Due to budget constraints, many counties are not able to allocate county funding for this purpose. In fact, only four counties in California are claiming Title IV-E child care funds.

**Need for Relative and Foster Placements:** Child welfare agencies investigate reports of child abuse or neglect 24 hours a day, 7 days a week. Once a decision is made to remove a child from abusive parents, federal and state law require every effort be made to place immediately the child with a relative, if at all possible. Relative placements can help to reduce trauma to the child and enhance reunification efforts.

Relatives serve as an essential resource to child welfare services. In many counties, close to 50% of all foster children are placed with relatives. Foster parents located in the neighborhood of the child are a second critical choice for placement.

**Relative & Foster Parents in the Workforce:** More Relative Caregivers and Foster Parents are in the workforce than ever before. As a result, Relative Caregivers require full-day subsidized child care for the child as a condition of placement. In addition, research has proven that quality child care improves the child's growth and development, and prepares the child for school and life; this is especially true for children with developmental delays due to maltreatment.

**Child Care and Development Priority Enrollment:** The California Education Code Section 8263 provides that children receiving Protective Services and those who are At-Risk of Child Abuse, Neglect, or Exploitation be given first priority enrollment in State-subsidized child care and development programs.

**Available CDE Child Care and Development Funds:** The California Department of Education funding for child care and development is categorized into 8 direct service programs. Of these, portions of three of these program funds are currently utilized as the non-federal match for Child Development Block Grant and TANF funding. However, at least \$1.2 billion dollars of CDE funding is un-encumbered and thus available to be utilized as the non-federal match for Title IV-E child care. Using these un-encumbered State allocated funds which already have a priority to serve the same population, the State would be able to serve more than twice as many children receiving protective service or children at-risk of abuse, neglect, or exploitation in quality child care and development programs in California.

**Title IV-E Child Care:** Title IV-E Child Care funding is an entitlement program; it is unlimited with no administrative cap.

**ARRA:** The American Recovery and Reinvestment Act increased the federal portion of Title IV-E to 56.2 percent. Therefore, the non-federal required match has been reduced to only 43.8 percent.

FISCAL IMPACT:

No additional State or County allocations would be needed as the non-federal match to Title IV-E. If only a fraction of the \$1.2 billion currently available in CDE Child Care and Development funding were to be utilized as the non-federal match to Title IV-E Child Care, the State of California would be able to bring in hundreds of millions in new federal funding. Therefore, thousands of children receiving Child Protective Services and children At-Risk of Abuse, Neglect or Exploitation could receive critical child care services at no cost to the State or Counties, with federal funding.

PROPOSED SPECIFIC LANGUAGE:

An act to amend Sections 11410 and 15200.5 of, and to add Section 11410.5 to, the Welfare and Institutions Code, relating to foster care.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11410 of the Welfare and Institutions Code is amended to read:

11410. a) The department shall amend the foster care state plan required under Subtitle IV-E (commencing with Section 470) of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), to authorize counties that elect to subsidize child care for foster parents to use federal matching funds under Subtitle IV-E for that purpose.

(b) When approved by the federal government, counties electing to administer the Foster Parent Child Care Program shall follow the guidelines developed by the State Department of Social Services.

(c) Federal funds used by a county pursuant to this section shall be matched **either only by county funds pursuant to Section 15200.5, or by funds made available pursuant to Section 11410.5, or by a combination of those funds, or any other non-federal funds.**

SEC. 2. Section 11410.5 is added to the Welfare and Institutions Code, to read:

**11410.5. (a) The department shall amend the foster care state plan required under Subtitle IV-E (commencing with Section 470) of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) to authorize the use of state child care and development funds administered by the child development division of the State Department of Education, that are not being used for any other nonfederal match, as the nonfederal match for Title IV-E child care for children receiving protective services, foster children, and children at risk of abuse and neglect.**

**(b) If child development division funds are to be used as the nonfederal match for Title IV-E, the county shall do all of the following:**

**(1) Contract with a local State Department of Education contracted child care agency that is willing to participate.**

**(2) Claim the full child care costs of federally eligible Title IV-E children, at a rate commensurate with regional child care and development costs.**

**(3) Provide the full federal Title IV-E funding to the local contractor. The local contractor shall use the provided funds as the nonfederal match and enroll and serve children identified by the county as children receiving protective services, foster children, or children at risk of abuse or neglect.**

**(4) Consult with the State Department of Education to ensure that the child development division contractor is in good standing with the Child Development Division in the State Department of Education, all federal Title IV-E funds are used to enhance the State Department of Education funded program, and the child development division contractor does not double charge for the same services.**

SEC.3. Section 15200.5 of the Welfare and Institutions Code is amended to read:

15200.5.(a) Notwithstanding subdivision (c) of Section 15200, and except as provided in subdivision (b), the county **may choose to shall** be responsible for 100 percent of the nonfederal share of payments to needy children eligible for AFDC-FC under the conditions of Section 11402.5, and for payments made to foster parents pursuant to Section 11410.

**(b) A county also may use funds made available pursuant to Section 11410.5 for the nonfederal share of payments made to foster parents pursuant to Section 11410.**

Approved as to form:  
Orange County Counsel

by Carolyn Frost  
Deputy County Counsel

#### POTENTIAL SUPPORT:

The following statewide agencies supported the Legislation last year: The California Welfare Director's Association, California State Association of Counties, children's advocacy organizations such as the California Association for the Education of Young Children, the California Child Care Coordinator's Association, Counties, Administrators in the California Department of Education, and all major statewide child care and development organizations have supported this measure in the past. Several Orange County State-subsidized Child Care agencies including Hands Together and the National Pediatric Support Services provided letters of support and provided live testimony before the Legislature at several committee hearings last year in support of SB 1099.

#### POTENTIAL OPPOSITION:

No one opposed SB 1099 legislation last year.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

Senator Lou Correa proposed SB 1099 last year. It was successful through several Committees including Education. However, it became stalled in the Senate Appropriations Committee when the May Revise proposed to eliminate all child care funding.

PERSONS RESPONSIBLE FOR TESTIMONY:

Anne Broussard Social Services Agency, as well as numerous State Subsidized Agencies throughout Orange County and the State of California.

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: SOCIAL SERVICES AGENCY/  
CHILDREN AND FAMILY SERVICES

CONTACT PERSON: Gary Taylor/Kim Ragen

Phone: 714-541-7793 Fax: 714-541-7811  
714-704-8750

Email address: Gary.Taylor@ssa.ocgov.com  
Kim.Ragen@ssa.ocgov.com

**SUBJECT: CHILD ABUSE CENTRAL INDEX (CACI)**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Children and Family Services and Sheriff's Department

CODE SECTIONS AFFECTED:

Penal Code Sections 11169(a), Penal Code Section 11170(a)(1), and Penal Code Section 11170(a)(3)

DESCRIPTION OF CURRENT LAW:

Penal Code Section 11169(a) currently requires a child welfare agency to submit a written report to the California Department of Justice of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded.

Note: This includes all child abuse investigations that result in substantiated or inconclusive findings. Penal Code Section 11165.12 defines an inconclusive report as "a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred."

Penal Code Section 11170(a)(1) directs the Department of Justice to maintain an index, referred to as the Child Abuse Central Index or CACI, of all reports of child abuse and severe neglect submitted pursuant to PC Section 11169.

Penal Code Section 11170(a)(3) indicates that information from an inconclusive or unsubstantiated (i.e., a term used for “inconclusive” prior to amendment in 1997) report filed pursuant to subdivision (a) of Section 11169 will be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10 year period, information from any prior report, as well as any subsequently filed report, will be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the DOJ.

Penal Code Section 11170(b) allows disclosure of information contained in the Child Abuse Central Index to multiple identified parties for purposes of child abuse investigation, licensing, and employment application for positions that have interaction with children.

#### PROPOSAL:

Proposal to amend the California Penal Code to eliminate the current requirement to report investigations of child abuse or severe neglect that result in inconclusive findings to the California Department of Justice.

Eliminate the requirement for submission of inconclusive findings to the Child Abuse Central Index. Allow child welfare agencies to maintain a record of inconclusive findings for review by child welfare staff and law enforcement, upon request, in cases of child abuse or neglect investigation.

#### DISCUSSION:

The Child Abuse Central Index is a database maintained by the California Department of Justice for use by law enforcement and agencies, including employers who have contact with children. The Index was created as a result of the State Legislature enacting the Child Abuse and Neglect Reporting Act (CANRA) and is an attempt to protect children from individuals who may pose a risk.

However, the attempt to ensure child safety also has the potential to result in inconsistent interpretation of the information contained in the Child Abuse Central Index. An employer’s interpretation of an inconclusive or unsubstantiated finding in the Child Abuse Central Index may result in job refusal or termination of an existing position. Similarly, a licensing agency may decline to issue a license based upon an inconclusive or unsubstantiated finding. Thus, in situations where by definition there is insufficient evidence to determine whether child abuse or severe neglect occurred, the accused can be unduly stigmatized and their livelihood negatively impacted by an inconclusive or unsubstantiated report maintained on the Child Abuse Central Index.

## FISCAL IMPACT:

Savings will be realized through reduction in staff hours needed to process Child Abuse Central Index submissions and reduced requests for grievance hearings.

Fiscal impact will vary across California counties based on county size, structure, and volume of inconclusive findings.

## PROPOSED SPECIFIC LANGUAGE:

Amend Penal Code Section 11169(a) to state, "An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be **inconclusive or** unfounded, other than cases coming within subdivision (b) of Section 11165.12. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not **inconclusive or** unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be **inconclusive or** unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specific in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

Amend Penal Code Section 11170(a)(1) to state, "The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be **inconclusive or** unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

Remove Penal Code Section 11170(a)(3) from existing statute.

### ~~11170. (a)~~

~~(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.~~

Approved as to form:  
Orange County Counsel

by Carolyn Frost  
Deputy County Counsel

#### POTENTIAL SUPPORT:

On June 15, 2010, the Orange County Grand Jury issued a report titled "CACI: Child Abuse Central Index: Guilty Until Found Innocent." The report was based on a study of Orange County's process for conducting child abuse investigations after the Grand Jury "received letters complaining about the difficulty of removing names from CACI." Among their conclusions, the Grand Jury found that, "Agency staff and law enforcement have expressed a high degree of frustration with the Inconclusive category. It is confusing, highly subjective and provides little protection for those falsely accused of abuse. An Inconclusive finding is not consistent with the concept of innocent until proven guilty." The Grand Jury recommended that "Orange County should join other counties in supporting a revision of the California Penal Code that would eliminate or modify the Inconclusive finding."

In September, 2010, Orange County Children and Family Services Director Gary Taylor attended the monthly convening of the California Child Welfare Directors Association (CWDA). Director Taylor proposed the idea of eliminating the requirement to submit inconclusive findings to the Child Abuse Central Index and received support from other California child welfare directors in attendance. Director Taylor will be submitting a written proposal to CWDA for consideration prior to the October 12, 2010, deadline.

#### POTENTIAL OPPOSITION:

Current recipients of information contained in the Child Abuse Central Index such as employers working with children and licensing agencies, may be opposed to the proposal to eliminate submission of inconclusive findings.

#### RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None.

#### PERSONS RESPONSIBLE FOR TESTIMONY:

Gary Taylor                                      Orange County Children and Family Services Director

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: SOCIAL SERVICES AGENCY

CONTACT PERSON: Gary Taylor/Nathan Nishimoto

Phone: 714-541-7793 Fax: 714-541-7811  
714-704-8399 Email address: Gary.taylor@ssa.ocgov.com  
Nathan.nishimoto@ssa.ocgov.com

**SUBJECT: GROUP HOME RATES FOR COUNTIES**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Social Services Agency/Children and Family Services

CODE SECTIONS AFFECTED:

California Welfare and Institutions Code Sections 11400(s) and 11462.02

DESCRIPTION OF CURRENT LAW:

Current code allows only the County of San Mateo to operate a group home using the established rate classification level (RCL).

PROPOSAL:

Proposal to amend California Welfare and Institutions Code Sections 11400(h) and 11462.02 to include Orange County as a county approved to operate a Level 12-14 group home using the RCLs established by the California Department of Social Services (CDSS) Foster Care Rates Bureau (FCRB).

DISCUSSION:

Per Welfare and Institutions Code Section 11462, group homes in California are classified into 1 of 14 RCLs according to level of care and provision of services. The RCL process utilizes a point system to measure the level or intensity of care and corresponding supervision. Points are based on the number of hours per child per month of services provided in three areas, 1) child care and supervision, 2) social work activities, and 3) mental health treatment services.

While there are approximately 100 youth now in Orange County requiring a level of care that would fall within RCL 12-14, there are currently no providers with the ability or willingness to operate a group home program meeting the needs of youth requiring this high level of care.

A Request for Proposal (RFP) was issued by the Orange County Social Services Agency seeking candidates for the operation of a group home program of this nature at the Tustin Family Campus. The Social Services Agency received no responses from providers expressing interest in operating such a program.

The youth in need are difficult to place and have experienced numerous and frequent placement disruptions from foster/relative to RCL 11 or lower levels of group home care. When these placement options fail, the youth must be housed at Orangewood Children's Family Center (OCFC) in a program geared toward providing short term care. Therefore, these youth do not receive the ongoing supervision and level of care that they need.

#### FISCAL IMPACT:

Funding source would change for children currently housed at OCFC who move to a group home located at Tustin Family Campus. Funding at OCFC is Emergency Assistance Temporary Assistance for Needy Families (EA TANF) which is capped, whereas funding at the group home would be Title IV-E which is uncapped. Costs and funding are mostly offset as operating a group home would be similar to OCFC but on a smaller scale. Orange County would like to house six to twelve high RCL children.

#### PROPOSED SPECIFIC LANGUAGE:

##### Welfare and Institutions Code Section

11400 (h). "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, or a nondetention licensed residential care home operated by the County of San Mateo **or the County of Orange** with a capacity of up to 25 beds, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

Welfare and Institutions Code Section 11462.02. Notwithstanding paragraph (2) of subdivision (a) of Section 11462, a foster care provider licensed as a group home may also have a rate established if the group home is operated by the County of San Mateo **or the County of Orange**, as provided by subdivision (h) of Section 11400.

Approved as to form:  
Orange County Counsel

By Dana J. Stits  
Deputy County Counsel

POTENTIAL SUPPORT:

Child advocacy groups.

POTENTIAL OPPOSITION:

Other contracted group home providers in Orange County.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None known.

PERSONS RESPONSIBLE FOR TESTIMONY:

Gary Taylor	Director, Children and Family Services/Social Service Agency
Nathan Nishimoto	Deputy Director of Family Assessment and Shelter Services

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: CLERK OF THE BOARD

CONTACT PERSON: Darlene J. Bloom Phone: 714-834-2206

Fax: 714-834-4439 email Address: Darlene.bloom@ocgov.com

**SUBJECT: LEGISLATION TO CONTINUE AND EXPAND ELECTRONIC FILING OF  
CONFLICT OF INTEREST (COI) FORM 700 TO ALL FILING OFFICERS**

AFFECTED DEPARTMENT/AGENCY:

Clerk of the Board

CODE SECTION AFFECTED:

Government Code Section 87500.1

DESCRIPTION OF CURRENT LAW:

Previously enacted legislation that allows Orange, Los Angeles, Santa Clara, Ventura Counties and the City of Long Beach COI Filing Officers, as part of a pilot program, to offer electronic filing of Statements of Economic Interest (Form 700s) to designated employees through 2010 filing period with a report back to the FPPC and legislature in 2011 to consider elimination of the Pilot Program or expanding electronic filing to all filing officers within the state and to include 87200 filers. (AB 2607, AB 1149, AB 1921 Assemblyman Davis' bills).

PROPOSAL:

To work with the California Association of Clerks and Election Officials (CACEO) and Assemblyman Davis to create legislation to expand electronic filing to 87200 filers and to eliminate the Pilot Program sunset date of January 1, 2012 and authorize continued use of current practices here in Orange County. It would also authorize the use of electronic filing to other county, city, and state filing officers; providing them the same benefits that the Pilot jurisdictions have experienced during the Pilot period.

Electronic filing eliminates the receipt, handling, tracking and storage of paper documents, and provides a public kiosk for easy public inspection of records.

## DISCUSSION:

The Pilot provided the Filing Officers in the above jurisdictions to automate the filing requirements and ensure timely reporting of assuming, leaving and annual Statements of Economic Interest (Form 700s). It provided a cost effective approach to track, review, and maintain for public inspection all Form 700s.

Filers are notified by email that a filing is due and it copies over all information from last filing so that filer merely has to update their financial information from year to year. This program has taken a three-person job task annually that lasted several months beyond the filing period to ensure data entry completion and the ability to locate and read filer's handwritten information to a one-person job task annually that lasts only a couple months beyond the filing period to ensure data entry for those few filers that continue to file by paper.

OC Clerk of the Board has approximately 3200 filers and about 5000 filings annually that we are responsible for receiving as the local Filing Officer. The automation developed here in OC has allowed us to become proactive in the annual processing of form 700s for designated employees while improving the filing experience. We are not only responsible for the departments/agencies and BCCs within the County but are also the filing officer for other authorities, such as School Districts, College Districts, Cemetery, Water and Sanitation Districts, Fire Authority, etc.

Electronic submission reduces paper, provides for quick retrieval of documents, and allows greater tracking and faster processing of COI Form 700s.

## FISCAL IMPACT:

With the loss of two employees in our 09/10 Budget, the Clerk of the Board does not have the staffing capabilities to continue quality review of Form 700s and meet the mandates of the Fair Political Practices Act without electronic filing.

## PROPOSED SPECIFIC LANGUAGE:

Amend Government Code Section 87500.1

(Specific language being developed.)

## POTENTIAL SUPPORT:

This legislation adds permissive language to the Government Code to authorize electronic filing of Conflict of Interest Form 700s to all Filing Officers throughout the State. The OC Clerk of the Board recently met with the FPPC administrative staff and demonstrated the OC automation prior to the formal submission of our report in 2011. They were very interested and could see the benefits of electronic reporting. Support is

anticipated from all Counties and Cities, League of Cities, CSAC, California Association of Clerks and Election Officials (CACEO), California Clerk of the Board of Supervisors Association (CCBSA)

**POTENTIAL OPPOSITION:**

The Orange County Clerk of the Board and the CACEO do not anticipate any opposition to this proposal with the support of the FPPC.

**PERSONS RESPONSIBLE FOR TESTIMONY:**

Darlene J. Bloom                      Clerk of the Board

**COUNTY-SPONSORED STATE PROPOSALS – CONTINUING**

**HABITAT MITIGATION/FINANCIAL ASSURANCE**

This proposal would amend the California Fish and Game Code by adding language to Section 2081(b)(4) to lessen the financial assurance burden on a city, county or public agency with the authority to levy and collect taxes and fees, from the requirement to demonstrate adequate funding to implement compensatory habitat mitigation projects, therefore, relieving public agencies from this requirement that results in unnecessary fiscal impacts. Without action, the cost of future public works construction projects will continue to rise and may double the actual cost of the mitigation because the required financial assurance amount for each project can be as high as the actual cost of the mitigation project itself. As a result, funding may not be available for other essential public works projects.

Update and Approach:

Chair Bates and Supervisor Campbell met with Secretary Chrisman in January 2009 regarding the habitat mitigation issue as it relates to financial assurance being required by the Department of Fish & Game and the overall negative financial impact to the County. The Board and County Agencies/Departments have continued to work extensively with the California Department of Fish and Game throughout the year seeking a mutually acceptable alternative solution(s).

Recommended Action:

Progress has been slow and the County should work with its advocates in Sacramento to find an author to bring this issue before the Legislature.

**SPECIAL VACANCY ELECTIONS EXPENSES**

This proposal would appropriate \$1,639,000 from the State General Fund to reimburse the County of Orange for its costs of the November 17, 2009, Special Primary Election and, if a general election is required, the January 12, 2010, Special General Election to fill a vacancy in the 72<sup>nd</sup> Assembly District.

Update and Approach:

CEO Legislative Affairs will seek an author to carry a proposal for reimbursement for previously uncompensated special elections. In 2010, Assembly Member Davis combined all counties with special election reimbursement issues for State and Federal Offices into AB 496. SB 994 by Senator Price was the State Senate version of this legislation.

Recommended Action:

CEO/Legislative Affairs and the County Sacramento Advocates continue to work with the Legislature for reimbursement for special elections through either legislation or the budget process. Multiple bills were in play in the 2010 and this issue is also important to other California counties.

DESIGNATION OF A CANDIDATE'S POLITICAL PARTY

This proposal would eliminate the requirement that the name of the party appear equidistant from the names of the candidates. Removing this language will help to clarify the code and remove any misunderstanding and confusion caused by the requirement.

Update and Approach:

CEO/Legislative Affairs and the County's Sacramento Advocates will bring this proposal back to the Legislature for consideration in the 2011-12 Legislative Session. In 2010, this proposal was under consideration by the Assembly Elections and Redistricting Committee. It was opined that this issue should be brought back in a non-election year. This requirement is unnecessary, impractical, and impossible to implement. It is not possible in all cases to for the name of the political party to appear equidistant from the two candidate names.

Recommended Action:

CEO/Legislative Affairs and the County Sacramento Advocates continue to work with the Legislature to eliminate the requirement that the name of the party appear equidistant from the names of the candidates.



# COUNTY OF ORANGE

## 2011 County-Sponsored Federal Legislative Proposals

**COUNTY OF ORANGE**  
**2011 COUNTY-SPONSORED FEDERAL LEGISLATIVE PROPOSALS**  
**EXECUTIVE SUMMARY**

**ELECTRONIC HEALTH RECORD INCENTIVE FUNDS**

The American Recovery and Reinvestment Act of 2009 (ARRA) authorized bonus payments for Eligible Professionals (EP) and hospitals participating in Medicare and Medicaid as an incentive to become meaningful users of certified Electronic Health Records (EHR). Health Care Agency does not meet the criteria established in legislation to be eligible for these incentive funds. This proposal would revise the criteria for receiving Medicaid incentive funds by expanding the definition of EP to include nurses and mental health professionals providing services at County-operated clinics or County-contracted providers.

**DISCOUNT DRUG PRICING**

Section 340B of the Public Health Service Act makes discount pricing available for covered outpatient drugs for certain federal grantees, federally-qualified health center look-alikes, and qualified disproportionate share hospitals. This proposal would revise the criteria for receiving 340B drug pricing to include County operated clinics or County-contracted providers.

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: HEALTH CARE AGENCY

CONTACT PERSON: David Thiessen Phone: 714-834-7652

Fax: (714) 834-7644 email address: dthiessen@ochca.com

**SUBJECT: ELECTRONIC HEALTH RECORD INCENTIVE FUNDS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Health Care Agency

CODE SECTION AFFECTED:

Title IV-Medicare and Medicaid Health Information Technology, Sections 4101 and 4102.

DESCRIPTION OF CURRENT LAW:

The American Recovery and Reinvestment Act of 2009 (ARRA) authorized bonus payments for Eligible Professionals (EP) and hospitals participating in Medicare and Medicaid as an incentive to become meaningful users of certified Electronic Health Records (EHR). HCA does not meet the criteria established in legislation to be eligible for these incentive funds.

PROPOSAL:

Revise the criteria for receiving Medicaid incentive funds by expanding the definition of EP to include nurses and mental health professionals providing services at County-operated clinics or County-contracted providers.

DISCUSSION:

Current law defines a Medicaid EP as follows:

- Physicians;
- Nurse Practitioners;
- Certified Nurse Midwives;
- Dentists; or

- Physician Assistants who provide services in a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC).

EPs also must meet one of the following criteria:

- Have a minimum 30 percent Medicaid payment volume\*;
- Have a minimum 20 percent Medicaid payment volume, and is a pediatrician\*;
- Have a practice that is predominantly in an FQHC or RHC and has a minimum 30 percent patient volume attributable to needy individuals.

\*Medicaid Patient volume criteria excludes CHIP patients

Applying this definition, HCA is substantially excluded from receiving EHR incentive funds. This is because HCA services to persons eligible for Medicaid are typically provided by mental health practitioners and nurses, rather than Physicians and Nurse Practitioners. In addition, HCA is not an FQHC or RHC.

As a major provider of care for low income persons, HCA should be made eligible for EHR incentive funds.

#### FISCAL IMPACT:

ARRA allows reimbursement for 85 percent of the allowable cost for a Medicaid provider to establish an EHR up to \$63,750 per EP. The term “allowable” is still being defined. However it is possible that HCA could realize ARRA revenue of up to \$10.9 million, or 85 percent of the projected \$12.8 million cost.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

#### **Subtitle B—Medicaid Incentives**

#### **SEC. 4201. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking “plus” at the end of subparagraph (E)

and inserting “and”; and

(C) by adding at the end the following new subparagraph:

“(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments to Medicaid providers described in subsection (t)(1) to encourage the adoption and use of certified EHR technology; and

“(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable

administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus”; and (2) by inserting after subsection (s) the following new subsection: “(t)(1) For purposes of subsection (a)(3)(F), the payments described in this paragraph to encourage the adoption and use of certified EHR technology are payments made by the State in accordance with this subsection —  
H. R. 1—376

“(A) to Medicaid providers described in paragraph (2)(A) not in excess of 85 percent of net average allowable costs (as defined in paragraph (3)(E)) for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) with respect to such providers; and

“(B) to Medicaid providers described in paragraph (2)(B) not in excess of the maximum amount permitted under paragraph (5) for the provider involved.

“(2) In this subsection and subsection (a)(3)(F), the term ‘Medicaid provider’ means—

“(A) an eligible professional (as defined in paragraph (3)(B))—

“(i) who is not hospital-based and has at least 30 percent of the professional’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title;

“(ii) who is not described in clause (i), who is a pediatrician, who is not hospital-based, and who has at least 20 percent of the professional’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title; and

“(iii) who practices predominantly in a Federally qualified health center or rural health clinic and has at least 30 percent of the professional’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to needy individuals (as defined in paragraph (3)(F)); and

“(B)(i) a children’s hospital, or

“(ii) an acute-care hospital that is not described in clause (i) and that has at least 10 percent of the hospital’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this title.

An eligible professional shall not qualify as a Medicaid provider under this subsection unless any right to payment under sections 1848(o) and 1853(l) with respect to the eligible professional has been waived in a manner specified by the Secretary. For purposes of calculating patient volume under subparagraph (A)(iii), insofar as it is related to uncompensated care, the Secretary may require the adjustment of such uncompensated care data so that it would be an appropriate proxy for charity care, including a downward adjustment to eliminate bad debt data from uncompensated care. In applying subparagraphs (A) and (B)(ii), the methodology established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

“(3) In this subsection and subsection (a)(3)(F):

“(A) The term ‘certified EHR technology’ means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an H. R. 1—377

ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

“(B) The term ‘eligible professional’ means a—

“(i) physician;

“(ii) dentist;

“(iii) certified nurse mid-wife;

“(iv) nurse practitioner; and

“(v) physician assistant insofar as the assistant is practicing in a rural health clinic that is led by a physician assistant or is practicing in a Federally qualified health center that is so led; **and**

**(vi) nurses and mental health workers providing services at County-operated clinics and/or County-contracted clinics**

Approved as to form:  
Orange County Counsel

by Massoud Shamel  
Deputy County Counsel

POTENTIAL SUPPORT:

It is possible that other counties could benefit from this proposal and so would be willing to provide their support. It is also possible that the professional associations such as CSAC, CHEAC, CMHDA, and other national organizations would support this proposal.

POTENTIAL OPPOSITION:

No known opposition.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None.

PERSONS RESPONSIBLE FOR TESTIMONY:

Mark Refowitz, Deputy Agency Director	Health Care Agency
David Souleles, Deputy Agency Director	Health Care Agency
Bob Wilson, Deputy Agency Director	Health Care Agency

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2011-2012 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: HEALTH CARE AGENCY

CONTACT PERSON: David Thiessen Phone: (714) 834-7652

Fax: (714) 834-7644 email address: dthiessen@ochca.com

**SUBJECT: DISCOUNT DRUG PRICING**

AFFECTED DEPARTMENT(S)/AGENCY(IES):

Health Care Agency

CODE SECTION AFFECTED:

The 340B Drug Pricing Program resulted from enactment of Public Law 102-585, the Veterans Health Care Act of 1992, which is codified as Section 340B of the Public Health Service Act.

DESCRIPTION OF CURRENT LAW:

Section 340B makes discount pricing available for covered outpatient drugs for certain federal grantees, federally-qualified health center look-alikes, and qualified disproportionate share hospitals.

PROPOSAL:

Revise the criteria for receiving 340B drug pricing to include County operated clinics or County-contracted providers.

DISCUSSION:

The federal government is a major purchaser of pharmaceuticals and has substantial leverage to obtain discounted drug prices. Under section 340B of the Public Health Services Act, these discounted prices are available to Federally Qualified Health Centers, qualified Disproportionate Share Hospitals, and certain other entities. HCA qualifies for 340B pricing in only one program which provides services to HIV clients. HCA spends significant funds on pharmaceuticals and access to 340B drug pricing for the rest of the Agency would bring about a substantial savings. While a thorough formulary analysis is yet to be completed, it is likely that the savings would amount to up

to \$6 million per year. As a major provider of care for low income persons, HCA should be made eligible for 340B discount drug pricing.

#### FISCAL IMPACT:

Two major program areas that could potentially benefit from access to 340B pricing include Medical Services Initiative and Behavioral Health Services. Savings will vary greatly depending on the mix of generic and name brand drugs that are utilized in the HCA formulary. This will require a detailed analysis. In addition, potential savings will depend on the extent to which clients are able to gain access to the discounted medications at local pharmacies. Assuming wide availability within the community, the potential savings could be up to \$6 million per year.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

#### **340B Drug Pricing Program Statute**

[\*602] SEC. 602. LIMITATIONS ON PRICES OF DRUGS PURCHASED BY CERTAIN CLINICS AND HOSPITALS.

In General. Part D of title III of the Public Health Service Act is amended by adding the following subpart:

"(4) Covered entity defined. In this section, the term 'covered entity' means an entity that meets the requirements described in paragraph (5) and is one of the following:

*"(A) A Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Social Security Act).*

*"(B) An entity receiving a grant under section 340A.*

*"(C) A family planning project receiving a grant or contract under section 1001.*

*"(D) An entity receiving a grant under subpart II of part C of title XXVI (relating to categorical grants for outpatient early intervention services for HIV disease).*

*"(E) A State-operated AIDS drug purchasing assistance program receiving financial assistance under title XXVI.*

*"(F) A black lung clinic receiving funds under section 427(a) of the Black Lung Benefits Act.*

*"(G) A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act.*

*"(H) A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988.*

*"(I) An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.*

*"(J) Any entity receiving assistance under title XXVI (other than a State or unit of local government or an entity described in subparagraph (D)), but only if the entity is certified by the Secretary pursuant to paragraph (7).*

*"(K) An entity receiving funds under section 318 (relating to treatment of sexually transmitted diseases) or section 317(j)(2) (relating to treatment of tuberculosis) through a State or unit of local government, but only if the entity is certified by the Secretary pursuant to paragraph (7).*

*"(L) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) that -- "(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act or eligible for assistance under the State plan under this title; "(ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act; and "(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.*

**"(M) A local government entity receiving funds from a State for the provision of health, mental health or substance abuse treatment services under title XIX of the Public Health Service Act, including local government entities providing services under an approved Federal waiver under section 1115 of the Social Security Act.**

"(5) Requirements for covered entities. -- "(A) Prohibiting duplicate discounts or rebates. -- "(i) In general. A covered entity shall not request payment under title XIX of the Social Security Act for medical assistance described in section 1905(a)(12) of such Act with respect to a drug that is subject to an agreement under this section if the drug is subject to the payment of a rebate to the State under section 1927 of such Act.

Approved as to form:  
Orange County Counsel

by Massoud Shamel  
Deputy County Counsel

POTENTIAL SUPPORT:

It is possible that other counties could benefit from this proposal and so would be willing to provide their support. It is also possible that the professional associations such as CSAC, CHEAC, CMHDA, and other national organizations would support this proposal.

POTENTIAL OPPOSITION:

No known opposition.

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

None.

PERSONS RESPONSIBLE FOR TESTIMONY:

Mark Refowitz, Deputy Agency Director	Health Care Agency
David Souleles, Deputy Agency Director	Health Care Agency
Bob Wilson, Deputy Agency Director	Health Care Agency

## **COUNTY-SPONSORED FEDERAL PROPOSALS – CONTINUING**

### **PROPOSAL TO ALLOW BOTH CURRENT AND NEW COUNTY EMPLOYEES TO MAKE A ONE-TIME IRREVOCABLE ELECTION IN PENSION FORMULAS**

The County of Orange proposes to allow current County employees to make a one-time irrevocable election between the current, more favorable pension formula and a new, less favorable pension formula, combined with a matching contribution to a defined contribution plan, for their future service. A question from the Internal Revenue Service (IRS) has arisen whether granting this election to current employees might cause future employee contributions to the retirement system to no longer be considered "picked-up" contributions under Code section 414(h)(2). Loss of "picked-up" status would result in some or all of the employees' future contributions no longer being pre-tax contributions.

#### Update and Approach:

Legislation may be needed to resolve the problem, which will allow current County employees to make a one-time irrevocable election in pension formulas. A positive outcome will be beneficial to all stakeholders. Revenue Ruling 2006-43 should not be interpreted to deny employer "pick-up" treatment under Code section 414(h)(2) as a result of one time elections arising from structural changes in a plan initiated by the government entity. It should be noted that state law necessitates that any change to current employee pension formulas be by participant election as government entities in California are constitutionally prohibited from unilaterally imposing a new formula on current participants.

#### Recommended Action:

CEO/Legislative Affairs recommends seeking legislation to revise the Internal Revenue Code Section 414(h) (2) and 414 (d) if an administrative solution is not forthcoming.

#### **The proposed code revision the County is seeking is:**

*Internal Revenue Code §414(h) (2) **Designation by units of government.** – For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions. For purposes of this paragraph (2), the availability of an irrevocable election between two alternative benefit formulas (a) for newly employed employees, upon employment with the employing unit or (b) for current employees of the*

employing unit, upon the introduction of a new benefit formula option or upon the individual employee becoming eligible for such option, shall not cause the contributions of the employees to whom such an election is made available to fail to be treated as employer contributions.



# COUNTY OF ORANGE

2012 Federal Appropriations

**COUNTY OF ORANGE**  
**2012 FEDERAL APPROPRIATIONS REQUESTS EXECUTIVE SUMMARY**

The following is a summary on each of the County's requests for 2012. For next fiscal year, the County is requesting eight projects. While the County is hopeful that all projects can be funded in the upcoming year, the realities of the continued economic climate, limited fiscal resources and the task of prioritizing projects by the federal government make it likely that few will receive federal funding.

**SANTA ANA RIVER PROJECT**

The Santa Ana River Mainstem Project, including Prado Dam (Project), was authorized under the Water Resources Development Act (WRDA) of 1986, and Section 309 of WRDA, 1996. The Project involves construction, acquisition of property rights, relocations, and environmental mitigation and enhancement in Orange, Riverside, and San Bernardino counties. The flood control districts of these counties are the Local Sponsors who are responsible, along with the Department of the Army, for implementing the Project. To date, the Federal Government and the flood control districts of the impacted counties have spent over \$1 billion on the Project. Major project accomplishments include the completion of Seven Oak Dam, raising of the Prado Dam embankment and construction of many miles of bank protection.

**ALISO CREEK, ORANGE COUNTY, CA (SECTION 5158)**

The planned project, also called Aliso Creek S.U.P.E.R. Project, incorporates and expands upon the Aliso Creek Mainstem Project (submitted as a separate appropriations project, see below) by proposing a multi-objective approach to provide water quality benefits, stream bank stabilization, utility infrastructure protection, and ecosystem restoration in the Aliso Creek watershed. The stabilization and ecosystem restoration component will include constructing a series of low riprap grade control structures and re-establishment of aquatic habitat connectivity, invasive species removal and riparian re-vegetation. The water quality treatment and beneficial use component includes diversion of the low flows, treatment of the water to beneficial use standards, and the sale of that water to users in the watershed for irrigation. A localized treatment system further downstream will protect recreational users from unhealthful bacteria along the beach.

**WESTMINSTER, EAST GARDEN GROVE, CA**

This cost-share study between U.S. Army Corps of Engineers and Orange County (shared 50/50) is to address flood damages along the East Garden Grove-Wintersburg Channel and associated aging levee system affect residences and businesses in 11

Orange County cities within a 74 square mile watershed. Because of local flood risks, over 20,000 property owners must participate in the National Flood Insurance Program while thousands of additional property owners, valuable coastal habitat and water quality are also in jeopardy from flooding impacts. Since inception of the project, significant progress has been made on the study. With continued Federal support, it is anticipated that the study could be completed in the next fiscal year

#### SAN JUAN CREEK, SOUTH ORANGE COUNTY, CA

A feasibility study for this project is required by the U.S. Army Corps of Engineers for implementing capital projects. Currently, the project has now moved into what the Corps calls a “spin-off” study. This spin-off study, which is shared 50/50 between the Corps and Orange County, is a focused study of flood control and ecosystem restoration alternatives for the watershed in the cities of Dana Point and San Juan Capistrano. Significant progress has been made on the study and could be completed next fiscal year with continuing Federal support.

#### SERRANO-BORREGO CORRIDOR FEASIBILITY STUDY

A feasibility study for Serrano-Borrego Corridor is needed to analyze specific projects for ecosystem restoration, as well as protect the Upper Newport Bay from harmful upstream impacts. The recently drafted Newport Bay-San Diego Creek Watershed Feasibility Study has identified a number of potential projects in the Serrano-Borrego Corridor, making the Corridor the top priority project from the Study. Serrano and Borrego Creeks contribute a large quantity of sediment to the Upper Newport Bay Ecological Reserve, affecting water quality and habitat in this rare coastal wetland providing critical habitat for a variety of migratory waterfowl traveling along the Pacific Flyway, shorebirds, and endangered species of birds and plants.

#### ALISO CREEK MAINSTEM, ORANGE COUNTY, CA

The goal of the feasibility study is to refine the detailed existing hydrologic/hydraulic model and create detailed design for modifications to be implemented along the Aliso Creek Mainstem, and potentially tributaries, which will restore stability to the riverine system and allow restoration of the ecosystem. It is also intended to produce an implementation document for authorization by Congress, as well as serve as an aid to local, state, and federal agencies involved in management and regulatory decisions that can impact the watershed.

## HASTER BASIN RECREATIONAL FIELDS

The Haster Recreational Fields project will fill a portion of a 21-acre existing retarding basin to provide approximately four acres of new usable parkland. The project will benefit an area of the County that contains a lower number of parkland acreage compared to rest of the County. The project will accommodate the need for active recreation by providing new park acreage in the form of a large open turf area suitable for recreational sport fields on weekends in various sizes and configurations. Proposed park amenities include picnic shelters, fitness stations along the main park trail, and benches.

## WEST BASIN/HIDDEN LAKES PARK TRAIL

West Basin is a flood retention basin, with no current public access. The West Basin/Hidden Lakes Trail project will consist of a 2,200 linear foot decomposed granite trail along the perimeter of the basin. Exercise fitness stations will be installed at intervals along the trail where the public can perform a variety of designated exercises involving stretching, balance, agility, and strength. The trail will provide recreational park space that is currently lacking in this portion of the County. The edge of the basin contains several mature trees providing a scenic landscape in this highly urbanized area.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

Project Name:	<b>Santa Ana River Project</b>
Exact Location/Address:	Santa Ana River within Orange, Riverside and San Bernardino Counties

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Ignacio Ochoa, Director/Chief Engineer
Organization:	Orange County Public Works Department
Address:	300 N. Flower Street, Santa Ana, CA 92703
Telephone:	(714) 667-3213
Email:	Ignacio.Ochoa@ocpw.ocgov.com

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

The Santa Ana River Mainstem Project (Project) is being constructed to address what the U.S. Army Corps of Engineers identified in the 1980's as 'the worst flood threat west of the Mississippi River' – which then impacted three million people and 110,000 acres located in the three Southern California counties of Orange, Riverside, and San Bernardino. It was estimated that a significant flood event on the Santa Ana River would cause a loss of 3,000 lives and \$15 billion in economic losses (1987-8 price levels).

The Project was authorized under the Water Resources Development Act (WRDA) of 1986, and Section 309 of WRDA, 1996. The Project involves construction, acquisition of property rights, relocations, environmental mitigation and enhancement in Orange, Riverside, and San Bernardino counties. The flood control districts of these counties are the Local Sponsors who are responsible, with the Department of the Army, for implementing the Project. To date, the Federal Government and the flood control districts of the impacted counties have spent over \$1.1 billion on the Project. Major project accomplishments include the completion of Seven Oaks Dam, raising of the Prado Dam embankment and construction of many miles of bank protection. Continued funding is necessary to complete the Project and ensure the level of protection as planned. Project completion is even more important now than when started in 1990, given the significant growth in population, land and structures value, and dependency on affected transportation routes.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

Project Name:	Aliso Creek, Orange County, CA (Section 5158)
Exact Location/Address:	Laguna Niguel, CA

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Mary Anne Skorpanich, Director
Organization:	County of Orange/OC Watersheds
Address:	2301 North Glassell Street, Orange CA 92865
Telephone:	714-955-0601
Email:	<a href="mailto:Maryanne.skorpanich@rdmd.ocgov.com">Maryanne.skorpanich@rdmd.ocgov.com</a>

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

Rapid urbanization of the Aliso Creek watershed has led to a variety of erosion and water quality problems. In response to this, federal, state and local government agencies and local utility districts have invested significant time and resources toward the development and implementation of a collection of projects to protect transportation, water and wastewater infrastructure and mitigate ongoing environmental degradation to the downstream Aliso Wood Canyon Wilderness Park area. Concurrently, the creek and coastal zone environment and its other beneficial uses are impaired by poor water quality with the repeat occurrence of bacterial contamination during storms as well as dry weather.

Over the last decade, the U.S. Army Corps of Engineers (Corps) has completed several independent and cost-shared studies evaluating the problems in Aliso Creek. Several opportunities and project alternatives have been identified that are viable from an engineering, environmental, and economic perspective.

In 1999, the Corps began the Aliso Creek Watershed Management Plan. This study was sponsored by the Corps, County, municipalities and water districts within the Aliso Creek watershed. A public stakeholder group was formed and met on a regular basis to provide input to the Corps for three years. A wide range of technical studies on overall watershed conditions were completed as part of the Plan, which identified a number of watershed problems as well as opportunities. The identified problems including water quality, instability of the creek, loss of ecosystems, and damage from flooding.

In 2002, the Corps completed the Aliso Creek Watershed Management Study to examine management measures that could address the various watershed problems identified in a “spin-off” feasibility study. The management study selected the measures that best meet the federal and local need. The Aliso Creek Mainstem Ecosystem Restoration Study was one of the recommended “spin-off” feasibility studies resulting from the management study. The Corps’ contractor (Tetra Tech), who prepared the Aliso Creek Watershed Management Study, revised the project by adding a water quality and utility protection feature to address stakeholder input.

This project proposes a multi-objective approach to provide water quality benefits, stream bank stabilization, utility infrastructure protection, and ecosystem restoration in the Aliso Creek watershed. The stabilization and ecosystem restoration component of the project will include: constructing a series of low riprap grade control structures and re-establishment of aquatic habitat connectivity; shaving of slide slopes to reduce vertical banks; invasive species removal and riparian re-vegetation and restoration of floodplain moisture. The infrastructure protection component of the project will include locking the low flow channel in place through placement of rock at the toe of the channel and soil wraps above the rock. The water quality treatment and beneficial use component of the project includes diversion of the low flows, treatment of the water to beneficial use standards, and the sale of the treated water to users in the watershed for irrigation.

Improvements anticipated from the study include relief from degradation of the creek and restoration of native habitat. Protection for important coastal wetlands downstream will benefit from improved water quality and ecosystem functioning. A localized treatment system further downstream will protect recreational users from unhealthful bacteria along the beach.

In WRDA 2007, Section 5158-Additional Assistance for Critical Projects provided a \$5,000,000 project limit for a Section 219 Environmental Infrastructure Project titled *Aliso Creek, Orange County, CA*. This program provides a more direct path to implementing a project that addresses long standing issues of concern. Advancing the project in a timely manner to construction would result in an overall savings in costs by reducing the amount of monies spent on studies, staffing resources, and emergency stop gap repairs. Under the Environmental Infrastructure account, the project can include more effective components to improve beach water quality.

Federal assistance would:

- Allow the local sponsor and Corps to execute a cost sharing agreement;
- Allow local sponsor to utilize \$8,000,000 of cost share funds before some grant monies expire; and
- Expedite project implementation; construction completed as early as 2014.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

<b>Project Name:</b>	<b>Westminster-East Garden Grove Watershed Study</b>
Exact Location/Address:	Includes 74 square miles in the cities of Anaheim, Stanton, Cypress, Garden Grove, Westminster, Fountain Valley, Los Alamitos, Seal Beach and Huntington Beach

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Ignacio Ochoa, Director/Chief Engineer
Organization:	Orange County Public Works Department
Address:	300 N. Flower Street, Santa Ana, CA 92703
Telephone:	(714) 667-3213
Email:	Ignacio.Ochoa@ocpw.ocgov.com

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

Flood damages along the East Garden Grove-Wintersburg Channel and associated aging levee system affect residences and businesses in 11 Orange County cities within a 74 square mile watershed. Because of local flood risks, over 20,000 property owners must participate in the National Flood Insurance Program while thousands of additional property owners, valuable coastal habitat and water quality are also in jeopardy from flooding impacts. Accordingly, the U.S. Army Corps of Engineers (Corps) and Orange County entered into a cost share agreement to develop solutions for more comprehensive flood protection with the additional objectives of ecosystem restoration and water quality improvement. The cost of the watershed study is shared 50/50 between the Corps and Orange County. Since inception of the project, significant progress has been made on the study. With continued Federal support, it is anticipated that the study could be completed in Federal Fiscal Year 2012.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

<b>Project Name:</b>	<b>San Juan Creek Watershed Study</b>
Exact Location/Address:	San Juan Capistrano, California

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Ignacio Ochoa, Director/Chief Engineer
Organization:	Orange County Public Works Department
Address:	300 N. Flower Street, Santa Ana, CA 92703
Telephone:	(714) 667-3213
Email:	Ignacio.Ochoa@ocpw.ocgov.com

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

Lower San Juan Creek, through the City of San Juan Capistrano, has a history of flooding problems. To date, the flooding problems have been a result of breakage of the levee walls at multiple locations from flood events significantly less than a 100-year flood event. In addition to the structural inadequacies of the 1960s unreinforced concrete slope lining, the flood control channel is lacking in flood control capacity and will be significantly overtopped in a 100-year flood event.

A feasibility study for this project is required by the U.S. Army Corps of Engineers (Corps) for implementing capital projects. Currently, the project has now moved into what the Corps calls a "spin-off" study, which is a focused study of flood control and ecosystem restoration alternatives for the watershed in the cities of Dana Point and San Juan Capistrano. The cost of the spin-off study is shared 50/50 between the Corps and Orange County. Since inception of the project, significant progress has been made on the study. With continued Federal support, it is anticipated that the study could be completed in Federal Fiscal Year 2013.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

**1. PROJECT:**

<b>Project Name:</b>	<b>Serrano-Borrego Corridor Feasibility Study</b>
Exact Location/Address:	Serrano Creek between Trabuco Road and Dimension Ave. in the City of Lake Forest, CA

**2. CONTACT INFORMATION:**

Local Contact Information:	
Name and Title:	Mary Anne Skorpanich, Director
Organization:	County of Orange/OC Watersheds
Address:	2301 North Glassell Street, Orange CA 92865
Telephone:	714-955-0601
Email:	<a href="mailto:Maryanne.skorpanich@rdmd.ocgov.com">Maryanne.skorpanich@rdmd.ocgov.com</a>

**3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:**

Background: The U.S. Army Corps of Engineers recently completed the \$48M, 5-year Upper Newport Bay Ecosystem Restoration Project which included dredging 2.3 million cubic yards of sediment from the Bay. Serrano and Borrego Creeks contribute a large quantity of sediment to the Bay, affecting water quality (Sediment TMDL) and habitat in this rare coastal wetland. Severely eroding slopes are potentially endangering homes and infrastructure. Federal assistance is requested to support multiple local jurisdictions in solving this watershed-wide problem to minimize dredging costs in 20 years from now.

Summary: The recently drafted Newport Bay-San Diego Creek Watershed Feasibility Study (Serrano Creek and Borrego Wash are located within this watershed), identified priority projects to address hydrologic changes from rapid development creating problems such as environmental degradation, habitat loss, water pollution, and erosion. To date the study has identified a number of potential projects in the Serrano-Borrego Corridor, making this the top priority project recommended for spin-off from this Study. With federal funding, a Feasibility Study can be completed to analyze specific projects for ecosystem restoration.

National Significance: Upper Newport Bay Ecological Reserve is one of the last remaining coastal wetlands in Southern California. It plays a significant role in providing critical habitat for a variety of migratory waterfowl traveling along the Pacific Flyway, shorebirds, and endangered species of birds and plants. Implementation projects analyzed in this study will protect the Bay from harmful upstream impacts, as well as provide ecosystem restoration in the upper watershed.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

Project Name:	Aliso Creek Mainstem, Orange County, CA
Exact Location/Address:	Laguna Niguel, CA

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Mary Anne Skorpanich, Director
Organization:	County of Orange/OC Watersheds
Address:	2301 North Glassell Street, Orange CA 92865
Telephone:	714-955-0601
Email:	<a href="mailto:Maryanne.skorpanich@rdmd.ocgov.com">Maryanne.skorpanich@rdmd.ocgov.com</a>

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

Rapid urbanization of the Aliso Creek watershed has led to a variety of erosion and water quality problems. In response to this, federal, state and local government agencies and local utility districts have invested significant time and resources toward the development and implementation of a collection of projects to protect transportation, water and wastewater infrastructure and mitigate on-going environmental degradation to the downstream Aliso Wood Canyon Wilderness Park area. Concurrently, the creek and coastal zone environment and its other beneficial uses are impaired by poor water quality with the repeat occurrence of bacterial contamination during storms, as well as dry weather.

Over the last decade, the U.S. Army Corps of Engineers (Corps) has completed several independent and cost-shared studies evaluating the problems in Aliso Creek. Several opportunities and project alternatives have been identified that are viable from an engineering, environmental, and economic perspective.

In 1999, the Corps began the Aliso Creek Watershed Management Plan. This plan was sponsored by the Corps, County, municipalities and water districts within the Aliso Creek watershed. A public stakeholder group was formed and met on a regular basis to provide input to the Corps for three years. A wide range of technical studies on overall watershed conditions were completed as part of the Plan, which identified a number of watershed problems as well as opportunities. The identified problems included water quality, instability of the creek, loss of ecosystems, and damage from flooding.

In 2002, the Corps completed the Aliso Creek Watershed Management Plan. The Plan recommended the pursuit of certain improvement measures that could address the various identified watershed problems. One of the improvement measures highlighted in the Aliso Creek Watershed Management Plan was the Aliso Creek Mainstem Ecosystem Restoration project.

In order to pursue this improvement project, a “spin-off” feasibility study (from the Aliso Creek Watershed Management Plan) was recommended to address in greater detail the best practices and alternatives for the Aliso Creek Mainstem Ecosystem Restoration project. This “spin-off” feasibility study is called The Aliso Creek Mainstem Ecosystem Restoration Study.

In September 2004, a Federal Cost Sharing Agreement was signed between the Corps and the County of Orange to conduct the 3-year Aliso Creek Mainstem Ecosystem Restoration Feasibility Study.

The specific goal of the feasibility study is to refine the detailed existing hydrologic/hydraulic model and create detailed design for modifications (stream bank stabilization structures and appurtenant features for ecosystem restoration) to be implemented along the Aliso Creek Mainstem, and potentially tributaries, which will restore stability to the riverine system and allow restoration of the ecosystem along the creek and tributaries to conditions found prior to initiation of the recent instability problem.

Various ecosystem restoration alternatives will be analyzed in order to generate sufficient information to make a determination of which alternative generates the most cost-effective means to the greatest benefit to the ecosystem. An incremental analysis of alternatives will be conducted, and all plan selection criteria will be discussed, as well as detailed cost estimates generated. Constructability and implementation issues will also be resolved. Any potential economic benefits of each alternative will be quantified and included as benefits of the various alternatives.

The feasibility study is intended to produce an implementation document for authorization by Congress. This study can also serve as an aid to local, state, and federal agencies involved in future management and regulatory decisions that impact the watershed. The feasibility phase will build on the efforts of the prior reconnaissance and watershed management (feasibility phase) studies, which utilized both existing data to generate a model of existing and future “without-project” conditions.

The Corps recently completed the Baseline Without Project Conditions Report (F3 Report). The F3 Report included a review of existing and future without project conditions, definition of study objectives, and development of a preliminary array of ecosystem restoration alternatives. The F4 Alternative Analysis Report is due to begin in winter 2010.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

<b>Project Name:</b>	<b>Haster Basin Recreational Fields</b>
Exact Location/Address:	12571 Haster Street, Garden Grove, CA

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Clayton Whisenant
Organization:	OC Parks
Address:	13042 Old Myford Rd. Irvine, CA 92602
Telephone:	949-923-3761
Email:	<a href="mailto:Clayton.Whisenant@ocparks.com">Clayton.Whisenant@ocparks.com</a>

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

Haster Basin/Twin Lakes Park is a flood retarding basin in the City of Garden Grove, CA. The basin is owned and maintained by Orange County Flood Control District. Total acreage of the basin and park is approximately 21 acres, with the basin occupying the majority of the site. Existing recreation at Haster Basin/Twin Lakes Park is limited to playground equipment and a paved maintenance road around the basin that is used for walking.

The Haster Recreational Fields project will fill a portion of the basin to provide approximately four acres of new usable parkland. The project will benefit an area of the County that contains a lower number of parkland acreage compared to rest of the County. The project will accommodate the need for active recreation by providing new park acreage in the form of a large open turf area suitable for recreational sport fields on weekends in various sizes and configurations. Additional parking will be provided to accommodate the increased number of park users. Proposed park amenities include picnic shelters, fitness stations along the main park trail, and benches.

## FISCAL YEAR 2012 FEDERAL APPROPRIATIONS REQUEST

### 1. PROJECT:

Project Name:	<b>West Basin/Hidden Lakes Park Trail</b>
Exact Location/Address:	12082 West Street, Garden Grove, CA

### 2. CONTACT INFORMATION:

Local Contact Information:	
Name and Title:	Clayton Whisenant, Project Manager
Organization:	OC Parks
Address:	13042 Old Myford Road, Irvine, CA 92602
Telephone:	949-923-3762
Email:	<a href="mailto:clayton.whisenant@ocparks.com">clayton.whisenant@ocparks.com</a>

### 3. EXECUTIVE SUMMARY, INCLUDING PROJECT BACKGROUND:

West Basin is a flood retention basin operated and maintained by Orange County Flood Control District. Currently no public access is provided to the basin. The edge of the basin contains several mature trees providing a scenic landscape in this highly urbanized area. An intermediate school's turf recreational fields abut the southern edge of this site, adding to the park-like setting of the basin.

The West Basin/ Hidden Lakes Trail project consists of a 2,200 linear foot decomposed granite trail along the perimeter of the basin. Exercise fitness stations will be installed at intervals along the trail where the public can perform a variety of designated exercises involving stretching, balance, agility, and strength. The trail will provide recreational park space that is currently lacking in this portion of the County.