

# Preliminary Findings of the LCPOA Election Security Committee

December 11, 2024

## Committee Members:

Mark McLeavy (Chair)	David Boyd	Fletcher Satterwhite
Barbara Bowers	Steve Cooper	Jeff Wax
Robert Fairfield		

## Reason for Initial Investigation

Approximately 117 proxies were submitted in connection with the 2024 Board of Director election for LCPOA. A telephone call with the Inspector of Elections, Ms. Lynn Colclough, indicated that (1) her company, Accurate Voting Services had “issued” no proxies and (2) she did not believe that an Inspector of Elections should be tasked with the responsibility of issuing proxies under California law. Moreover, even though she acknowledged that the LCPOA proxy rules were not followed, she indicated that the ballots associated with the proxies were counted toward the election results. Those ballots clearly determined the outcome of the election.

## Review of Voting Material

Members of the Committee reviewed the election materials sent by Accurate Voting Services to Powerstone. At all times, the review by Committee members was supervised by Ms. Elisa Garibay Community Manager for Powerstone. The review meetings at Powerstone, along with the Committee attendees, were as follows:

1. 11/12/2024 - Mark McLeavy, Fletcher Satterwhite and David Boyd.

The purpose of this meeting was to understand the scope of the election materials sent by Accurate Voting Services to Powerstone, and to confirm whether the proxies used in the election conformed to the election rules adopted by the LCPOA Board of Directors on 2023/06/20 (a copy of which is attached to this Preliminary Findings as **Annex A**).

2. 11/21/2024 - Mark McLeavy, Fletcher Satterwhite, David Boyd, and Jeff Wax

The purpose of this meeting was to review each of the proxies and ballots in detail to determine if the ballots cast by proxies could be conclusively identified.

3. 12/4/2024 - Mark McLeavy, Fletcher Satterwhite, David Boyd, Jeff Wax, Steve Cooper and Barbara Bowers

The purpose of this meeting was to determine whether there was any clear evidence of “double voting” – that is, casting a vote by mailing in the ballot provided by Accurate Voting Services, and simultaneously provided a proxy that was used to cast a second vote.

## Process

All meetings started with the delivery of a box of election materials by Elisa Garibay. Elisa reported that this material was provided in the exact form that it was received from Accurate Voting Services. As noted above, at all times the Committee’s use of the voting materials was supervised by Ms. Garibay. At the conclusion of each

meeting, the election materials were reboxed, and the new box was sealed with tape and returned to Ms. Garibay.

The materials provided in the box were the following:

- Two computer printouts showing the voter rolls
- Blue “Envelope B” rubber banded together in groups
- A stack of proxies delivered to Accurate Voting Services
- The ballots cast in the election

All material was reviewed (although the computer printouts did not appear to contain markings from the Inspector of Elections and, therefore, were not closely examined).

## **Preliminary Findings**

### Proxies

There were 117 proxies in the box. None of them conformed to the election rules adopted by the Board of Directors. 109 of the proxies identified Steve Brown as the proxy holder. 8 of the proxies did not identify a proxy holder. A few of the proxies appeared to have photocopied signatures.

### Ballots

There were two distinct groups of ballots. One set that contained a legend in blue ink on the lower right corner of the ballot with the following words:

**Official Ballot  
Do Not Duplicate  
Accurate Voting Services**

The other set of ballots did not contain this legend.

A call by Elisa Garibay to Lynn Colclough revealed that the ballots with the legend were the ballots completed by the proxy holder after the submitted proxy was validated. In addition, Elisa was told by Ms. Colclough that there were “a few” such ballots delivered to “walk ins” at the Adjourned Annual Meeting. The legend in blue ink is used by Accurate Voting Services to ensure that the ballot is not duplicated and counted more than once. The ballots received by mail from the LCPOA property owners did not contain any legend as there was no need to be concerned about the potential for duplication according to Ms. Colclough.

A total of 120 ballots contained the blue legend. Of those, 119 were marked identically with one vote for Ron Calisher and one vote for Tsun-I Wang. The actual markings on each ballot were close to identical. There was one ballot that was marked with two votes for Tsun-I Wang and no votes for Ron Calisher. The total number of the ballots with the blue legend (120) is consistent with the 117 proxies submitted, plus 3 ballots for walk in votes (as described by Lynn Colclough).

### Potential Double Vote Counting

During the second meeting, Committee members noticed examples where both a proxy was provided and a blue “Envelope B” was provided in the box from Accurate Voting Services – with the same LCPOA property owner listed as the originator of the documents. The Committee was concerned that both the proxy and the Envelope

B might have resulted in double counted ballots. Samples were provided by Ms. Garibay at the request of the Committee members as follows:

The image shows three samples of "Envelope B" forms for the La Cresta Property Owners Association Revocable Proxy. Each form is a business reply mail envelope with a label that includes the association's name, address (PO Box 80477, Rancho Santa Margarita, CA 92688-9916), and a return address. The forms are for different proxy holders: Sergio Vazquez, Yvonne Thompson, and Steve Brown. Each form has a section for the proxy holder to indicate how to vote, with checkboxes for "Yes", "No", and "Abstain". The forms also include a section for the proxy holder to indicate how to vote on the attached ballot, with checkboxes for "Yes", "No", and "Abstain".

After further inspection, it appeared that an Envelope B was provided and completed for each proxy presented to the Inspector of Elections. This fact allowed the Committee to reach the tentative conclusion that there was not likely two ballots associated with properties providing proxies. To confirm this, a follow up question was presented to Ms. Colclough as to whether it was the practice of Accurate Voting Services to have proxy holders complete the Envelope B forms. The response received from Ms. Colclough confirmed that Accurate Voting provided an "Envelope B" to the proxy holder for each proxy presented. As a result, the Committee stopped its review of potential double counted votes.<sup>1</sup>

## Conclusions

None of the proxies accepted by Accurate Voting Services conformed to the applicable election rules adopted by the LCPOA Board of Directors in 2023. Ms. Lynn Colclough stated in a telephone call with a Committee member that she did not follow the LCPOA proxy rules, even though her contract with LCPOA obligated her to do so. Specifically,

- None of the proxies were issued directly to LCPOA members by the Inspector of Elections;
- None of the proxies were given specific and unique numbers; and
- None of the proxies were delivered to the Inspector of Elections one business day prior to the date of the election (assuming that a business day requires a full 24 hours prior to the time of final ballot submission).

If the 117 ballots with the blue legend were removed from the total (allowing the 3 additional blue legend ballots that were submitted by the walk in participants at the Adjourned Annual Meeting to be counted), the vote

<sup>1</sup> A detailed review of all Envelope B's that were mailed in to Accurate Voting Services is possible since those envelopes contain a U.S. Post Office cancellation stamp. That subset of envelopes could be compared to the proxies (all hand delivered) to see if there was any overlap. According to the LCPOA election rules, and consistent with California law, a submitted proxy cannot supersede a previously provided ballot. That review was not undertaken given the time (and cost) of that work. The Committee is willing to complete that work at the request of the Board.

count would have shown that Paul Gaarenstroom and Jim Kramer won the election by a significant margin. The following table demonstrates the corrected vote count:

	As Initially Certified	Improper 117 Proxy Votes	Corrected Vote Count
Auger	18		18
Calisher	224	117	107
Gaarenstroom	249		249
Kramer	247		247
Wang	259	117	142
	997	234	763

Moreover, the percentages associated with the votes cast on behalf of Paul Gaarenstroom and Jim Kramer would have mirrored the 2023 election results for the votes cast for Carla Marvin and Rick DeAndero where there were no proxies presented.

	2024		2023
Gaarenstroom	33%	Marvin	34%
Kramer	32%	DeAndero	32%

**Initial Recommendations**

The Committee recommends that the Board requests a formal letter from the Association’s lawyer to Accurate Voting Services containing the following:

- Notice that the validly adopted election rules were part of the contract with Accurate Voting Services (referenced as “Exhibit B”);
- Notice that the proxy provisions contained in the election rules were not followed by Accurate Voting Services;
- Requesting Accurate Voting Services to provide a recount of the ballots cast for the 2024 election by removing the 117 ballots marked with the distinct blue legend stamp; and
- Furter requesting that Accurate Voting Services recertify the final vote count and identify the election winners.

To the extent possible, the Committee recommends that payment for election services be withheld pending a response from Accurate Voting Services to the letter from the Association’s lawyer.

## LA CRESTA PROPERTY OWNERS' ASSOCIATION

ELECTION RULES AND PROCEDURES

Adopted June 20, 2023

1. **Application of Rules:** These rules shall apply to any meeting of the membership or solicitation of membership approval by a ballot vote (i) regarding matters specified in California Civil Code Section 5100(a), and (ii) any other matter unless the Association's Board of Directors has elected to conduct such vote or solicit such member approval for such other matter in accordance with California Corporations Code Section 7513, in which case the provisions of (A) Corporations Code Section 7513, (B) the Association's Bylaws, and (C) other applicable provisions of the California Corporations Code will apply to the exclusion of these Election Rules and Procedures. The Election Rules contained herein are intended to be in compliance with Civil Code Section 5100 et seq., and should be interpreted as such.
2. **Membership Voting:** Pursuant to the Association's governing documents, every person who acquired title, legal or equitable, to any lot in the Development shall become a Member of the Association. Each owner shall be entitled to cast one (1) vote for each lot owned. When more than one (1) Person owns any lot, all of those Persons are Members. The vote of such lot shall be exercised as they among themselves determine in accordance with the Governing Documents, but in no event shall more than one (1) vote be cast for any lot.
3. **Record Dates:** In the absence of a specific resolution of the Board for any given election, the record date for determining the right of a Member to receive notice and to vote shall be the date that ballots are distributed, and shall include all separate interests reflected in the Association membership list as of such record date. Members may verify and update their individual information contained in the Association's records anytime up to the date ballots are distributed, and are encouraged to review their personal information by the deadline set for submitting nominations of candidates to ensure Members review their personal information at least thirty (30) days before the ballots are mailed. The voter list shall include for each separate interest: (1) name; (2) voting power; (3) the separate interest address, parcel number or both; and (4) the mailing address, if different. The voting period shall start when ballots are distributed and shall close when the ballots are counted. The polls shall close for any Member vote as specified in the ballot materials or as determined by the Inspector(s) of Election at any Member meeting.
4. **Candidate Qualifications:** The affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) Persons. The Directors shall be elected to serve a term of two (2) years. The Directors will be elected at the annual lot owners meeting. Three (3) Directors shall be elected in the odd numbered years and two (2) shall be elected in the even numbered years.

Subject to Civil Code §5105, all Candidates for the Board must meet the following qualifications:

- a.* The Candidate must be an Owner. If title to a separate interest is held by a legal entity, such entity may appoint a natural person to serve or vote on such entity's behalf by delivering evidence of an appropriate written appointment to the Association;
  - b.* The Candidate must be current in the payment of all regular and special assessments. For the purposes of these election rules, "current" means no regular or special assessment is past due by more than thirty (30) days, or such period of time as is specifically defined in the Association's collection policy;
  - c.* The Candidate may not hold a joint ownership interest in the same separate interest as any other candidate or incumbent director; and
  - d.* The Candidate is not eligible to run if the Association is aware or becomes aware of a past criminal conviction that would, if the Candidate were elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code §5806 or terminate the Association's existing fidelity bond coverage.
- 5. **Director Requirements:** To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must be current in the payment of all regular and special assessments.
- 6. **Nominations:** Nomination for election to the Board may be made from any qualified Member. Any Member may nominate themselves as a candidate. Every qualified Member returning a candidacy form by the deadline established in any candidate solicitation shall be included on the ballot and in any associated ballot materials. Nominations from the floor during an election and write-in candidates are not permitted.
- 7. **Ballot Distribution:** A ballot shall be distributed to every Member reflected in the Association membership list on the date that ballots are distributed. Replacement ballots will be provided upon request to anyone who was a Member as of the date when ballots were distributed. The Association shall not deny a ballot to a person with general power of attorney for a Member. A ballot submitted by a person with general power of attorney for a Member, if valid and returned by the applicable deadline, shall be counted by the Association. At least thirty (30) days prior to any election, the Inspector(s) of Election shall deliver or cause to be delivered a ballot to each Member reflected on the voting list, along with a copy of these election rules. Delivery of these election rules may be accomplished by posting them on an internet website and including the corresponding internet website address, in at least 12 point font, the phrase: "The rules governing this election may be found here:".
- 8. **Ballot Materials:** Every Candidate and Member shall have equal access to the Association mailings, newsletters, and website during a campaign, if any such access is provided, for the publication of viewpoints reasonably related to any issue presented for membership vote.
  - a.* **Content:** The Association does not edit or redact any content provided by a Candidate or Member. The Candidate or Member creating such content, and not the Association, is responsible for any published statement.

**b. Limitation on Publication Space Made Available:** So long as each Candidate and/or Member is provided the same opportunities for publication, the Association may restrict the availability of any publication by limiting the printing space made available or the number of words that will be included from each Candidate or Member included in the publication. In the absence of more restrictive limitations adopted by the Board for any particular matter, each Candidate and/or Member shall be limited to no more than 200 words for any one publication. The Board may, in its sole discretion, present a candidacy questionnaire with questions for all interested Candidates and/or Members to complete. If such a questionnaire is provided, then the Association will only print the answers to such questions and may impose a limitation upon the number of words for the response to any question presented.

**9. Proxies:** Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by written proxy executed by such persons or his duly authorized agent and filed with the Secretary of the Association.

**a.** In order to be valid, proxy forms must satisfy the requirements of California Civil Code Section 5130 and be issued directly to the Member giving the proxy by the Inspector of Election. Each proxy form is unique to a specific Member and Lot and may not be transferred.

**b.** Proxy forms must name one or more proxyholders who is an/are Association Member(s).

**c.** Proxy forms may not be altered after completion by the Member giving the proxy. Proxy holders may not alter a completed proxy form in any way or delegate the proxy to a third party.

**d.** If the Member giving the proxy is a corporate entity, the entity must provide written documentation acceptable to the Association identifying the person who has authority to give the proxy. If this documentation is not already on file with the Association it must be provided with the completed proxy form.

**e.** Completed proxies must be delivered to the Inspector of Election no later than one (1) business day prior to the date of the election.

**f.** The granting of a proxy shall not authorize the retrieval of any ballot previously cast. Ballots, once cast, are final and irrevocable.

**10. Availability of Meeting Space:** Access to common area meeting space shall be made equally available, at no cost, to all Candidates and/or Members desiring to use such space for any reason reasonably related to a membership vote. The Association may meet the requirements of this section by hosting a "Meet the Candidates Night", or other such special meeting, so long as every Candidate and/or Member is provided with an equal opportunity to participate in the event.

**11. Inspector(s) of Election:** Prior to the presentation of any issue to the Members for a membership vote, the Board may appoint one (1) or three (3) Inspector(s) of Election. In the absence of a specific appointment by the Board, or in the event that an appointed Inspector is unable or unwilling to serve, then the Members in attendance at any duly held meeting of the Members at which a quorum is present may elect an Inspector or Inspectors to serve.

Any Inspector(s) of Election must be an independent third party. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector(s) of Election. An Inspector may not be: (1) a Director; (2) a Candidate; (3) a Director's relations; or (4) a Candidate's relations.

The Inspector(s) of Election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) of Election deem appropriate, provided that the additional persons satisfy the eligibility requirements for service as an Inspector of Election.

In the absence of a more specific determination by the Inspector(s) of Election, the Association's management company shall prepare and retain the association election materials (i.e., the candidate registration list, voter list, ballots, signed voter envelopes, and any proxies) for a period of three (3) years following any election.

Inspector(s) of Election shall perform all duties impartially, in good faith, to the best of their ability, as expeditiously as practical, and in a manner that protects the interest of all Members of the Association.

**12. Meeting Conduct:** Any counting of ballots shall be done at an open meeting of the membership or the Board of Directors. Any Candidate or Member may observe the count, but shall stand at least five feet away from the Inspector(s) of Election. No person may harass, cajole or otherwise interfere with the Inspector(s) of Election while the count is taking place. Persons not specifically authorized to do so may not touch any secret ballot or other election materials. All ballots will be made available for inspection by any Candidate or Member during regular business hours at the Association's management office once the meeting is concluded. Any person violating this section may be asked by the Inspector(s) of Election or the meeting chair to leave the meeting to prevent further disruption.



**LA CRESTA PROPERTY OWNERS' ASSOCIATION**  
**Revocable Proxy**

ID NUMBER

**This proxy form is not valid unless it has been issued directly to the above-named property owner by the Inspector of Elections and contains a unique number as provided at the bottom of this page. This Proxy is a TWO-page document. Do not sign this document unless it is two separate pages and the voting instructions page is attached. This proxy form may not be altered in any way or it will be void.**

\_\_\_\_\_  
Print Property Owner Name

\_\_\_\_\_  
Property Address or APN

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Date Signed

The above-signed member of the La Cresta Property Owners' Association (LCPOA) hereby revokes all previous proxies and acknowledges receipt of the notice of the Annual Meeting to be held on \_\_\_\_\_, or any adjournment thereof, to vote on the election of the Board of Directors, and appoints as proxy holder:

PROXY HOLDER NAME: \_\_\_\_\_  
(Must be a member of LCPOA)

This proxy gives the proxy holder the power to represent the member at the referenced annual meeting in accordance with the voting instructions shown below and provided on the accompanying page **[CHOOSE ONE OPTION ONLY]**:

☐ This proxy is for quorum purposes only. If this option is selected, do not mark any instructions on the separate voting instructions page. Owner Signature \_\_\_\_\_

OR

☐ Proxy holder may vote as he/she deems proper. If this option is selected, do not mark any instructions on the separate voting instructions page. Owner Signature \_\_\_\_\_

OR

☐ Proxy holder to cast votes as instructed on the separate voting page. If this option is selected, mark instructions on the separate voting page. Owner Signature \_\_\_\_\_

1. This proxy supersedes all proxies previously issued by the property owner and applies only to the address or APN provided above.
2. The property owner may revoke this proxy by doing one of the following prior to receipt of the ballot by the Inspector of Election: a) Informing LCPOA in writing that this proxy is revoked; b) Executing a new proxy delivered at the meeting; or Attending the meeting and votes in person.
3. **LEGAL OWNER OF THE PROPERTY MUST SIGN AND DATE ABOVE. TO THE EXTENT THAT LEGAL OWNERSHIP IS IN THE NAME OF AN ENTITY, SUPPORTING DOCUMENTATION OF AUTHORIZED SIGNATURE MUST BE PROVIDED WITH THIS PROXY OR ON FILE WITH LCPOA.**

The following general instructions apply to this proxy:

1. **No LCPOA member has any obligation to give a proxy to anyone.** Member voting by secret ballot is both effective and secure, and eliminates any question that the vote is recorded as intended by the member.
2. Proxies are not confidential. While the vote cast by the proxy holder is done by secret ballot (and, therefore, confidential), that fact that a proxy was given, the name of the proxy giver, and the name of the proxy holder are all available for inspection by any LCPOA member eligible to vote.
3. Proxies are legally binding for the limited purpose of the election described and should be given only to someone trusted by the proxy giver to vote consistent with the proxy giver's interest.

Once this proxy has been validated at the meeting, the voting instructions page will be detached by the Inspector of Election and given to the proxy holder to cast your vote by secret ballot as directed. Incomplete or conflicting voting instructions may result in this proxy being used for quorum purposes only, as determined by the inspector. This proxy is invalid after completion of the above-noticed meeting or its adjournment.

**IT IS YOUR DECISION AS A PROPERTY OWNER TO TRUST THAT THE PROXY HOLDER WILL CAST YOUR VOTE AS YOU DESIGNATE. THE PROXY HOLDER VOTES BY SECRET BALLOT, SO YOU WILL NOT BE ABLE TO CONFIRM THAT YOUR VOTE WAS CAST AS YOU INSTRUCTED.**

**VOTING INSTRUCTIONS FOR PROXY HOLDER  
FOR OPTION 3 ON PREVIOUS PAGE**

**Proxy holder to cast votes on the Secret Ballot as instructed below:**

**VOTING INSTRUCTION FOR THE ELECTION OF THE BOARD – 3 TOTAL VOTES**

3 Total Votes - You may cumulate (combine) all 3 votes to 1 candidate, cast 1 vote each for any 3 different candidates, or in a combination which totals 3. Fractional voting is not permitted. Ballots with more than 3 total votes will be void. Mark votes with whole numbers.

_____	Candidate 1
_____	Candidate 2
_____	Candidate 3
_____	Candidate 4
_____	Candidate 5
3	TOTAL VOTES

\* Denotes an incumbent candidate