

# COUNTY OF SACRAMENTO CALIFORNIA

## RESPONSE TO THE 2007-2008 GRAND JURY FINAL REPORT

### Sacramento County Airport System

#### Airport Master Plans (p54)

##### Finding #1:

Sacramento International's Master Plan was approved by the Board of Supervisors in late 2007. It was drafted as a 20-year plan. However, as a result of the complex environmental reviews now required which take up to a cumulative eight years before completion, International's Master Plan is now a 12-year plan. Even though updates are planned every 5 years, it remains a short term airport plan.

##### Response to Finding #1: Do Not Concur

The inordinate amount of time it takes to complete a comprehensive airport master plan is not a recent phenomenon. Long range plans require an analytical and collaborative process involving numerous local, state and federal agencies and interest groups. By its very nature this takes time and resources to ensure adequate stakeholder input and compliance with the many federal, state and local rules and regulations.

Per Federal Aviation Administration Advisory Circular 150/5070-6B, the Sacramento International Master Plan considered existing conditions (1999-2000) and future planning horizons (2005 short-term, 2010 medium-term, and 2020 long-term) using 1999 as its base year. While it is regrettably not uncommon for significant time to lapse between the initiation of a Master Plan and the ultimate approval of the plan's environmental documentation, such a lapse does not change the long term perspective of the plan itself or its compliance with the mandated FAA planning horizon for Sacramento International Airport.

##### Recommendation #1:

Future airport master plans should be 30-Year Plans to take into account the impact of delays resulting from complex environmental reviews and extensive community input required prior to approval.

##### Response to Recommendation #1: Concur

The master plan for Sacramento International Airport and the time it took to complete is not the norm for most airport master plans. The previous airport master plan study for Sacramento International Airport was nearly 30 years old (adopted by the County Board of Supervisors June 16, 1976) so we did not have the benefit of relevant historical data from previous studies. This lack of a historical perspective resulted in additional time being needed to complete the study. Additionally, seventeen months into the master plan process the tragic events of 9/11 resulted in our putting the study on hold to determine what the fallout would be, this also resulted in the plan taking additional time to complete.

The above being said, during the time the Sacramento International Airport master plan and environmental review process was underway; the Federal Aviation Administration (FAA) published revisions to their Master Plan and EIS/EA guiding documents which should facilitate future efforts by integrating environmental considerations into the master plan from the outset. The recent guidance received from the FAA also allows airport sponsors to tailor airport master plans to address long term (more than 10 years) needs. Accordingly, we plan to include a 25 or 30 year analysis in future plans consistent with new guidance from the FAA when we perform the first update of the 2007 master plan in 2012.

**Finding #2A:**

New residential development within the 60 CNEL noise exposure curve for Sacramento International, Mather, or McClellan Airports is prohibited by CLUCPs.

**Response to Finding #2A: Do not concur**

The Sacramento Area Council of Governments (SACOG) serves as the airport land use commission (ALUC) for the counties that comprise SACOG including Sacramento County. Under the California Public Utilities Code Section 21670 et seq., ALUCs are responsible for developing an Airport Land Use Compatibility Plan (ALUCP) for most public use airports, including all airports operated by the Sacramento County Airport System (SCAS). While the current ALUCP for International and Franklin Field designate new residential development inside the 60 CNEL to be incompatible land uses, the PUC also allows local governments to override ALUC determinations that a proposed land use is inconsistent with an ALUCP. Thus, to say such development is prohibited by the ALUCPs, while technically accurate, is somewhat misleading as there are provisions whereby local jurisdictions can override the ALUC.

Additionally, new residential development inside the 60 CNEL noise contour around Mather Airport is prohibited by Sacramento County Ordinance, keeping in mind that this prohibition applies only to unincorporated areas of Sacramento County. The County ordinance does not prohibit cities that have lands within the 60 CNEL at Mather from approving such residential development.

The current Mather, McClellan and Executive ALUCPs designate 65 CNEL as the threshold for incompatibility for residential land uses. An update to the McClellan ALUCP is currently underway and it will consider new residential land uses inside the 60 CNEL to be incompatible as well. We plan to propose that future updates to the ALUCPs at Sacramento Executive and Mather also change this threshold to the 60 CNEL.

**Finding #2B:**

New developments within the Airport Planning Policy Areas should have Avigation and Noise Easements recorded on each residential parcel in favor of Sacramento County. However, Avigation and Noise Easements will not prevent law suits in the case of an aircraft accident. In addition, culpability would almost certainly be magnified if the accident involved developments approved below known flight paths/patterns.

**Response to Finding #2B: Concur with first part of Finding.**

This is already policy for areas of the unincorporated Sacramento County that lie within the Airport Planning Policy Area boundary because avigation easements have proven to be an effective tool to convey constructive notice to prospective home buyers they are buying in an area subject to the impacts of aircraft operations. Experience has shown that very few aircraft noise complaints come from residents of homes conditioned by avigation easements. However, Sacramento County cannot require other neighboring jurisdictions to require granting avigation easements because it is the responsibility of the ALUC to establish ALUCPs and it is through SACOG's update of individual ALUCPs where conditions requiring avigation easements are coordinated with local governments having jurisdiction.

We **do not** concur with the opinion expressed by the Grand Jury that the County is culpable for aircraft accidents under known flight paths/patterns. The County has a consistent record of not approving residential development that has been determined to be inconsistent with current land use policies.

**Finding #2C:**

Mather's future as an important cargo hub has been jeopardized by developments impacting options required for a major extension of its secondary runway. Unless steps are taken to protect Sacramento International Airport, it too may lose future regional expansion options.

**Response to Finding #2C: Do not concur**

Mather's future as a regional air cargo airport has not been jeopardized by encroaching development and the extension of runway 22R is included in the Draft Master Plan. The recommended extension to 8,500 feet was not chosen because a 7,200 feet extension is what is necessary for the runway to provide adequate redundant capacity for forecast air

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cargo operations should Mather's primary 11,200 foot runway be temporarily out of service.

At Sacramento International Airport the County is in the process of identifying the lands necessary for construction of the third parallel runway (included in the Final Master Plan approved by the Board of Supervisors) and already have sufficient property for both an extension of runway 34L/16R and for the buffer lands necessary to provide protection for required runway safety areas and instrument approach paths. Other lands adjacent to the airport are either slated for airport compatible development or are outside the current County urban services boundary. The Sacramento County Airport System (SCAS) is vigilant to ensure any proposed development near SCAS facilities are compatible with current and future airport operations and are consistent with federal, state, and local regulations concerning compatible land uses around airports.

**Recommendation #2:**

Sacramento County should ensure that land use restrictions and Avigation and Noise Easements are mandatory for all developments approved within International's Airport Policy Planning Area, to include neighboring counties.

**Response to Recommendation #2: Concur with first part of Finding**

Within California the County of Sacramento is in the vanguard of establishing progressive airport land use policies to protect County owned/operated airports against incompatible encroachment. These policies have resulted in County owned airports having no incompatible land uses.

Additionally, the County of Sacramento is in the process of developing comprehensive long-range master plans for all Sacramento County Airport System airports. One such plan was adopted for Sacramento International Airport by the Board of Supervisors in August 2007.

And while the County will continue to work with surrounding jurisdictions on land use policies that protect public use airports, the County can not dictate to other local jurisdictions how they should establish land use policies.

**Finding #3A:**

County Airport staff has not provided a sufficient response to development proposals necessary to balance political and economic pressures from population growth which may hinder future airport expansion plans.

**Response to Finding #3A: Do not concur**

The Sacramento County Airport System (SCAS) staff has been a strong advocate for preserving the long-term viability of the SCAS. We believe the most viable means by

which to do so is through the comprehensive airport master planning process. We have successfully completed a master plan for Sacramento International Airport; a draft master plan for Mather Airport has been approved by the Sacramento County Board of Supervisors and it is now going through the environmental review processes; and master plans are in development for Sacramento Executive (a City of Sacramento owned airport) and Franklin Field with a draft plan expected to be completed in the second quarter of 2009.

**Finding #3B:**

The long range protection of Sacramento's airport assets, critical for regional economic and transportation viability, demand an informed aviation advocate. At times County Airport Staff has been silent responding to developments presented to the Board of Supervisors, and oftentimes became an agency of compromise.

**Response to Finding #3B: Do not concur**

Without examples of critical incidents where Sacramento County Airport System (SCAS) staff has been "silent responding to developments presented to the Board of Supervisors, and oftentimes became an agency of compromise" it is difficult to respond.

As for being an advocate for airports, the SCAS has a record of success demonstrated by its ability to accomplish objectives by working collaboratively with regional stakeholders and within established rules and regulations that govern airports at the federal, state and local level. This typically involves reviewing and commenting on project proposals within 5 miles of any SCAS facility or that otherwise might have potential to restrict future airport operations and/or needed expansion activities. The end result, in most cases, projects are modified by the sponsor to be compatible with airports in a manner that meets the approval of the community, local governments, the airport system, and federal and state agencies such as the FAA, U.S. Fish and Wildlife, U. S. Army Corps of Engineers, California Departments of Environmental Protection, Transportation, and Fish and Game, among others.

Again, we believe the best strategy for preserving the long-term viability of airports is through the comprehensive master planning process and the SCAS has proven its ability to get such plans in place, keeping in mind there were no current master plans prior to 2000 when we began the master plan for Sacramento International.

**Recommendation #3:**

The County Board of Supervisors should establish an Aviation Committee of select airport and County staff directly responsible for overseeing and advocating the long-term regional importance and viability of Sacramento's airport system. Direct representation by regional airport experts on the Sacramento Area Council of Governments (SACOG) is recommended.

**Response to Recommendation #3: Do not concur**

There are a variety of different forms for operating an airport enterprise and the concept of an airport committee is sometimes used as an administrative adjunct to the elected body. This concept is normally an advisory body comprised of volunteers with business and/or aviation experience. These airport advisory committees are most frequently used at smaller general aviation airports where the level of staffing expertise is limited due to financial constraints. These conditions do not present themselves within the Sacramento County Airport System.

**Finding #4:**

Executive Airport's 5,500 foot runway is totally encroached by development.

**Response to Finding #4: Do not concur**

Sacramento Executive Airport has been in continuous operation since its inception in the 1930's. Its three operating runways were shortened to include displaced thresholds; otherwise very few physical changes have occurred since scheduled passenger operations were transferred to then Sacramento Metropolitan Airport in 1967, over 40 years ago. Sacramento Executive Airport is a good neighbor airport with strong community support and airport operations are fully compliant with all federal, state and local rules and regulations.

**Recommendation #4:**

As appropriate, and without jeopardizing current flight operations, the County Airport Director should discourage jet aircraft from using Executive Airport, and, through incentives, encourage jet aircraft to use Mather Field, McClellan or International.

**Response to Recommendation #4: Do not concur**

Sacramento Executive Airport (SAC) has restrictions imposed on operations through Sacramento County Code Section 11.28. This ordinance effectively limits the aircraft that can operate into SAC based on their certificated take-off noise levels. To arbitrarily restrict additional aircraft operations would be against federal law and put the County at risk of losing future federal grants and could undermine the financial viability of the many local business that rely upon itinerant jet aircraft operations.

SAC has been and continues to be a vital part of the overall Sacramento County Airport System. It operates in harmony with the surrounding community and consistent with all federal, state and local rules and regulations.

**THE CITY OF ELK GROVE RESPONSE  
TO THE REPORT OF THE SACRAMENTO GRAND JURY**

To the Hon. James M. Mize Presiding Judge Superior Court of California County of Sacramento:	<b>In re:</b> <b>City of Elk Grove Animal Services</b> <b>Sacramento Grand Jury Report</b> <b>June 30, 2008</b>
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**Whereas**, the Sacramento County Grand Jury has directed the City of Elk Grove to provide comment to both the findings and recommendations to the Presiding Judge of the Sacramento Superior Court as required by Penal Code Sections 933 and 933.05; and

**Whereas**, the Mayor of the City of Elk Grove has reviewed the report by the Grand Jury;

**Now, Therefore**, the City Council of the City of Elk Grove does hereby resolve and comment as follows:

**Finding 1A. Comment:** The City agrees with the finding. The review of the affidavit regarding the incident where the pit bull killed the cat while off its property was not handled within the timeframes required by the City's current ordinances. In addition, when the matter was set for hearing, the hearing should have been held even without the attendance or participation of the dog owner.

**Finding 1B and Recommendation 1B. Comment:** The City agrees. See Comment to Finding 1A.

The recommendation has already been implemented. Prior to the issuance of the Grand Jury report on June 30, 2008, the Animal Services department had implemented changes so that hearings regarding vicious animals are held with or without the presence of the animal's owner (in absentia).

**Finding 2 and Recommendation 2A. Comment:** The City agrees. At the time, there was no provision for immediate dispatch of an animal control officer when one animal attacked another.

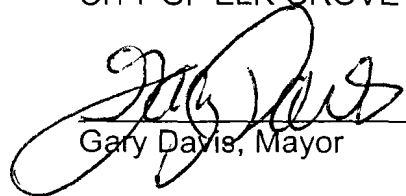
The recommendation will not be implemented as stated. Instead, the City of Elk Grove has already implemented changes to its protocols so that an animal control officer is dispatched whenever a report is received of one animal killing another. A request from the reporting party is not solicited nor required. Staff, including staff at the 911 dispatch center, has been trained on this procedure. In addition, staff duty times have been expanded to provide better coverage in

evenings and on weekends in order to respond to calls for service regarding animals.

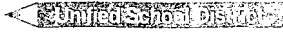
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By my signature below, I submit this as the response of the City of Elk Grove pursuant to the Laws of the State of California.

August 27, 2008  
CITY OF ELK GROVE



Gary Davis, Mayor



**Members of the Board:**  
Jeanette J. Amavisca  
Pollyanna Cooper-LeVangie  
Priscilla S. Cox  
Pamela A. Irely  
William H. Lugg, Jr.  
Chet Madison, Sr.  
Brian D. Myers

**Steven M. Ladd, Ed.D.**  
Superintendent

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9510 Elk Grove-Florin Road, Elk Grove, California 95624

September 16, 2008

The Honorable James M. Mize  
Presiding Judge  
Sacramento County Superior Court  
720 Ninth Street, Dept. 47  
Sacramento, CA 95814

RE: Response of Elk Grove Unified School District Board of Education to 2007-2008  
Sacramento County Grand Jury Final Report

Dear Judge Mize:

The Board of Education of the Elk Grove Unified School District, at a regular meeting held on September 16, 2008, adopted this letter as its response to the Grand Jury's 2007-2008 final report. The Board's response is hereby submitted in compliance with Penal Code Sections 933 and 933.05. The Board wishes to thank the members of the Grand Jury for their time and efforts devoted to the Elk Grove Benefits Retirement Trust ("EGBERT"). Specific responses to each finding and recommendation are set forth below.

### **OPEN MEETINGS**

**Finding 1 A:** The EGUSD approves benefit provisions for its employees and retirees. The EGBERT, by "closing" its meetings, has limited the public's ability to oversee how its retired teachers' health and welfare benefit funds are managed.

**Response to Finding 1 A: Partially Disagree with Finding.** The District does not determine or approve benefit provisions for its retired employees participating in EGBERT. EGBERT is governed by a separate Board of Directors. Pursuant to the provisions of the EGBERT agreement, the EGBERT Board of Directors has sole and exclusive authority to determine the benefits that EGBERT will provide to participants. Except as clarified above, the Board agrees with the finding that the restrictions on access to meetings of the EGBERT Board of Directors limits the public's ability to monitor how retiree health benefit funds are managed.

**Finding 1 B:** The Elk Grove Board of Education and current management staff were helpful to this Grand Jury. We commend their openness and commitment to transparency.

**Response to Finding 1 B: Agree with Finding.** The Board appreciates this recognition of District staff and their efforts to assist the Grand Jury with its duties.

**Finding 1 C:** A recent report on “Funding Pensions and Retiree Health Care for Public Employees”, prepared by the State’s Public Employee Post-Employment Benefits Commission, supports public participation, disclosure, transparency and accountability in these matters.

**Response to Finding 1 C: Agree with Finding.**

**Recommendation 1:** The EGBERT should comply with the Brown Act since it is using public dollars to fund benefits for public employees, and using reimbursed public staff time and facilities.

**Response to Recommendation 1: Cannot Be Implemented.** As discussed above, EGBERT is a separate entity and is managed by its own Board of Directors. The District does not appoint a majority of the EGBERT Board and does not have operational control over EGBERT’s decisions or activities.

It has been clear for some time that the District Board would prefer EGBERT Board meetings to be open to the public. When the EGBERT Board was considering adopting changes to the trust agreement to restrict access to its meetings, two members of the District Board of Education personally appeared at the EGBERT meeting and appealed to the EGBERT Board to open their meetings to any interested person. (See minutes of September 17, 2007 EGBERT Board meeting, Section III, attached hereto as Exhibit 1.) Despite the known preference of the District’s Board for open meetings, the EGBERT Board voted to adopt the amendments to its trust agreement, thereby restricting access to its meetings.

As a separate entity independent from the District, EGBERT retains its own legal counsel. Based upon correspondence from EGBERT’s counsel, it appears clear that EGBERT believes it is correct in its decision to restrict access to its meetings. (See July 11, 2008 letter from the law firm of Beeson, Tayer & Bodine attached hereto as Exhibit 2.) Only the EGBERT Board of Directors can change EGBERT’s current policy.

As stated above, the District Board agrees with the Grand Jury that EGBERT Board meetings should be open to any interested person. Accordingly, in furtherance of its commitment to transparency, the District Board has sent a letter to the EGBERT Board encouraging that it hold open meetings. This letter was copied to the exclusive representative for each employee organization participating in EGBERT. (See September 16, 2008 letter attached hereto as Exhibit 3.) Additionally, the District Superintendent will request that the management appointees to the EGBERT Board of Directors schedule a vote by the full EGBERT Board regarding possible amendments to the EGBERT trust agreement opening EGBERT Board meetings to any interested person.

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## **FUTURE UNFUNDED LIABILITIES**

**Finding 2 A:** Admirably, the EGBERT has done well with its investments and with controlling management and consultant costs.

**Response to Finding 2 A: Agree with Finding.** The EGBERT Board and its advisors have acted professionally and responsibly in the management of EGBERT's trust assets. The District Board joins the Grand Jury in commending EGBERT in this regard.

**Finding 2 B:** The EGUSD fiscal staff currently projects that in four to five years EGBERT will have a serious gap between the totals of its current contributions and invested trust fund dollars and its unfunded liabilities for retirees. There is no current plan on how to answer this future and predicted liability.

**Response to Finding 2 B: Partially Disagree with Finding.** The District currently contributes more funds to EGBERT than EGBERT spends on benefits for participants. The current funding trend is projected to continue for approximately 5 years, until 2014, when EGBERT's expenses are projected to exceed cash contributions. On a cash basis, EGBERT is projected to have sufficient funds to provide benefits through 2022. These projections assume that there are no changes to EGBERT's benefits or funding.

As noted by the Grand Jury in its final report, there are two methods for addressing the gap between EGBERT's current assets and its projected liabilities, increase contributions or reduce the cost of benefits. Given recent budget cuts to schools and the state's current fiscal situation, current strategy will necessarily be focused on reducing costs. (See p. 59 of Grand Jury Final Report.) The District has already taken some steps to control retiree benefits costs by negotiating an agreement with each of its employee organizations to increase from 10 to 15 years the amount of service required to qualify for retiree benefits. Once a person has retired, however, the level of benefits is controlled exclusively by the EGBERT Board of Directors.

**Recommendation 2:** The EGUSD needs to prepare for affiliation with an organization such as CalPERS to administer its health and welfare retirement benefits. The District should see that necessary laws are enacted to allow for this transition.

**Response to Recommendation 2: Cannot be Implemented.** EGBERT is not a public agency and therefore does not qualify to participate in the new CalPERS California Employers' Retiree Benefit Trust ("CERBT") for pre-funding of retiree benefits. Even if CalPERS would support allowing private non-profit entities to participate in CERBT, it is not clear whether changes in state law would be sufficient to achieve this result. The CalPERS CERBT was carefully designed to comply with Section 115 of the Internal Revenue Code in order to enjoy tax-qualified status. (See "What about a Private Letter Ruling?" in the FAQ on CalPERS' website at <http://www.calpers.ca.gov/index.jsp?bc=/employer/retiree-ben-trust/faq.xml>.)

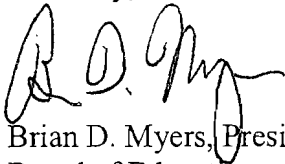
The Honorable James M. Mize  
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September 16, 2008

It is unclear whether EGBERT can participate in the CalPERS CERBT without jeopardizing the tax-exempt status of the trust and such participation may require changes to federal law or regulations that are far beyond the scope of the District's influence.

Additionally, even if it were clear under current state and federal law that EGBERT could transfer its holdings to CalPERS for administration of its investment portfolio, the District Board has no authority to direct such a transfer of EGBERT's assets. As discussed above, the EGBERT Board of Directors has sole and exclusive control over the management of EGBERT's assets and therefore Recommendation 2 cannot be implemented by the District.

In closing, the Board of Education would again like to express its appreciation to the members of the Grand Jury for this timely and helpful dialog regarding EGBERT, and for its recognition of the good job that EGBERT has done managing the assets under its control.

Sincerely,



Brian D. Myers, President  
Board of Education

cc: Dave Irish, Director of Finance  
County of Sacramento  
County Clerk – Recorder Division  
600 8th Street  
Sacramento, CA 95814

✓ Sacramento County Grand Jury  
Attn: Becky Castaneda, Grand Jury Coordinator  
720 Ninth Street, Room 611  
Sacramento, CA 95814

EXHIBIT 1

**Special Meeting of the Board of Directors  
of the  
Elk Grove Benefits Employee Retirement Trust  
("EGBERT")**

**MINUTES  
September 17, 2007**

**Members:**

Carmen Austin, AFSCME Director (*present*)  
Jack Bowman, Management Director (*present*)  
Charlie Chatten, EGEA Director (*Co-Chair, present*)  
Xavier De La Torre, Ed.D., Management Director (*absent*)  
Bob Fossgreen, Management Director (*present*)  
Jeffrey Markov, Management Director (*Co-Chair, absent*)  
Christy Mason, CSEA Director (*present*)  
Richard Odegaard, Management Director (*present*)  
Brian Wiens, ATU Director (*absent*)  
Crystal Jones, PSWA Director (*absent*)

**Alternates:**

Rich Fagan, Management, Alternate (*present*)  
Debra Ladwig, AFSCME Alternate (*present*)  
Victor Guerra, ATU Alternate (*absent*)  
Robbi Henle, PSWA Alternate (*present*)  
Carol Johnson, CSEA Alternate (*present*)  
Debby Smith, Management, Alternate (*absent*)  
Carl Woodbury, EGEA Alternate (*present*)

**Others:**

Shelly Loller, Recorder (*present*)  
Devon Muir, Alan Biller & Assoc. (*present*)  
Sam Ginsburg, Alan Biller & Assoc. (*present*)  
John Provost, Counsel to EGBERT (*present*)  
Lee Schneider, Mellon Capital

**I. CALL TO ORDER:**

With a quorum present, the meeting was called to order by Co-Chair, Charlie Chatten, at 3:09 p.m.

**II. PRESENTATION BY LEE SCHNEIDER, MELLON CAPITAL**

Mr. Schneider provided a brief overview of the firm's history. Materials were provided to Board members to use as reference during the presentation (copy attached). Highlights of the presentation included:

- a. The product proposed is the Global Alpha I, a Global Tactical Asset Allocation strategy, that invests in the world's stock, bond and currency markets
- b. The goal of Global Alpha is to provide consistent returns in a low risk environment, exceeding the benchmark by 5%
- c. Global Alpha is added to the 60/40 benchmark (60% of investments are made in global equities, 40% of investments are made in global bonds), set by Mellon Capital, to create the Global Alpha I strategy
- d. Global Alpha provides for four (4) different decision factors among 39 match points, considers different risk assessment needs, designed to give exposure to world markets
- e. Mellon Capital exposes clients to established markets only, no emerging market investments
- f. Mellon Capital utilizes a systematic approach of incremental investment changes; investment models are run twice a day, tactical shifts may be made 2-3 times per month (avoids jumping in and out of funds)
- g. Mellon Capital provides a transparent portfolio; Alan Biller & Associates can request current information (month end) as needed and not wait for the quarterly reports
- h. Global Alpha is an alternative strategy, not a hedge fund strategy
- i. Mellon Capital evaluates the market to make the investment decisions for the organization

The Board had the opportunity to ask questions about Mellon Capital's investment management practices. Mr. Schneider explained that the firm is looking for broad market exposure and that the models provide for building forward earnings estimates using such information as purchased IBIS data and commodity studies. The model is constantly examined to include different exposures and factor considerations. The basic notion of projecting future earnings has been in place since 1983 and the basis and fundamentals do not change; what does change are the sources from which the information is received.

Previous Board conversations had included discussion about investing 10%. This level of investment would give the organization exposure into global fund opportunities to consider future investment increases into the fund – "put a toe in the water" approach. Mr. Schneider did note that the Global Alpha product will be closing shortly as capacity has nearly been achieved.

The Board will review the information and revisit the idea of making an allocation at the next meeting.

### **III. FURTHER DISCUSSION OF SECTION 7.7 – OPEN MEETINGS:**

The directors discussed the language they had directed John Provost to prepare after their last meeting. Two members of the EGUSD school board had appeared at that meeting and appealed to the EGBERT board to open its meetings to any interested persons. The EGBERT directors, however, had directed Mr. Provost to prepare language to specify the many categories of persons to whom they wished their meetings to be completely open -- i.e., school district retirees, EGBERT participants, EGUSD employees and administrators, and consultants to the Trust -- without completely opening the meetings. The proposed language had been circulated by e-mail.

Mr. Provost reported that Ken Mandler had threatened a lawsuit over this issue. The directors said they had no problem providing Mr. Mandler -- or anyone else for that matter -- with copies of minutes, agenda, and other documents generated for and at EGBERT meetings. However, they still wished to maintain a policy of only conferring an absolute right to attend meetings to the retirees, employees, and school district personnel directly involved with the Trust. After lengthy discussion, it was moved, seconded, and passed to approve Amendment No. 5 to the Trust Agreement regarding meeting requirements. Richard Odegaard abstained from voting.

### **IV. MINUTES OF AUGUST 16, 2007, MEETING:**

The minutes of the regular board meeting held on August 16, 2007, were distributed for review. Approval will be sought at the meeting to be held on October 18, 2007. There will be two corrections made to the minutes to be presented for approval. Carol Johnson will be changed to reflect that she was present at the August 16<sup>th</sup> meeting. Carmen Austin's notation that Brian Myers requested that the Board at least consider amending the language so that it was less restrictive will be added to the first paragraph of Item II.

### **V. ADJOURNMENT:**

There being no further business, the meeting was adjourned at 4:40 p.m.

EGBERT  
Special Board Meeting  
September 17, 2007

AGENDA ITEM II:

1. Original language from trust agreement

Meetings of the Board of Directors shall be open to interested persons and be held from time to time at a place designated by the Board of Directors. Unless such place is designated by previous motion of the Board of Directors, meetings shall be held at the principal office of the EGBERT.

2. Language from amendment #4

Meetings of the Board of Directors shall be open to the Directors and Alternate Directors of EGBERT, the consultants of EGBERT, and to the invitees of the EGBERT Directors. Meetings shall be held from time to time at a place designated by the Board of Directors. Unless such place is designated by previous motion of the Board of Directors, meetings shall be held at the principal office of the EGBERT.

3. Proposed language revision (John's email)

Meetings of the Board of Directors shall be open to the Directors and Alternate Directors of EGBERT as well as to all employees of the Elk Grove Unified School District, the Governing Board and administration of the District, EGBERT retirees, participants and beneficiaries, and to the consultants, advisors and business invitees of EGBERT. Other interested persons may request to attend meetings and such requests shall be subject to approval by the EGBERT Directors. Meetings shall be held from time to time at a place designated by the Board of Directors.

## EXHIBIT 2

DUANE B. BEESON  
NEIL BODINE  
ROBERT BONSALL  
GEOFFREY PILLER  
CATHERINE E. AROSTEGUI  
JOHN C. PROVOST  
ANDREW H. BAKER  
JASON RABINOWITZ\*  
SHEILA K. SEXTON  
MATTHEW MORBELLO\*\*  
DALE L. BRODSKY  
TEAGUE P. PATERSON\*\*\*  
COSTA KERESTENZIS  
LISA W. PAU  
DAVID WEINTRAUB  
MARGARET A. GEDDES  
SARAH SANDFORD-SMITH\*\*\*\*  
PETER M. MCENTEE

\*ALSO ADMITTED IN NEVADA AND HAWAII  
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\*\*\*ALSO ADMITTED IN NEW YORK  
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## BEESON, TAYER & BODINE

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July 11, 2008

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Fresno, CA 93720-3370

Re: *Sacramento Grand Jury report regarding Elk Grove  
Benefits Employee Retirement Trust (EGBERT)*

Dear Mr. Smith:

Richard Odegaard has asked me to contact you about the recent Sacramento Grand Jury report regarding the Elk Grove Benefits Employee Retirement Trust (EGBERT). More specifically, because the Elk Grove Unified School District must respond to the report by October 1, 2008 -- even though the report primarily addresses *EGBERT*, and its procedures, funding and benefits -- many of the EGBERT directors thought it would be a good idea for me to share some information with you regarding the report.

I find the report to be inaccurate in several respects and to be illogical and ill conceived in several others. Most obviously, although one of the two issues cited in the beginning of the report is whether or not EGBERT has to comply with the Brown Act, EGBERT is not asked to respond to the report, just the District. This makes no sense, and this incongruous thread, by which the District and EGBERT are not treated as separate entities, runs throughout the report.

With regard to the specific findings and recommendations in the report, my own conclusions follow the quoted sections of the report below:

*"Finding 1A: The EGUSD approves benefit provisions for its employees and retirees. The EGBERT, by "closing" its meetings, has limited the public's ability to oversee how its retired teachers' health and welfare benefit funds are managed." The fact is that EGBERT's meetings are not completely closed, as the report suggests. The Trust Agreement for EGBERT provides that besides EGBERT directors and consultants, all employees of the Elk Grove Unified School District, the Governing Board and administration of the District, EGBERT retirees, participants and beneficiaries may attend EGBERT meetings, as well as other interested persons by invitation. Thus, there is ample opportunity for the public, and particularly the individuals who are or who*

*may receive EGBERT benefits, to monitor how EGBERT is administered. The report also completely ignores the fact that in the 12 ½ years of EGBERT's existence only one person has ever been denied access to a directors' meeting. The report also ignores the fact that insofar as this one individual is concerned, the EGBERT directors have agreed to provide him -- and have provided him -- with copies of all relevant documents from directors meeting, including agendas, minutes, financial reports, and actuarial reports.*

*All of this shows that EGBERT is hardly operating in a closed or secretive manner as the report would suggest.*

**“Recommendation 1:** The EGBERT should comply with the Brown Act since it is using public dollars to fund benefits for public employees, and using reimbursed public staff time and facilities.” *This recommendation seems to suggest that EGBERT should comply with the Brown Act because it is legally required to do so. However, there is absolutely no legal analysis employed in the report, and the fact is, there is legal authority supporting the EGBERT directors' determination that it is not covered by the Brown Act. Both the text of the Government Code and an Attorney General's opinion support this determination.*

*You and I have discussed this authority at length in the past, so I will not repeat it here. But I am a bit incredulous that the Grand Jury, which is supposed to operate within a legal framework, is reaching conclusions here that not only fail to use any legal analysis, but actually ignore legal precedent that goes against its conclusions and recommendations. I would be happy to provide you with the relevant citations so you can include them in any District response to the report, if you need them.*

**“Finding 2B:** The EGUSD fiscal staff currently projects that in four to five years EGBERT will have a serious gap between the totals of its contributions and invested trust fund dollars and its unfunded liabilities for retirees. There is no current plan on how to answer this future and predicted liability.” *I do not know what the District's staff has projected, but the April, 2008 EGBERT actuarial report indicated that EGBERT's income each year will exceed its benefit expenses through 2014, and it currently has approximately \$44 million in assets that are in trust exclusively to fund retiree medical benefits.*

*That is not to say there is no funding issue with regard to long-term unfunded liabilities. But although there is no definite “plan” to fund these liabilities, the EGBERT directors and the collective bargaining parties have taken actions at various times in recent years to increase funding and to reduce liabilities. They continue to discuss these issues and no doubt will continue to act where necessary and appropriate.*

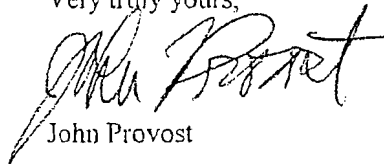
**“Recommendation 2:** The EGUSD needs to prepare for affiliation with an organization such as CalPERS to administer its health and welfare retirement benefits. The District should see that necessary laws are enacted to allow for this transition.” *It is difficult to respond to this because I cannot tell what the Grand Jury means by suggesting CalPERS “administer” District retiree medical benefits.*

*Do they mean EGBERT should in essence purchase retiree healthcare through CalPERS? If so, I would respond that EGBERT has obtained better premium rates from its HMO providers than CalPERS would offer, so that makes no sense. Do they mean CalPERS should truly "administer" the program by collecting contributions, paying HMOs and other providers, determining retiree eligibility, etc.? If so, I have seen absolutely nothing to lead anyone to believe CalPERS could do these things more effectively or cheaply than they are being done now. If they mean that CalPERS should handle EGBERT investments, I do not know why the Grand Jury thinks that would be preferable to what EGBERT is doing now. CalPERS could possibly achieve slightly greater returns, but we do not know (and I venture to say, neither does the Grand Jury) whether the increased volatility that would come with CalPERS's investment allocation would be tolerable for EGBERT and its specific needs.*

*This recommendation also says the District should "see that necessary laws are enacted for this transition." I have no idea what laws they are talking about, nor do I understand what the District could do to ensure that such laws get passed, or by whom. This also begs the question of the role of the collective bargaining parties in this process. The Grand Jury essentially ignores the fact that EGBERT is a creature of collective bargaining. Unless state law is changed in some way as to eliminate the rights of employee organizations to collectively bargain over retiree benefits (which is, practically speaking, not going to happen), neither the District nor EGBERT can force the District's five unions to agree to dissolve EGBERT and go to CalPERS.*

For whatever use you may find them, these are my thoughts on the Grand Jury report and what I would say in response if I were charged with drafting a response. If I can assist you in any way or answer any questions concerning EGBERT and its operations please let me know.

Very truly yours,



John Provost

JP/slj

cc: EGBERT Directors  
Geoffrey Kischuk  
Sam Ginsburg  
Devon Muir

## EXHIBIT 3



**Members of the Board:**  
Jeanette J. Amavisca  
Pollyanna Cooper-LeVangie  
Priscilla S. Cox  
Pamela A. Irely  
William H. Lugg, Jr.  
Chet Madison, Sr.  
Brian D. Myers

**Steven M. Ladd, Ed.D.**  
Superintendent

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September 16, 2008

Board of Directors  
Elk Grove Benefits Employee Retirement Trust  
9510 Elk Grove-Florin Road  
Elk Grove, CA 95624

RE: Opening EGBERT Board Meetings to all Members of the Public

Dear Members of the EGBERT Board of Directors:

The Elk Grove Unified School District Board of Education believes that meetings of the Board of Directors of the Elk Grove Benefits Employee Retirement Trust ("EGBERT") should be open to all members of the community, whether they are District employees, parents of District students, or interested members of the public. While Amendment No. 5 to the EGBERT Trust Agreement expanded the groups of individuals able to attend EGBERT Board meetings, it still does not provide a general right of access for any member of the public.

The Board of Education understands EGBERT's position that, since it is not a local public agency, EGBERT is not subject to the Brown Act (Government Code §54950 *et seq.*). However, there are strong policy reasons why the EGBERT Board should conduct open meetings with publicly available agendas. Even though the law may not require EGBERT to do so, the Board of Education believes that the public interest and the interest of the Elk Grove community will be best served if the EGBERT Board adopts a broad open meeting policy. Accordingly, the Board of Education hereby encourages the EGBERT Board to further amend the Trust Agreement, or adopt a set of Bylaws, to provide that meetings of the EGBERT Board will be open to any interested member of the public.

Sincerely,

Brian D. Myers, President  
Board of Education

cc: Robert Rader, President, AFSCME  
Murt Anderson, Executive Board, ATU  
Mary Deutsch, President, CSEA  
Tom Gardner, President, EGEA  
Armando Fernandez, President, PSWA