



COUNTY of NAPA

BOARD OF SUPERVISORS

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June 17, 2008

The Honorable Raymond Guadagni
Presiding Judge
Superior Court of California, County of Napa
825 Brown Street
Napa, CA 94559

FILED

JUN 17 2008

Clerk of the Napa Superior Court
By: C. Bu
Deputy

Dear Judge Guadagni:

As required by Penal Code Section 933(c), enclosed is the response to the 2007-08 Grand Jury Final Report on the Renovation of Farmworker Housing Centers by the Napa Valley Housing Authority. Responses to findings and recommendations affecting local government entities other than the County are not included in the Board's response when those entities are not under the jurisdiction of the County Board of Supervisors.

Grand Jury activity takes place over the course of a number of months. As such, their findings and recommendations often address issues which county departments have already identified as problems and to which solutions are in the process of being developed. We note that a number of the Grand Jury's recommendations have been implemented or are in the process of being implemented at this time.

The Board acknowledges the members of the 2007-08 Grand Jury for the time they have devoted in preparing their report.

Sincerely,

Brad Wagenknecht, Chair
Napa County Board of Supervisors

Enclosure

cc: Foreman, 2007-08 Grand Jury

Received
Napa Superior Court

JUN 17 2008

Court Executive Office

**NAPA COUNTY
RESPONSE TO GRAND JURY REPORT
FISCAL YEAR 2007-08**

**FINAL REPORT ON RENOVATION OF FARMWORKER HOUSING CENTERS
BY THE NAPA VALLEY HOUSING AUTHORITY**

Recommendation No. 1: A training manual be developed and training provided for new members of any County agency and advisory group. The training must include the legal basis for that entity and other regulations that are important to know in carrying out their role and the requirements of the Brown Act.

Response, Board of Supervisors: The recommendation will be implemented. In 2005 a training workshop was created for Board, Committee and Commission members and staff. Integral aspects of this training include the Brown Act, Napa County policies related to boards, commissions and committees, procedures for agendas, minutes and meeting conduct, and roles and responsibilities for commission members. Due to the resignation of the Clerk of the Board in 2006 and the arrival of the new Clerk of the Board in February 2007 no trainings were held in the FY 06/07. The Clerk of the Board in cooperation with County Counsel is preparing to conduct annual training sessions beginning in FY 08/09.

Recommendation No. 2: All Joint Powers Authorities (JPA) have a clear, defined set of rules for its members as they come from different municipalities with different operating procedures. The JPA members must know which rules are to be followed. It is the responsibility of the JPA Counsel to update members as rules change.

Response, Board of Supervisors: The recommendation has been implemented. The County Counsel's Office routinely updates JPAs and other agencies it advises whenever there is a rule change. When an agency's bylaws change or a joint powers agreement changes, the change needs to be approved by the agency, at which time the change is discussed with the agency's governing board at a public meeting. When new members join a JPA, or some other agency represented by the County Counsel's office, meetings will be scheduled with those new members to ensure to the maximum extent possible that the new member(s) are fully familiar with all of the operating procedures of the JPA or other agency. Public sessions to discuss changes in state law that need to be brought to the attention of the JPA or agency will also be scheduled as warranted.

Recommendation No. 3: Members of these County agencies and advisory groups attend the meetings, read the agenda material before they vote and remain vigilant. As a matter of policy, they not simply rely upon staff but rather follow the precept outlined in Ordinance 05-01, to read and understand what comes before them.

Response, Board of Supervisors: The Board of Supervisors understands that the Grand Jury recommendation to follow the precept outlined in Ordinance No. 05-01 reflects the conclusions of the Grand Jury that county boards and agencies should attend meetings regularly, read the agenda material before they vote and remain vigilant, but not that advisory board members need necessarily comply with the procedural requirements of Ordinance No. 05-01 related to members signing statements that they have read and understood all materials associated with resolutions or ordinances. The Board agrees with this recommendation and it has been implemented to the extent legally possible. The Clerk of the Board has implemented a procedure ensuring that members of the Board of Supervisors receive their agenda materials not later than the Thursday before the meeting. By the end of 2008, the County will have implemented a similar procedure for the benefit of members of the various county boards and agencies. These new procedures will ensure that those individuals receive their written material not less than four (4) calendar days prior to the meeting to be consistent with the process that is presently in place insofar as the Board of Supervisors is concerned. Additionally, all members of boards and agencies will be reminded periodically that they are able to discuss with staff matters appearing on the agenda if needed to understand the implications of one or more agenda items so long as it occurs in a manner that is consistent with the Brown Act (i.e. so long as an *in seriatim* meeting does not occur).

Recommendation No. 4: The Board of Supervisors, acting as the NCHA, take steps to restore the public's trust in the management of farmworker housing.

Response, Board of Supervisors: The recommendation has been implemented. To this end, the County or Napa County Housing Authority has:

- Taken over full responsibility/operation/ownership of the centers;
- Established multiple policies for financial management and other aspects of the operation of the centers;
- Established the Napa County Housing Commission, an 11-member advisory group with broad community representation;
- Reported status of the centers publicly at monthly Housing Commission and Housing Authority meetings;
- Auditor/Controller has fully integrated the budget/expenditures in the County system;
- Staff has made presentations to industry organizations, whose representatives are included on the newly-established Napa County Housing Commission (June 2007), comprised of a number of industry representatives, of organizations such as Napa Valley Vintners, Napa County Farm Bureau, Grape Growers Association, etc.;
- The County Housing Authority will conduct an audit for the Fiscal Year ending June 30, 2008 – the first year of its operation of the system.

Recommendation No. 5: For any future capital improvement project of NCHA, a professional project manager or the Public Works Department be retained and the project be sent out for bid after a building permit is issued and the financing for the project is in place.

Response, Board of Supervisors: This is not a matter within the purview of Board of Supervisors Sitting as as the Napa County Housing Authority Board, the Board has indicated that this recommendation will be implemented as capital improvements are identified. The NCHA has formally adopted the procurement policies of the County. In the event that any capital improvement projects are undertaken by the NCHA, the NCHA Board has committed to hiring a professional project manager or utilizing the Napa County Public Works Department to oversee such projects. The NCHA Board has also committed to not sending a project out to bid until a building permit is issued and financing for the project is in place.

Recommendation No. 6: Agreements to which local governmental agencies are parties not contain false statements in the recitals.

Response, County Counsel: The recommendation has been implemented. County Counsel agrees with the recommendation that agreements to which local government agencies are parties should not contain false statements in the recitals of agreements (or anywhere else in agreements for that matter). However, the request of the Grand Jury for a response to their recommendation is somewhat disingenuous since the Grand Jury requests a response to a recommendation that contains an unwarranted assumption (i.e. the recommendation assumes the first sentence in Recital L to the settlement agreement was a false statement). County Counsel respectfully disagrees with the Grand Jury's characterization of the referenced recital as a false statement.

Based on County Counsel's research, the County's position was and continues to be that the Executive Director at no point in time was authorized to sign change orders by the Napa Valley Housing Authority (hereafter "NVHA") for the reasons set forth below. Additionally, when the entire agreement is considered as a whole, it is hard to imagine how one could conclude it is a statement of fact; much less a false statement of fact. Recital L clearly was not statement of fact but simply set forth in the settlement agreement the county's legal conclusion that the Executive Director did not have authority to sign change orders.

County Counsel notes that even the City of Napa in its Grand Jury response to Recommendation #6 conceded that Recital "L" was simply a indication of the County's legal position; not a statement of fact. A brief explanation of the basis of the County Counsel's legal conclusion that the Executive Director never secured the necessary authorization to sign change orders may be helpful in understanding why County Counsel believes the Grand Jury's recommendation could and should have been more accurately phrased.

The resolutions authorizing the Executive Director to sign the “contract documents” for each project were silent on the issue of change orders. These resolutions awarded the construction contracts with specific base bids to the lowest bidders—\$1,317,000 on the Calistoga project to Helmer & Sons, Inc. and \$1,155,590 on the Mondavi project to Bollo Construction—and authorized the Executive Director to sign the related “contract documents.” These resolutions authorized only the signing of the two base bid documents for the amounts indicated in the base bid documents. The resolutions could not reasonably be construed as authorizing the Executive Director to sign the change orders which ultimately resulted in the spending well over a million dollars beyond the base bid amounts without the NVHA’s approval and compliance with the California Public Contract Code. Nor did the resolutions contain as attachments the industry form contracts which were put together by the Executive Director and the architect after the NVHA board adopted the resolutions awarding the contracts. While these industry form contracts appear to give the Executive Director the authority to sign change orders, the industry form contract purporting to give the Executive Director the authority to approve change orders was never presented to the NVHA board for review, approval and signature by the Chair.¹ Under the JPA (Section 8(d)), all contracts requiring expenditure of funds must be approved by the NVHA Chair. Nor are the bylaws of the JPA of any help since the bylaws do not give the Executive Director the authority to independently enter into construction contracts or obligate the funds of the NVHA to approve project changes and related cost increases.

Finally, the NVHA could not delegate to the Executive Director the authority to approve change orders even if it wished to do so since such action would be *ultra vires*. The NVHA is a joint powers authority between the City of American Canyon (a general law city), the housing authority of Napa County and the housing authorities of the cities of St. Helena, Calistoga, and Yountville. As a joint powers agency, the JPA may exercise only those powers common to the contracting members (Gov. Code 6502). Unlike counties, general law cities do not have statutory authority to allow post-award administratively-approved change orders – unless the general law city’s board has elected to use the Uniform Construction Cost Accounting Act (Public Contract Code section 22030 et. seq.), which did not occur in this case. Because the general law city member could not authorize administrative approval of change orders without complying with the requirements of the Public Contract Code the JPA could not do so either.

If the Executive Director had erroneously assumed² the county rules relating to Public Works construction contracts were applicable, there still would have been no authorization for the magnitude of the change orders he signed. In the case of counties, the maximum change order that may be delegated under the Public Contract Code for contracts of the size herein involved would have been between \$70,000 and \$78,000. Any

¹ This authority would have increased the authority of the Executive Director to expend NVHA funds beyond the base bid amounts to an unknown but potentially significant degree which in turn would have required NVHA express approval. See Section 8(d) of JPA.

² County Counsel notes that the Executive Director failed to seek legal advice from the County Counsel’s Office regarding his authority to execute change orders at any point in the process.

larger amount could not be delegated and would have required express approval by the governing body.

If the Executive Director had erroneously assumed the City of Napa rules relating to Public Works Contracts were applicable the Executive Director knew, or should have known, that he had no authorization to approve change orders absent an express delegation of change order authority of a specific percentage of the original contract amount. The Napa City Attorney has advised that the Napa City Council does not grant blanket change order authority in the case of public works construction contracts. The City Council expressly approves change order authority of construction contracts on a case by case basis. For example, the Napa City Council authorized the Public Works Director to execute change orders relating to the 1st Street Bridge bid in an amount not to exceed 10% of the original bid. As noted previously, the resolution approving the two construction contracts contained no change order authority whatsoever.

Finally, County Counsel also respectfully disagree with the Grand Jury's conclusion that by not objecting to the various cost overruns when "updates" of the status of the Farm Labor Centers were presented to the NVHA board the NVHA board implicitly approved them. The rules and regulations discussed above, among others, eliminated any possibility that the Executive Director was, or could have been, granted implicit authority to sign change orders as a result of the NVHA board not commenting on the various agenda items the Executive Director prepared providing the NVHA board with updates but not directly asking the NVHA for authority to sign change orders.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the County Counsel.

Recommendation No. 7: The NCCDPD assure that thorough plan checks are done and that permits are issued on a timely basis.

Response, Director of Conservation, Development & Planning: The recommendation has been implemented. Since events described in the Grand Jury report took place, there has been a change in leadership in the County's building department, and there has been a focus on reducing processing times associated with plan reviews and quality control. The department has established a goal of completing all standard plan reviews within four weeks, and meets this goal an increasing percentage of the time. The department also provides a mechanism for applicants to have larger projects reviewed by an external plan review firm if they desire expedited review.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Director of Conservation, Development & Planning.

Recommendation No. 10: All supporting documents for the Agenda for public agency meetings in Napa County list the name of the author(s).

Response, County Executive Officer: We agree that it is important that it be clear which staff person is accountable for agenda items presented at public agency meetings. Since the implementation of the AgendaNet system in 2004, all Board of Supervisors agenda items include the name of the agenda item's author and contact information. The same is true for all boards where the Board of Supervisors acts as the governing body. However, the entirety of this recommendation as it relates to identifying "all supporting documents" will not be implemented because it is not reasonable. Supporting documents attached to agenda items typically include things like resolutions, ordinances and other legal documents, staff reports, reports from consultants or outside agencies, and letters and other submittals from businesses and community members. We do not believe it is reasonable to require all of these documents to list the name of the author(s). Again, in our view, the critical issue here is that it be clear who is accountable for the agenda item as a whole. We believe the accountability rests in part with the agenda item author, but, ultimately, with the department head who must either authorize each agenda item or delegate authorization authority.

County staff does not have any control over agenda requirements for non-County public agencies for which the Board of Supervisors does not serve as the governing body.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the County Executive Officer.

Recommendation No. 11: The NCHA establish a capital improvement fund for the farmworker housing centers.

Response, Board of Supervisors: The recommendation will be implemented by June 30, 2008. NCHA Staff has already generated a detailed list of repairs and improvements that will be necessary in the next fiscal year. This list – and associated cost estimates – will be used by the end of 2008 to generate a comprehensive Capital Improvement Program.

Staff will recommend to the Napa County Housing Commission and the Board of the NCHA a request to modify the appropriate budgets to establish both revenue and expenditure accounts for Capital Improvements to the farm worker centers.

Recommendation No. 12: Governmental entities must avoid having one individual serve in an executive position with access to financial resources for two organizations. Such a policy will significantly reduce the opportunity for conflict of interest and commingling or misallocation of funds.

Response, Board of Supervisors: We agree that, ideally, it would be beneficial for each government entity, no matter what the size, to have at least one manager who is not

affiliated with another public agency. At the least, this would insure that there is a disinterested staff person who can assist the governing body in managing contracts for services and perhaps somewhat reduce the risk of misallocation of funds. However, this recommendation will not be implemented because it is not reasonable. As a practical matter, many government agencies are so small that this would not be cost-effective. In our view, the benefits associated with the limited risk reduction that might be achieved by the policy recommended by the Grand Jury needs to be weighed against the costs on a case-by-case basis.

We believe that the crux of the problem that allowed for comingling funds was not the fact that the same person served as Executive Director of both agencies, but, rather, the lack of adequate internal financial controls at the City of Napa. If appropriate internal controls had been in place, the comingling would not have been allowed to occur, regardless of who the Executive Director was. And, without adequate internal controls, comingling of funds could still occur even if the executive director of one agency did not work for another.