



Thomas A. Schweich  
Missouri State Auditor

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Toad Cove Complex  
Transportation Development  
District  
and  
Toad Cove Resort  
Transportation Development  
District



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Report No. 2012-116

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<http://auditor.mo.gov>



# CITIZENS SUMMARY

## Findings in the audit of the Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District

Background	The Toad Cove Complex Transportation Development District and the Toad Cove Resort Transportation Development District (TDDs) are located in the City of Lake Ozark. The TDDs were organized in May 2008. The TDDs were formed for the purpose of leasing and operating a parking lot. The Horseshoe Bend Special Road District and Camden County are the public entities with jurisdiction over this project, but, because the project is not located on public transportation or right-of-way, neither entity has accepted dedication of the project.
Board of Directors	The property owners have not met to elect successor directors, and the Board has not met since 2009 and has not adopted budgets for the years ended December 31, 2011 and 2010.
Board Controls	The TDDs did not adequately monitor sales tax revenues, and, as a result, the TDDs did not receive approximately \$23,000 in taxes dues to them. After audit staff brought this to the attention of the TDDs' Board Treasurer, the Treasurer and managing corporation prepared amended sales tax returns. The Treasurer does not provide financial records to other Board members for review and approval, and the TDDs did not timely submit 2010 or 2009 financial statements to the State Auditor's office. Both of the TDDs may be subject to a maximum fine of \$292,500 for the late filing, but the law does not establish the agency responsible for assessment and collection authority of these fines.

In the areas audited, the overall performance of this entity was **Poor**.\*

American Recovery and Reinvestment Act (Federal Stimulus)	The Toad Cove Complex Transportation Development District and the Toad Cove Resort Transportation Development District did not receive any federal stimulus monies during the audited time period.
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\*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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# Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District Table of Contents

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State Auditor's Report	2
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Management Advisory Report - State Auditor's Findings	1. Board of Directors .....4 2. Board Controls .....5
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Organization and Statistical Information	7
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# **THOMAS A. SCHWEICH**

## **Missouri State Auditor**

Roger Rand, Chairman  
and  
Board of Directors  
and  
Property Owners,  
Toad Cove Complex Transportation Development District  
and  
Toad Cove Resort Transportation Development District  
City of Lake Ozark, Missouri

We have audited certain operations of the Toad Cove Complex Transportation Development District and the Toad Cove Resort Transportation Development District in fulfillment of our duties under Section 238.272, RSMo. The scope of our audit included, but was not necessarily limited to, the 2 years ended December 31, 2011. The objectives of our audit were to:

1. Evaluate the districts' internal controls over significant management and financial functions.
2. Evaluate the districts' compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the districts, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the districts' management and was not subjected to the procedures applied in our audit of the districts.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District.

A handwritten signature in black ink, reading "Thomas A. Schweich". The signature is fluid and cursive, with the first name "Thomas" and last name "Schweich" clearly legible.

Thomas A. Schweich  
State Auditor

The following auditors participated in the preparation of this report:

Deputy State Auditor:	Harry J. Otto, CPA
Director of Audits:	Regina Pruitt, CPA
Audit Manager:	Randall Gordon, M.Acct., CPA, CGAP
In-Charge Auditor:	Gayle Garrison
Audit Staff:	Wayne Kauffman, MBA

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# Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District Management Advisory Report - State Auditor's Findings

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## 1. Board of Directors

The Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District (TDDs) property owners have not elected successor directors. The TDDs' Board indicated it has not met since 2009, and, as a result, the Board has not adopted annual budgets as required by state law.

### 1.1 Successor directors

The property owners have not met to elect successors for directors whose initial terms on the TDDs' Board have expired.

In 2008, the original property owner established a Board of Directors for each TDD under Section 238.220.2, RSMo, which requires the Directors to be composed of owners or representatives of owners of real property in the district. The terms of the initial directors expired on January 31, 2009, 2010, and 2011. However, those original Directors or others subsequently appointed to the Board by the original Directors continue to serve as the Directors.

Section 238.220.2(3), RSMo, requires successor directors to be elected by the property owners. Section 238.202.2(2)(b), RSMo, allows votes of other qualified voters to be included with the property owners' votes.

### 1.2 Board meetings/budgets

The Boards' Chairman and Treasurer indicated a Board meeting had not been held since 2009, and budgets were not adopted for the years ended December 31, 2011 and 2010. There are no legal requirements which stipulate the frequency of Board meetings and the Board has not adopted a policy on the frequency of Board meetings. Sections 67.010 to 67.040, RSMo, include provisions regarding annual budgets. Board meetings, conducted at least annually, to review and approve the budget appear necessary for the Board to properly fulfill their duties as described in state law.

## Recommendations

1.1 The TDDs' property owners and other qualified voters elect Directors to serve on the Board in accordance with state law.

1.2 The TDDs' Board conduct a meeting at least annually to properly fulfill their duties, including adopting budgets annually as required by state law.

## Auditee's Response

*The Toad Cove Complex TDD property owners and the Toad Cove Resort TDD property owners declined to provide a response.*

*The TDDs' Board provided the following written responses:*

1.1 *The TDD Board recognizes and acknowledges the statutory requirements for election of directors to serve on the Board.*



Toad Cove Complex Transportation Development District and  
Toad Cove Resort Transportation Development District  
Management Advisory Report - State Auditor's Findings

*1.2 The TDD Board will implement plans to conduct a meeting at least annually to properly fulfill their duties.*

## 2. Board Controls

Adequate controls were not implemented to ensure proper supervision of revenues, financial records and transactions, and financial reporting compliance.

### 2.1 Sales tax

Sales tax revenues were not adequately monitored by the TDDs and as a result, taxes due to the TDDs totaling approximately \$23,000 were not received by the TDDs.

The businesses in both TDDs which generate TDD sales tax revenues remit sales taxes collected from customers to the Missouri Department of Revenue (DOR) each month. These businesses are managed by the same corporation. The DOR remits sales taxes to the TDDs based on the information included in the businesses' sales tax returns. The Toad Cove Complex TDD did not receive sales tax payments from the DOR for 7 months during 2011 including 6 consecutive months between June and November 2011.

A review of the sales tax returns, provided by the TDDs' Board Treasurer, for the businesses in both TDDs determined the managing corporation was reporting sales of one of the TDD's businesses under an address location associated with another business located outside the TDDs. The non-TDD business had ceased operations as of November 2010, but sales tax was reported incorrectly from this business location instead of the applicable TDD businesses. After we brought this to the attention of the TDDs' Board Treasurer, the Treasurer worked with the managing corporation to prepare amended sales tax returns for the businesses in both of the TDDs. The amended sales tax returns, which had been submitted to the managing corporation for review, indicate approximately \$23,000 is due to the TDDs.

Adequate management practices to ensure the TDDs are receiving appropriate sales tax receipts would include a review of the monthly payments from the DOR for reasonableness. Payments which are not consistent with expectations should be investigated by making inquiries with the reporting businesses and the DOR.

### 2.2 Supervision

The TDDs' Board Treasurer maintains financial records including financial statements, bank statements, bank reconciliations, and invoices; but these records are not submitted to other Board members for review and approval. Nine disbursements of the TDDs were reviewed and none of the nine invoices, totaling over \$32,000, were reviewed and approved by other Board members. In addition, a detailed invoice could not be provided to support a \$3,000 payment.



## Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District Management Advisory Report - State Auditor's Findings

Without adequate reviews of financial records, the TDDs' Board has less assurance the financial reports and transactions are proper.

### 2.3 Financial statements

The TDDs did not submit the 2010 or 2009 financial statements to the State Auditor's office (SAO) timely. The 2010 financial statements were submitted on August 18, 2011, 110 days after they were due. The 2009 financial statements were submitted on August 18, 2011, 475 days after they were due. Both of the TDDs may be subject to a maximum fine of \$292,500 for the late filing. However, the law does not establish the agency responsible for assessment and collection authority of these fines (see report No. 2012-13, *Transportation Development Districts*, issued in February 2012). The 2011 financial statements were filed in April 2012, as required.

Section 105.145, RSMo, requires TDDs to file annual financial statements with the SAO. Section 105.148.8, RSMo, states any district that fails to timely submit a copy of the annual financial statement with the SAO shall be subject to a fine not to exceed \$500 per day. 15 CSR-40.30.030 provides if a political subdivision is audited by an independent auditor, a copy of the audit report can be filed in lieu of a separate financial report. The annual financial report is to be filed within 4 months of the entity's fiscal year end, while an audit report is to be filed within 6 months of the entity's fiscal year end.

### Recommendations

The TDDs' Board:

- 2.1 Ensure reviews are performed to verify the reasonableness of sales taxes received.
- 2.2 Review and approve financial reports and transactions prepared by the Board Treasurer and retain original invoices to support all disbursements.
- 2.3 File annual financial statements with the SAO timely.

### Auditee's Response

*The TDDs' Board provided the following written responses:*

- 2.1 *The TDD Board will implement procedures to ensure that reviews are performed to verify the reasonableness of sales taxes received.*
- 2.2 *The TDD Board will implement procedures to cause review and approval of financial reports and transactions and will implement procedures to retain original invoices to document all disbursements.*
- 2.3 *The TDD Board will implement procedures to assure that annual financial statements are timely filed in the future.*



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# Toad Cove Complex Transportation Development District and Toad Cove Resort Transportation Development District Organization and Statistical Information

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The Toad Cove Complex Transportation Development District and the Toad Cove Resort Transportation Development District (TDDs) are located in the City of Lake Ozark. The TDDs were organized in May 2008 by petition of the owner of property within the proposed TDDs. The retail establishments located within the TDDs collect and remit the TDD sales tax to the Missouri Department of Revenue (DOR). In turn, the DOR remits the monies to the TDDs.

The TDDs have a fiscal year end of December 31 and did not have independent audits performed for the 2 years ended December 31, 2011.

The TDDs were formed for the purpose of leasing and operating a parking lot located outside the districts' boundaries for use by the public and the TDDs' businesses with an initial estimated cost of between \$2 million and \$3 million. The terms of the subsequent lease agreement indicate maximum estimated costs total approximately \$7.5 million although an appraisal of the fair rental value indicates a fair value estimated cost of approximately \$3.1 million for the leased property. The property owner at the time the TDDs' were formed owned the revenue producing business properties and the parking lot. Ownership of the revenue producing business properties in the Toad Cove Complex TDD and the Toad Cove Resort TDD changed in January 2010. The original owner no longer has controlling ownership of the TDDs' revenue producing properties but still owns the parking lot. The TDDs' Board of Directors passed a 1-cent (1 percent) sales tax for 40 years. The Horseshoe Bend Special Road District and Camden County are the public entities with jurisdiction over this project. However, because the project is not located on public transportation or right-of-way, neither entity has accepted dedication of the project.

## District Boards

The TDDs' Boards, appointed by the property owner, act as the policy-making body for both districts' operations. The Boards' five members serve 3-year terms without compensation. The same members serve on both Boards. Members of the Boards at December 31, 2011, were:

Roger Rand, Chairman  
Christina Vandervort, Secretary and Vice Chair  
Merlyn Vandervort II, Assistant Secretary  
Rhonda Martin, Treasurer  
Ray Salassa, Member

## American Recovery and Reinvestment Act 2009 (Federal Stimulus)

The Toad Cove Complex Transportation Development District and the Toad Cove Resort Transportation Development District did not receive any federal stimulus monies during the 2 years ended December 31, 2011.



Toad Cove Complex Transportation Development District and  
Toad Cove Resort Transportation Development District  
Organization and Statistical Information

Financial Activity

A summary of the districts' financial activity for the 2 years ended December 31, 2011, follows:

		Toad Cove Complex TDD	
		Year Ended December 31,	
		2011	2010
Receipts:			
Sales taxes	\$	3,819	19,696
Total Receipts		3,819	19,696
Disbursements:			
Parking lot lease		3,877	23,733
Repairs and maintenance		958	414
Electricity		581	1,125
Total Disbursements		5,416	25,272
Receipts Over (Under) Disbursements		(1,597)	(5,576)
Beginning Cash Balance		1,748	7,324
Ending Cash Balance	\$	151	1,748

		Toad Cove Resort TDD	
		Year Ended December 31,	
		2011	2010
Receipts:			
Sales taxes	\$	22,104	15,788
Total Receipts		22,104	15,788
Disbursements:			
Parking lot lease		18,601	18,057
Repairs and maintenance		4,054	0
Electricity		825	0
Total Disbursements		23,480	18,057
Receipts Over (Under) Disbursements		(1,376)	(2,269)
Beginning Cash Balance		1,501	3,770
Ending Cash Balance	\$	125	1,501