



Lou Ann Texeira  
Executive Officer

**MEMBERS**

Federal Glover  
County Member  
Michael R. McGill  
Special District Member  
Martin McNair  
Public Member  
Dwight Meadows  
Special District Member  
Rob Schroder  
City Member  
Don Tatzin  
City Member  
Gayle B. Uilkema  
County Member

**ALTERNATE MEMBERS**

Sharon Burke  
Public Member  
Tom Butt  
City Member  
George H. Schmidt  
Special District Member  
Mary N. Piepho  
County Member

July 13, 2011

July 13, 2011  
Agenda Item 11

Contra Costa Local Agency Formation Commission  
651 Pine Street, Sixth Floor  
Martinez, CA 94553

**Contra Costa County 2010-2011 Grand Jury Report No. 1105  
“Ethics and Transparency Issues in Contra Costa County”**

Dear Members of the Commission:

On May 31, 2011, Contra Costa LAFCO received Contra Costa County Grand Jury Report No. 1105 “Ethics and Transparency Issues in Contra Costa County” (Attachment 1).

The subject report deals with ethical behavior and transparency (openness) by public officials.

The California Government Code requires that the responding entity reply to each finding and recommendation. The response is due no later than August 24, 2011.

LAFCO staff has reviewed the report and drafted a response (Attachment 2) for the Commission’s consideration.

RECOMMENDATION

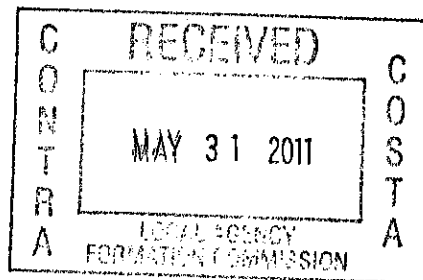
It is recommended that the Commission approve the attached response to Grand Jury Report No. 1105 entitled “Ethics and Transparency Issues in Contra Costa County”, with any changes as desired, and direct LAFCO staff to forward the response prior to August 24, 2011.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER

Attachments:

- 1 - Grand Jury Report No. 1105 “Ethics and Transparency Issues in Contra Costa County”
- 2 - Draft Response



May 26, 2011

Lou Ann Texeira, Executive Officer  
Local Agency Formation Commission  
651 Pine Street – 6<sup>th</sup> Floor  
Martinez, CA 94553

Dear Ms. Texeira:

Attached is a copy of Grand Jury Report No. 1105, "Ethics and Transparency Issues in Contra Costa County by the 2010-2011 Contra Costa Grand Jury.

In accordance with California Penal Code Section 933.05, this report is being provided to you at least two working days before it is released publicly.

Section 933.5(a) of the California Government Code requires that (the responding person or entity shall report one of the following actions) in respect to each finding:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees with the finding.
- (3) The respondent partially disagrees with the finding.

In the cases of both (2) and (3) above, the respondent shall specify the portion of the finding that is disputed, and shall include an explanation of the reasons therefor.

In addition, Section 933.05(b) requires that the respondent reply to each recommendation by stating one of the following actions:

1. The recommendation has been implemented, with a summary describing the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis. This response should explain the scope and parameters of the analysis or study, and a time frame for the matter to be prepared for discussion. This time frame shall not exceed six months from the date of the publication of the Grand Jury Report.


Lou Ann Texeira, Executive Officer  
May 26, 2011  
Page 2

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation thereof.

Please be reminded that Section 933.05 specifies that no officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to its public release. Please insure that your response to the above noted Grand Jury report includes the mandated items. We will expect your response, using the form described by the quoted Government Code, no later than **August 24, 2011.**

It would be greatly appreciated if you could send this response in hard copy to the Grand Jury as well as by e-mail to [jcuev@contracosta.courts.ca.gov](mailto:jcuev@contracosta.courts.ca.gov) (Word document).

Sincerely,



LINDA L. CHEW, Foreperson  
2010-2011 Contra Costa County Civil Grand Jury

A REPORT BY  
THE 2010-2011 CONTRA COSTA COUNTY GRAND JURY


725 Court Street  
Martinez, California 94553

REPORT 1105

**Ethics and Transparency Issues in Contra Costa County**


APPROVED BY THE GRAND JURY:

Date:           MAY 4, 2011          

  
\_\_\_\_\_  
LINDA L. CHEW  
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date:           5/16/11          

  
\_\_\_\_\_  
JOHN LAETTNER  
JUDGE OF THE SUPERIOR COURT

Contact: Linda Chew  
Foreperson  
(925)-567-9638

## Contra Costa County Grand Jury Report 1105

### **ETHICS AND TRANSPARENCY ISSUES IN CONTRA COSTA COUNTY**

**TO: Contra Costa County Board of Supervisors  
Contra Costa Local Agency Formation Commission  
Cities in Contra Costa County  
Independent Special Districts in Contra Costa County**

#### **SUMMARY**

Ethical behavior and transparency (openness) by public officials are essential to good government. Despite the fact that County officials receive ethics training, the Grand Jury has found instances of ethical breaches.

In some cases, there have been public accusations of ethical misbehavior and/or misrepresentation, charges of nepotism and cronyism, and allegations of long-term County mismanagement of a mitigation fund.

The Grand Jury believes that greater effort must be made to improve openness and accountability, to display more sensitivity to ethical considerations, and to be aware of any appearances of impropriety to the public.

#### **BACKGROUND**

Effective January 1, 2006, AB 1234 (Government Code Sections 53232, et seq.) required that local officials who receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles. The requirement applies not only to the governing body of a local agency but also to members of commissions, committees, boards, or other local agency bodies, whether permanent or temporary, decision-making or advisory. Training must be renewed every two years.

According to the Fair Political Practices Commission and the California Attorney General, training regarding conflicts of interest, perquisites of office and governmental transparency should include the following:

(1) Laws relating to personal financial gain by public servants...

- (A) Laws prohibiting bribery (Pen. Code, § 68)
- (B) Conflicts of Interest under the Political Reform Act (Gov. Code, §§ 87100, 87103).
- (C) Contractual Conflicts of Interest (Gov. Code, § 1090 et seq.).
- (D) Conflicts of Interest and Campaign Contributions (Gov. Code, § 84308).
- (E) Conflicts of Interest When Leaving Office (Gov. Code, §§ 87406.3, 87407).

(2) Laws relating to claiming perquisites of office

(3) Government transparency laws

(4) Laws relating to fair processes

The Grand Jury has divided the remainder of this report into several sections. Each section contains its own findings and recommendations. An overall finding and recommendation has also been made that may apply to all agencies throughout the County.

## **LAFCO: SOME MEMBERS OVERSTEPPING THEIR BOUNDARIES**

### **BACKGROUND**

The Contra Costa Local Agency Formation Commission (LAFCO) reviews, approves, or disapproves changes in organization to cities and special districts including annexations, detachments, new formations and incorporations. Its members (commissioners) serve the entire county and are to be neutral decision makers. LAFCO commissioners are guided by a Commissioner's Handbook which states:

“Government Code Section 56325.1 states that while serving on the Commission all members shall exercise their independent judgment on behalf of the interests of residents, property owners and the public as a whole.”

In May, 2010, two LAFCO commissioners addressed a developer-sponsored local ballot measure to extend the Urban Limit Line of the City of Brentwood. Prior to the election, these commissioners signed a public letter indicating that they were speaking not only as LAFCO spokespeople, but as representatives of the Contra Costa County Mayors' Conference, their appointing agency. They stated that should Brentwood voters defeat Measure F, LAFCO could annex the land in question to Antioch. Further, certain other LAFCO commissioners, instead of speaking to these statements, chose to weigh in supportively on the **content** of the letter, when the matter was not before LAFCO. The measure failed, and both LAFCO and the Mayors' Conference took some action to address this.

LAFCO stated that its procedures do not allow for reprimand or removal of offenders, but inserted new language into the Commissioner's Handbook (1.4 Rules and Procedures – Section F.5) which details when a commissioner may act as a spokesperson.

The Mayors' Conference, while voting (12-4) not to remove the involved commissioners, issued an admonishment, and adopted an amendment to the Conference Policies and Procedures statement prohibiting individual positions from being expressed as representative of the will of the Conference. In its motion, the Mayors' Conference stated that it "is not in the business of taking issues on individual matters, especially when pitting one city against another."

The Grand Jury recognizes that some corrective actions have been taken. However, some LAFCO members weighed in favorably on the import of the letter. While LAFCO had the option to recommend removal to the offending members' appointing authority for "malfeasance of office" (Commissioner Handbook 1.2), it did not do so.

## **FINDINGS**

1. Some LAFCO members committed ethical breaches by indicating that they spoke on behalf of LAFCO and the Mayors' Conference on matters not before LAFCO.
2. Certain other LAFCO members weighed in inappropriately on the statements.

## **RECOMMENDATIONS**

1. All LAFCO members, including the public member, should receive regular training per AB 1234\*, on the LAFCO Commissioners Handbook with particular focus on LAFCO's mission statement and ethics, as well as the Updated Commissioner Representation policy (1.4 Rules and Procedures – Section F.5).
2. LAFCO should promptly consider appropriate action when a violation of its policies occurs.

### **\*AB 1234 - Local Officials Ethics Training Requirement**

The newest of these ethics training requirements applies to certain local public officials. While similar to the rules for state officials that have been in place since 1998, the rules applicable to local officials are different in content, including a requirement that these officials receive training not only in applicable ethics laws but also in ethics principles and agency rules.

## NEPOTISM ALIVE IN CEMETERY DISTRICT

### BACKGROUND

**Nepotism** is favoritism (as in appointment to a job) based on kinship.<sup>1</sup>

**Nepotism** undermines public trust by making government look like a family business run not for the community, but for the families in power.<sup>2</sup>

The Contra Costa County Board of Supervisors (BOS) makes appointments to certain special district boards. Each Supervisor recommends appointments for their respective district, after public notice of vacancy and interviews of applicants have been completed.

Recently, when a Supervisor's spouse sought an opening on the board of a small cemetery district, this notice and interview process was not initially followed. As a result, there was significant public reaction to the appearance of nepotism.

The spouse of one Supervisor sat on LAFCO, which regulates County boundaries. A prerequisite for this person's inclusion on LAFCO was being on the board of a special district. This person's current special district membership was ending soon and he sought a special district slot elsewhere.

In violation of California's Maddy Act (Gov. Code Section 54970-54974) the Clerk of the Board failed to advertise/post this opening to the public. As a result, several interested candidates were not considered or interviewed. The Supervisor self-recused and another Supervisor recommended appointment of the spouse. Ultimately, the BOS referred the process to an impartial outside panel, so as to avoid any real or perceived conflict-of-interest. The position was then advertised and applications from eight people were received.

After an interview process, a different individual was recommended by the special panel and was appointed by the BOS.

Subsequently, the BOS adopted an anti-nepotism policy that prohibits appointment by BOS members of relatives, domestic partners, and individuals with shared business interests to Boards, Councils, and Advisory Panels.

<sup>1</sup> Merriam-Webster Dictionary

<sup>2</sup> Robert Wechsler  
Director of Research, City Ethics  
<http://www.cityethics.org/node/811>

### FINDINGS

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



2. The initial recommendation to appoint the spouse of the Supervisor for the open special district position was not consistent with the appointment procedure.
3. At a minimum, these improprieties created the appearance of nepotism.
4. The formation of an outside, impartial panel to interview and select an applicant was appropriate.
5. The adoption of a County anti-nepotism policy was proper.

## **RECOMMENDATIONS**

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.

## **THE DECOMPOSING OF THE KELLER CANYON MITIGATION FUND**

### **BACKGROUND**

The Keller Canyon Mitigation Fund (KCMF) was established in 1992 to lessen the impacts of an East County landfill on roads, open space, and the surrounding community. Funds are generated through dumping fees and granted through an application process. Approximately \$14 million has been awarded over the past ten years.

In 2005, the BOS voted to eliminate the Finance Committee oversight of the KCMF. Since then the District Supervisor, the Supervisor's Chief-of-Staff, and a County employee comprise the KCMF Committee, and have had discretion in the awarding of grants. Eligible recipients of grants have expanded from those who were truly impacted by the landfill to any non-profit groups the KCMF Committee deems eligible.

In 2010, a group of concerned citizens complained about irregularities with the KCMF's operations. The group conveyed its concerns to various County agencies. Among these were:

- KCMF is being used illegally as a political "slush fund."
- KCMF lacks required grantee and management paperwork (applications, work plans, progress reports, etc.).
- Substantial expenditures are being made outside of the intent and guidelines of the KCMF, often without required BOS approval.

The Contra Costa County Auditor-Controller's office addressed the charges in its November 5, 2010, "Response to Allegations Concerning the Keller Canyon Mitigation Fund" Report (Auditor's report).

A fraud audit was not performed. However, it was determined that the "internal control environment of the KCMF is seriously deficient" and that because of this there is "a possibility of fraud and abuse". In addition, it was determined that over the last 10 years, \$634,372 was spent without required BOS approval, and that since 2005, when BOS Finance Committee oversight ended, the fund has had a deficit in each of the following years.

The Auditor's report detailed some problem areas with the fund and recommended, among other goals, restoring transparency, accountability, and public confidence in county governance with regard to the KCMF.

One recommendation calls for establishment of an ethics policy and training for KCMF Committee members. This recommendation, which "includes a recusal provision," seeks to eliminate numerous instances where KCMF Committee members also sit on boards of grantee organizations.

At the time this Grand Jury report was written, the BOS had instructed the Finance Committee to review the Auditor's Report and its recommendations.

## FINDINGS

1. Proper oversight of the KCMF by the BOS is lacking, which provides opportunity for impropriety.
2. The KCMF has distributed grants without the required applications, work plans, and follow-up reports.
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)).
4. Ethical concerns are raised when grants are awarded to organizations whose boards include members of the granting committee.
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.
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.

## RECOMMENDATIONS

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.
2. The BOS should require training on and compliance with a County ethics policy for all KCMF Committee members.
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.
4. The BOS should consider re-establishing the Finance Committee oversight of grant awards.
5. The BOS should ensure that all County mitigation funds, or similar funds under the control of a single Supervisor, receive proper supervision.

## OVERALL FINDING

The Grand Jury finds that:

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

## OVERALL RECOMMENDATION

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.

## REQUIRED RESPONSES

### LAFCO section

#### Findings and Recommendations

Local Agency Formation Commission

1, 2

**NEPOTISM section**

**Findings**

Contra Costa County Board of Supervisors 1-5

**Recommendations**

Contra Costa County Board of Supervisors 1

**KELLER CANYON section**

**Findings**

Contra Costa County Board of Supervisors 1-6

**Recommendations**

Contra Costa County Board of Supervisors 1-5

**Overall Finding and Recommendation**

**Finding and Recommendation**

Contra Costa County Board of Supervisors 1

**REQUESTED RESPONSES**

**Overall Finding and Recommendation**

**Finding and Recommendation**

The cities of: Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon and Walnut Creek 1

**Independent Special Districts:**

Crockett Community Services District, Diablo Community Services District, Discovery Bay Community Services District, Kensington Police Protection and Community Services District, Knightsen Town Community Services District, Kensington Fire Protection District, Moraga-Orinda Fire District, Rodeo-Hercules Fire Protection District, San Ramon Valley Fire Protection District, Los Medanos Community Healthcare District, Mt. Diablo Healthcare District, West Contra Costa County Healthcare District, Byron-Bethany Irrigation District, East Contra Costa Irrigation District, Bethel Island Municipal Improvement District, Ambrose Recreation and Park District, Green Valley Recreation and Park District, Pleasant Hill Recreation and Park District, Rollingwood-Wilart Park Recreation and Park District, Byron Sanitary District, Central Contra Costa Sanitary District, Ironhouse Sanitary District, Mt. View Sanitary District, Rodeo Sanitary District, Stege Sanitary District, West County Wastewater District, Contra Costa Water District and Diablo Water District, Byron-Brentwood-Knightsen Union Cemetery District 1



Lou Ann Texeira  
 Executive Officer

**MEMBERS**

<b>Federal Glover</b> County Member	<b>Dwight Meadows</b> Special District Member
<b>Michael R. McGill</b> Special District Member	<b>Rob Schroder</b> City Member
<b>Martin McNair</b> Public Member	<b>Don Tatzin</b> City Member
<b>Gayle B. Uilkema</b> County Member	

**ALTERNATE MEMBERS**

**Sharon Burke**  
Public Member

**Tom Butt**  
City Member

**George H. Schmidt**  
Special District Member

**Mary N. Piepho**  
County Member

**Attachment 2**

July 13, 2011

Linda L. Chew, Foreperson  
 2010-2011 Contra Costa County Civil Grand Jury  
 725 Court Street  
 P.O. Box 911  
 Martinez, CA 94553-0091

Dear Ms. Chew:

On May 31, 2011, the Contra Costa Local Agency Formation Commission (LAFCO) received Grand Jury Report No. 1105, which deals with the ethics and transparency issues.

On July 13, the Commission met and reviewed the draft response to the Grand Jury. The Commission provided input and directed LAFCO staff to submit a response by the August 24<sup>th</sup> deadline.

We hereby submit the following responses to the applicable Findings and Recommendations contained in Grand Jury Report No. 1105, “*Ethics and Transparency Issues in Contra Costa County.*”

**FINDINGS**

1. Some LAFCO members committed ethical breaches by indicating that they spoke on behalf of LAFCO and the Mayors’ Conference on matters not before LAFCO.

**Response:** *The respondent disagrees with the finding. Commissioners Allen and Schroder did not intend to imply that their letter reflected the views of the Commission, and that impression could have been avoided if the letter specifically stated that the views expressed were the personal opinions of the authors and did not represent the views of LAFCO. In July 2010, the Commission approved revisions to strengthen its policies dealing with Commissioner Representation. With regard to the Mayors’ Conference, we cannot comment.*

2. Certain other LAFCO members weighed in inappropriately on the statements.

**Response:** *The respondent disagrees with the finding. Members of federal, state and local agencies retain their right to free speech when they take office. However, when someone holds a public office, it benefits the officer and the public to make it clear when personal views, as opposed to the views of the organization, are being expressed.*

## RECOMMENDATIONS

1. All LAFCO members, including the public member, should receive regular training per AB 1234, on the LAFCO Commissioner Handbook with particular focus on LAFCO's mission statement and ethics, as well as the updated Commissioner Representation policy (1.4 Rules and Procedures – Section F.5).

***Response:*** *With regard to AB 1234 training (Gov. Code section 53234 et seq.), the recommendation requires further analysis. Contra Costa LAFCO is composed of County, City, Special District and Public members. Currently, the County, City and Special District LAFCO members receive training per AB 1234 through their respective elected offices. LAFCOs are not specifically included in the provisions of AB 1234, and the decision to require the LAFCO public members to receive training is at the discretion of each individual LAFCO. Currently, Contra Costa LAFCO has no policy requiring its public members to receive training per AB 1234. The issue will be discussed with the Commission at a future LAFCO meeting.*

*With regard to training on the Contra Costa LAFCO Commissioner Handbook with particular focus on LAFCO's mission statement, ethics and Commissioner representation, this recommendation has been implemented. Contra Costa LAFCO regularly reviews and updates the Commissioner Handbook. Updates are presented to the Commission at least annually, and sometimes more frequently. The Commissioner Handbook was last updated in July 2010, at which time the policy relating to Commissioner Representation was enhanced. As part of these regular updates, the Commissioners must review the Handbook. Also, this summer LAFCO will conduct a strategic workshop focusing on LAFCO's unique role/mission and timely issues.*

2. LAFCO should promptly consider appropriate action when a violation of its policy occurs.

***Response:*** *The recommendation has been implemented. LAFCO deals promptly with issues relating to violation of its policies.*

Please contact the LAFCO office if you have any questions or if we can be of further assistance.

Sincerely,

Lou Ann Texeira  
LAFCO Executive Officer