

**CONTRA COSTA COUNTY CIVIL GRAND JURY REPORT NO. 1105
"ETHICS AND TRANSPARENCY ISSUES IN CONTRA COSTA COUNTY"**

BOARD OF SUPERVISORS RESPONSE

SECTION 2: "NEPOTISM ALIVE IN CEMETERY DISTRICT"

FINDINGS - *Section 933.5(a) requires a response to the designated findings of the Grand Jury.*

1. There was a failure to advertise/post the open position, in compliance with the Maddy Act.

Response: Partially agree. In compliance with the Maddy Act of 1975 and Board Resolution No. 2002-377 "Board Advisory Body Procedures", the Board of Supervisors declared the Cemetery District seat vacant on August 10, 2010 (Attachment A) and directed the Clerk of the Board to post the vacancy. The Clerk is required to post unscheduled vacancies such as this one "...within 20 days after the vacancy occurs" (Attachment B). The Clerk of the Board did post the vacancy as ordered by the Board; however, the date of the posting was September 9, 2010, which was beyond the time requirements specified in state law and Board policy.

2. The initial recommendation to appoint the spouse of the Supervisor for the open special district position was not consistent with the appointment procedure.

Response: Disagree. The Board policy governing appointment procedures provides that nominating authority for certain District appointments is the responsibility of individual District Supervisors (Attachment B). In the case of the Cemetery District appointment, the District III Supervisor has the responsibility to nominate an applicant for appointment to the Board of Supervisors. In the case of this appointment, the District III Supervisor recused herself from both the interview and nomination process after her spouse had indicated his interest in applying for the vacant seat. The Board then acted to appoint a separate Supervisor to act on behalf of the full Board and carry out the interview and nomination process, returning with a recommendation to fill the vacant seat.

3. At a minimum, these improprieties created the appearance of nepotism.

Response: Disagree. The Board of Supervisors' decision to appoint a separate Supervisor to oversee the interview and nomination process and the District III Supervisor's recusal were undertaken specifically to ensure that the appearance of nepotism did not occur.

4. The formation of an outside, impartial panel to interview and select an applicant was appropriate.

Response: Agree.

5. The adoption of a County anti-nepotism policy was proper.

Response: Agree.

RECOMMENDATIONS - *Section 933.05(b) requires a response to the designated recommendations of the Grand Jury.*

1. The County should adopt a policy requiring the formation of impartial selection committees in situations where there are conflicts of interest, real or perceived, that cannot be adequately addressed by a normal recusal process

Response: The recommendation has been implemented and is being publicized. Section I(1) of Resolution No. 2002/377 "Board Advisory Body Procedures" (Attachment B), provides that, "A screening committee may be selected to assist the Board, or a member of the Board, in the interview and selection of applicants for appointment". This section has been reviewed by the Internal Operations Committee, which has determined that this policy is sufficient and should remain in force.

In February 2011, the Board of Supervisors adopted an anti-nepotism and anti-favoritism policy (Attachment C) for purposes of evaluating Board appointment requests. This is the only policy of its kind known to exist within the nine Bay Area counties and is more stringent than specifications outlined in the Maddy Act. The policy is attached to all applications for Board appointments and can be found by the public on the county website in the Board of Supervisors section.

SECTION 3: "DECOMPOSING THE KELLER CANYON MITIGATION FUND"

FINDINGS - *Section 933.5(a) requires a response to the designated findings of the Grand Jury.*

1. Proper oversight of the KCMF by the BOS is lacking, which provides opportunity for impropriety.

Response: Disagree. The Board of Supervisors makes an annual appropriation of KCMF funds during the annual budget process. In addition, prior to policy enhancements to the KCMF allocation process approved by the Board of Supervisors on May 24, 2011 (*Attachment D*), the District V Supervisor would submit an allocation plan to the Board of Supervisors each fiscal year for consideration and approval. The 2010/11 KCMF allocation plan, as approved by the Board of Supervisors, is included for reference (*Attachment E*)

2. The KCMF has distributed grants without the required applications, work plans, and follow-up reports.

Response: Agree.

3. The KCMF, as currently administered, is not transparent, and lends itself to a perception of being a "political slush fund," (defined as "A sum of money used for illicit or corrupt purposes, as for buying influence." (Webster's New Universal Unabridged Dictionary)).

Response: Disagree. Prior to policy enhancements to the KCMF Allocation Process approved by the Board of Supervisors on May 24, 2011 (*Attachment D*), the District V Supervisor would submit an allocation plan to the Board of Supervisors each fiscal year for approval. A copy of the 2010/11 allocation plan, as approved by the Board of Supervisors, is included for reference (*Attachment E*).

4. Ethical concerns are raised when grants are awarded to organizations whose boards include members of the granting committee.

Response: Agree. To address real or perceived conflicts of interest, the Board of Supervisors approved Resolution No. 2002/376 "*Policy for Board Appointees Governing Conflict of Interest & Open Meetings*" (*Attachment F*), which revised the Conflict of Interest policy for certain Board appointees to local appointive bodies. In addition, Contra Costa County complies with Assembly Bill 1234 (Chapter 700, Statutes of 2005) which requires certain public officials to complete Ethics Training on a bi-annual basis.

5. Despite the fact that \$14 million has been distributed over the past ten years, no annual report has been issued. At the time of the writing of this report, no County-linked website to the KCMF could be found.

Response: Partially Disagree. The new Annual Report requirement was approved by the Board of Supervisors on May 24, 2011 (*Attachment D*). As of May 26, 2011, the date that the Grand Jury submitted Report No. 1105 to the Board of Supervisors, a county-linked website for the KCMF was active on the District V Supervisor's website.

6. Due to a lack of publicly available information about the KCMF, not all non-profit organizations, nor the public, are aware of the fund its mission, and its processes, and thus are unable to benefit from it.

Response: Partially Disagree. The Board of Supervisors makes an appropriation of KCMF funds during

the annual budget process. In addition, prior to policy enhancements to the KCMF allocation process approved by the Board of Supervisors on May 24, 2011 (*Attachment D*), the District V Supervisor would submit an allocation plan to the Board of Supervisors each fiscal year for approval. A copy of the 2010/11 allocation plan, as approved by the Board of Supervisors, is included for reference (*Attachment E*).

RECOMMENDATIONS - Section 933.05(b) requires a response to the designated recommendations of the Grand Jury.

1. The BOS should direct the County Administrator's Office to more closely monitor the KCMF activity and ensure compliance with BOS approval requirements, as well as application, work plan and performance reporting requirements.

Response: The recommendation will not be implemented. The Finance Committee reviewed the KCMF grant process and made policy enhancement recommendations to the Board of Supervisors. The recommendations were approved by the Board of Supervisors on May 24, 2011 (*Attachment D*) and have been implemented.

2. The BOS should require training on and compliance with a County ethics policy for all KCMF Committee members.

Response: The recommendation has been implemented. On April 14, 2011, the Board of Supervisors approved a recommendation from the Finance Committee to establish the "Keller Canyon Mitigation Fund Review Committee" (*Attachment G*). The Committee members, once appointed, are required to complete a conflict of interest training program pursuant to Section 3 of Resolution No. 2002/376 "Policy for Board Appointees Governing Conflict of Interest & Open Meetings" (*Attachment F*).

3. An annual report for the KCMF should be issued, and a County-linked website should be established to clarify mission, application and selection process and requirements.

Response: The recommendation has been implemented. On May 24, 2011, the Board of Supervisors adopted several policies, as recommended by the Finance Committee, governing the use of Keller Canyon Mitigation funds (*Attachment D*). Section II(E) of the policy requires that an Annual Report be filed with the Board of Supervisors no later than September 30th of each year for the prior fiscal year. Section II(A) of the policy requires that information regarding the KCMF grant process be posted on the District V and County websites.

4. The BOS should consider re-establishing the Finance Committee oversight of grant awards.

Response: The recommendation will not be implemented. The Finance Committee reviewed the KCMF grant process and made policy enhancement recommendations to the Board of Supervisors. The recommendations were approved by the Board of Supervisors on May 24, 2011 (*Attachment D*) and have been implemented.

5. The BOS should ensure that all County mitigation funds, or similar funds under the control of a single Supervisor, receive proper supervision.

Response: The recommendation has been implemented. In December 2008, the Board of Supervisors referred the issue of County Special Revenue Funds to the Internal Operations Committee for review and potential establishment of a protocol for allocating funding from such funds. After several months

of study, the IOC referred a draft Special Revenue Policy to the Finance Committee for review in August 2009. In December 2009, the Board of Supervisors approved a policy statement affirming that responsibility for administration of Special Revenue funds was to remain with the Supervisor of the District in which the revenue was generated (*Attachment H*).

OVERALL FINDINGS

1. Avoiding the appearance of unethical behavior especially with conflicts of interest and nepotism, is crucial to public confidence in governance.

Response: Agree.

OVERALL RECOMMENDATIONS

1. Each of the 19 cities, 28 independent special districts and the County should review and report to the Grand Jury on the adequacy of its:

- a) nepotism policy;**
- b) conflict of interest policy; and**
- c) ethics training policy.**

Response: The recommendation has been implemented. The Board of Supervisors makes the following determinations regarding the adequacy of each policy outlined above:

a) Nepotism Policy: On October 26th, 2010, a report from the Public Protection Committee to the Board of Supervisors noted that Committee staff did not find a policy prohibiting family members of Supervisors from being appointed to local committees, commissions, or bodies in the neighboring nine Bay Area counties (*Attachment I*). The Board of Supervisors approved Resolution No. 2011/55 (*Attachment C*) prohibiting family members of Supervisors from receiving such appointments and is thus the only county in the Bay Area known to have such a policy.

b) & c) Conflict of Interest and Ethics Policies: In 2002, the Board of Supervisors approved Resolution No. 2002/376 "*Policy for Board Appointees Governing Conflict of Interest & Open Meetings*" (*Attachment G*), which revised the Conflict of Interest policy for certain Board appointees. In addition, Contra Costa County complies with Assembly Bill 1234 (Chapter 700, Statutes of 2005) which requires certain appointees to local legislative bodies (committees, commissions, and advisory bodies) to complete Ethics Training on a bi-annual basis.