

CONTRA COSTA COUNTY GRAND JURY REPORT 0901

COMPLIANCE AND REVIEW COMMITTEE REPORT

The Contra Costa County Civil Grand Jury is impaneled annually to investigate city and county governments, special districts and certain non-profit corporations to ensure that their functions are performed in a lawful, economical and efficient manner. Findings and Recommendations developed from these investigations are contained in reports signed by the Grand Jury Foreperson and the Grand Jury Judge. Responses to these reports must be made within certain time constraints and in accordance with specific formats pursuant to 933 and 933.05 of the California Penal Code.

The following Compliance and Review Committee report was prepared by the 2008-2009 Grand Jury. A function of the Compliance and Review Committee is to request additional responses in cases where the original responses were deemed to be inadequate. Any such additional responses have been included in this report.

This year as last year, responses to last year's Grand Jury reports were posted on the Contra Costa County Grand Jury Website shortly after receipt and in their entirety. The entire responses often contain additional background information not required by law and not contained herein.

The Grand Jury believes it is important for future Grand Juries to continue to review these responses and to be vigilant in seeing that recommendations that have been accepted have been carried out. In this manner, the commitment and hard work of past and future Grand Juries will result in positive changes for the citizens of Contra Costa County.

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CONTRA COSTA COUNTY GRAND JURY REPORT 0802

DELINQUENT SCHOOL FOOD SAFETY INSPECTIONS PLACE STUDENT HEALTH AND PUBLIC SCHOOL LUNCH PROGRAM FUNDING AT RISK

*Response from Contra Costa County Board of Supervisors (BOS)
and Office of Education, Contra Costa County (OE)*

FINDINGS

1. **Federal law (the 1946 Richard B. Russell National School Lunch Act) requires the nation's public schools to provide free or reduced-priced meals to students commensurate with family size and income standards. The act also requires public schools to follow associated federal and state guidelines to qualify for federal reimbursement for costs associated with providing meals covered under the National School Lunch Program (NSLP).**

BOS Response: Agree.

OE Response: The County Office agrees that these are factual statements regarding the National Free Lunch Act.

2. **Federal law related to the NSLP was modified in 2004 to require at least twice per school year food safety inspections of school food service facilities by a qualified state or local government agency to identify and correct food safety problems in a timely and consistent manner. The new regulations took effect on July 1, 2005.**

BOS Response: Agree, with clarification. The federal law does not specify that local Environmental Health operations are required to perform the inspections or that they should proactively contact school districts. The law leaves up to the individual schools which government agency they choose to conduct the inspections.

OE Response: The County Office agrees that these are factual statements regarding the National Free Lunch Act.

3. **Public schools that fail to comply with the twice per school year food service facility safety inspection requirement risk the loss of funding available to them through the NSLP.**

BOS Response: Agree.

OE Response: The County Office agrees that these are factual statements regarding the National Free Lunch Act.

4. **The Contra Costa County Office of Education reports that 253 of the County's public schools participate in the National School Lunch Program.**

BOS Response: Agree.

OE Response: The County Office agrees that these are factual statements regarding the National Free Lunch Act.

5. **The County Health Services Department reports that as of October 2007, 40 (16%) of Contra Costa County's 253 public school food service facilities had met the twice per school year food safety inspection requirement that took effect in 2005.**

BOS Response: Agree with clarification. The inventory of school cafeterias that Environmental Health used to plan for inspections included 222 food facilities reported by school districts. After the receipt of the Grand Jury Report, the Contra Costa County Office of Education reported 253.

6. **Based on data provided by the school districts to the State of California, 217 Contra Costa County schools reported that during the 2006-2007 school year, 15 (7%) school cafeterias were inspected twice; 156 (72%) were inspected once; and, 46 (21%) were not inspected.**

BOS Response: Unable to respond. Environmental Health does not receive this information from the Contra Costa County school districts and therefore, does not know what information has been reported to the State of California. Environmental Health has different numbers of school cafeterias, sites with multiple inspections, and sites not inspected.

A. The Environmental Health Division of the County Health Services Department

7. **The Environmental Health Division (EHD) is an enterprise division of the County Health Services Department (CHS). As such, it generates income from user fees sufficient to cover all its operating expenses. It does not require or receive any county General Funds.**

BOS Response: Partially disagree. The Environmental Health Division is not an "enterprise" division of the County Health Services Department since revenues and expenditures are not segregated into a separate fund with its own financial statements. However, the EHD is entirely funded by user fees without a County general fund allocation.

8. **As an enterprise division, the EHD functions in a semi-autonomous fashion. It does not receive the same level of managerial oversight as other CHS divisions.**

BOS Response: Disagree. As stated in the response to Finding #7 above, the Environmental Health Division is not an "enterprise division." The Environmental

Health Director reports to and meets regularly with the Director of Health Services Department and discusses critical issues on a regular basis. The Director of Health Services oversees the budget of the Environmental Health Division, approves the Division Strategic Plan, important staffing matters, all pay and benefit recommendations, and the fee schedules proposed to the Contra Costa County Board of Supervisors.

9. **The EHD is responsible for conducting food service safety inspections for restaurants, vehicle commissaries, community pools, spas, and school cafeterias.**

BOS Response: Agree with clarification. Environmental Health has no responsibility for food service safety inspections for community pools and spas unless they also include food facilities that require permits.

10. **The EHD and CHS report that they were not aware until the fall of 2007 of the federal requirement that public schools participating in the National School Lunch Program are required to have twice per school year safety inspections of their food service facilities.**

BOS Response: Disagree. EHD was aware prior to the fall of 2007 that schools were required to have two inspections per year, however the regulations specify that the inspections can be performed either by the state or by a local government agency.

11. **The EHD and CHS report that they were not aware until the fall of 2007 that public schools that fail to comply with the federal inspection requirement risk losing their eligibility to participate in the National School Lunch Program.**

BOS Response: Agree.

12. **The EHD and CHS report that they were not aware that a significant number of Contra Costa County public schools are not in compliance with the twice per school year safety inspection requirement.**

BOS Response: Agree with clarification. Environmental Health was not aware that any schools were out of compliance with the National School Lunch Program requirements because schools have the option of using a state agency to meet those requirements.

13. **The CHS has assigned a higher priority to the inspection of healthcare facilities and commercial food service locations (e.g., hospitals and restaurants) where it believes health problems are more likely to occur. CHS has not identified public school food service facilities as a significant problem area, based on the lack of reported cases of illness resulting from unsafe foods at public schools.**

BOS Response: Agree.

14. **The EHD reports that its goal is to conduct twice per school year food safety inspections at all public school food service facilities in Contra Costa County.**

***BOS Response:** Partially agree. Environmental Health would like to inspect each school cafeteria in Contra Costa County twice each school year (if requested by the school) and is pursuing options for funding.*

15. **In a letter to the Walnut Creek School District dated February 22, 2006, the Environmental Health Division stated, “For the foreseeable future staffing shortages will prevent our agency from modifying our current goal of conducting at least one inspection.”**

***BOS Response:** Agree.*

16. **In a letter to the Mt. Diablo Unified School District dated August 23, 2007, the EHD response to the request for two inspections stated, “Staffing shortages have prevented Contra Costa Environmental Health from inspecting school kitchens more than once per year. At current staffing levels the goal of Environmental Health is to inspect every retail food facility, including school kitchens, at least once per year, even at the cost of significant overtime expenditures. We believe we will achieve this goal in 2007.”**

***BOS Response:** Agree.*

17. **The EHD reports that public schools receive food safety inspections at least once annually based on a pre-determined schedule.**

***BOS Response:** Disagree. Although it has been the objective of Environmental Health to inspect each school cafeteria in the inventory of known food facilities once a year, some cafeterias were not inspected every school year due to staff shortages. Inspections are unannounced, not scheduled.*

18. **Public schools believe they are required to ask the EHD to conduct the required twice per school year food safety inspections.**

***BOS Response:** Unable to respond. Although this may be true, Environmental Health has no knowledge of what “public schools believe.”*

19. **Public schools attribute their failure to comply with the requirement to secure two food safety inspections per school year to reports by the EHD of a shortage of inspectors.**

***BOS Response:** Unable to respond. Although this may be true, Environmental Health has no knowledge of how “public schools attribute their failure to comply ...”*

20. **During an August 2007 interview, the EHD stated that the 23 inspectors currently budgeted are adequate to complete their mission; and, that the division had not requested approval from the Contra Costa County Board of Supervisors (BOS) for additional inspectors.**

***BOS Response:** Disagree. During the August 2007 interview, Environmental Health staff stated that the 23 inspector positions then budgeted were considered to be adequate to cover inspections at permitted food facilities on the inventor. Only 18 of the 23 budgeted positions were actually filled at that time. EHS has experienced staffing shortages because of the difficulty in recruiting inspectors in the local labor market. In fact, the number of food facilities on the Environmental Health inventory has now increased, the number of employed inspectors is now 21, and Environmental Health is actively recruiting to fill the vacancies. Environmental Health has also requested two more inspector positions to help cover the increase in the number of permitted food facilities. These are dynamic, not static parameters.*

21. **During a December 2007 interview, the CHS reported that staffing shortages were being addressed. It was also reported that the EHD was working to fill a single food inspector position vacancy. Once they are fully staffed (23 inspectors), EHD will evaluate whether it has an adequate number of inspectors to conduct twice per school year public school food safety inspections, in addition to all required commercial food inspections.**

***BOS Response:** Agree.*

22. **In 2007, the EHD conducted more than 8600 food safety inspections. With the exception of public schools, the EHD charges for inspections using a tiered fee schedule; i.e., based on the size of the facility, the service(s) provided, etc. Fees range from \$74 for a single commercial food cart to over \$900 for a large restaurant.**

***BOS Response:** Partially agree. Environmental Health also exempts from fees a few other permit holders who claim exemptions allowed in state law and county ordinance codes (i.e., veterans, those who are legally blind and non-profit organizations for temporary food events).*

23. **Section 6103 of the California Government Code prohibits the EHD from charging public schools fees for inspecting school food facilities. While the EHD does not charge fees for public school food safety inspections, it reports that it is not aware of the basis for not doing so.**

***BOS Response:** Partially disagree. Environmental Health is pursuing with County Counsel the option of charging fees.*

24. **The CHS advises that there are no funding restrictions that would prevent EHD from hiring more staff, provided the BOS approves fee increases sufficient to cover the cost of hiring additional inspectors.**

***BOS Response:** Agree with clarification. The Board of Supervisors would need to approve an increase in revenue and expenditure authority and authorized positions in*

addition to any fee increases. Competition for Environmental Health Specialists among the Bay Area counties is very keen and it is difficult to find available candidates.

25. **The BOS approves the annual EHD budget, the inspection fee schedule, and associated policies for services provided by the division.**

BOS Response: Agree.

B. The Contra Costa County Office of Education

26. **The elected Contra Costa County Superintendent of Schools (Superintendent) heads the Contra Costa County Office of Education (COE).**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

27. **The Superintendent has oversight responsibilities for 18 county public school districts, 260 public schools, approximately 8500 teachers, and approximately 165,000 students.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

28. **The COE is primarily responsible for monitoring teacher credentialing, approval of annual budgets and budget projections, preparation of school funding allocations, and periodic monitoring of budgeted funds and associated activities.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

29. **The COE is aware of the federal requirement that public schools participating in the NSLP are required to have twice per school year safety inspections of their food service facilities.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

30. **The COE is aware that a significant percentage of Contra County public schools have not received twice per school year safety inspections since the federal requirement was implemented.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

31. **The COE is aware that the primary reason cited by the EHD for its inability to complete the required safety inspections is a shortage of inspectors.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

32. **The COE does not have the legal authority to coordinate and/or monitor school compliance with required twice per school year safety inspection requirements related to food service facilities.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

33. **The COE does have the authority to perform overall inspections of schools. If these inspections reveal sanitation problems anywhere on campus, the COE has the authority to alert the EHD to request further investigation.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

34. **In the fall of 2007, the COE alerted the EHD regarding the condition of one county public school. At its request, the EHD conducted a follow-up inspection that focused on the school's food service facility.**

OE Response: The County Office agrees that these are factual statements regarding the school districts in the county and the County Office's involvement with the inspections of food service facilities and school site inspections.

RECOMMENDATIONS

The 2007-2008 Contra Costa Grand Jury recommends:

1. **That the County Health Services Department assume greater managerial oversight of its Environmental Health Division.**

BOS Response: The recommendation will not be implemented because it is not warranted. Environmental Health is a Division of the Department of Health Services and sufficient oversight is already provided.

2. **That the County Health Services Department and Environmental Health Division complete the twice per school year public school food safety inspections required by law.**

BOS Response: The recommendation will be implemented before the end of calendar year 2008. Our goal is to help schools by conducting inspections two times per school year when requested to do so. We will explore funding options to cover the associated costs.

3. **That within three months of this report, the Environmental Health Division and County Health Services Department, complete an evaluation of the resources required to complete the twice per school year public school food safety inspections.**

BOS Response: The recommendation has been implemented. One man-year (Full Time Equivalent) Environmental Health Specialist position, at an annual cost of \$130,000 - \$150,000 per year, will be required to complete twice per school year public school food safety inspections for 253 schools. County Health Services Department will explore funding options.

4. **That within three months of this report, the Environmental Health Division and County Health Services Department seek approval from the Board of Supervisors for the number of additional inspectors that would be required to complete the public school food safety inspections.**

BOS Response: The recommendation will be implemented subject to identification of funding. We will continue to request positions as needed to cover workload requirements, subject to adequate funding.

5. **That before the end of calendar year 2008, the Environmental Health Division of the County Health Services Department completes two food safety inspections at each of the public schools that participates in the National School Lunch Program.**

BOS Response: The recommendation will be implemented before the end of calendar year 2008. Environmental Health will complete the necessary inspections as soon as possible.

6. **That the County Office of Education take a more proactive role in monitoring school compliance with the requirement for twice per school year food safety inspections of public schools that participate in the National School Lunch Program.**

BOS Response: The recommendation does not apply to Environmental Health.

OE Response: The County Office requests to be copied on district school food safety reports in order to assist districts with compliance issues. The County Superintendent of

Schools will continue to collaborate with the County Health Services Department to ensure safe facilities for all students.

- 7. That the County Office of Education and County Health Services Department coordinate their efforts to ensure compliance by all participating public schools with the twice per school year food safety inspection requirement.**

***BOS Response:** The recommendation has been implemented. Environmental Health is currently conferring with the County Office of Education to achieve better coordination and will continue to do so.*

***OE Response:** The County Office requests to be copied on district school food safety reports in order to assist districts with compliance issues. The County Superintendent of Schools will continue to collaborate with the County Health Services Department to ensure safe facilities for all students.*

CONTRA COSTA COUNTY GRAND JURY REPORT 0803

ATTENTION SPECIAL DISTRICTS! YOU TOO COULD FACE PENSION PLAN PROBLEMS

Other Special Districts Could Learn From Pleasant Hill Recreation & Park District's Experience

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the preparation or approval of this report.

Response from Board of Directors, Pleasant Hill Recreation & Park District

FINDINGS

1. **The Pleasant Hill Recreation & Park District (District) was created by the voters in the District in 1951 pursuant to California Public Resources Code section 5780 et seq. The District covers approximately nine square miles, has approximately 22,000 voters, and provides parks, recreation facilities, open space, and recreation programs for District residents.**

Response: The District agrees with the finding.

2. **A five-member Board of Directors (Board) governs the District. The Board is made up of five District citizens directly elected by District voters.**

Response: The District agrees with the finding.

3. **The District's 2007-2008 budget includes approximately \$5.6 million in revenues, of which approximately \$2.4 million is from property taxes on District residences and businesses. The District generates the balance through the provision of services such as sports activities, facility rentals, weddings, dances, and other functions.**

Response: The District agrees with the finding.

4. **The District has 27 full-time employees, and also hires numerous part-time employees. The subject of this report affects approximately 1,400 former and current part-time employees.**

Response: The District agrees with the finding.

5. **The District has well-kept parks and extensive recreation programs.**

Response: The District agrees with the finding.

A. The Former District Pension Plan

6. **Until 2004, the District, together with 10 similar districts across the state, invested funds in a pension plan on behalf of its part-time employees through the California Recreation District Employee Benefit Plan (Plan). An individual, who died in 2004, administered the Plan.**

Response: The District agrees with the finding.

7. **The Plan was a 401(a) FICA alternative plan, in lieu of Social Security.**

Response: The District partially disagrees with the finding. The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended the Internal Revenue Code to mandate that employees of public agencies, who are not members of their employer's existing retirement system as of January 1, 1992, be covered under Social Security or an alternate plan. This plan satisfied the OBRA 90 federal requirements.

8. **The District's elected Board provided minimal oversight of the Plan, its manager, funds, and investments.**

Response: The District disagrees with the finding. The Board of Directors reviewed reports from the CRDEB Plan. Annual audits were completed by independent auditors of the District's financial transactions and no issues regarding the retirement plan were discovered. Retired and former employees who no longer worked for the District were receiving their invested money up to the date of the death of the administrator in 2004. The District was receiving and reviewing reporting for the CRDEB plan, however, it was later discovered these reports were overstated and falsified.

9. **An audit performed in 2004, after the death of the Plan administrator, found that approximately \$700,000 was missing. Of that amount, this District's share of the loss was approximately \$283,000. After legal proceedings began against the administrator's estate, a settlement was negotiated in which this District received approximately \$40,100.**

Response: The District agrees with the finding. The settlement was agreed upon on the advice of counsel. The settlement was agreed to due to the fact that the assets of the estate were rapidly diminishing and were insufficient to pay the claims.

10. **When concerns arose, the District withheld approximately \$17,000 from contributions it would have otherwise been required to deposit under the terms of the Plan. This sum, plus the \$40,100 received by the District as part of the settlement resulting from the suit brought against the Plan administrator's estate, has been deposited in the Local Agency Investment Fund (LAIF). The LAIF is an investment alternative available to local governments and special districts through the California State Treasurer.**

Response: The District agrees with the finding. The money was withheld before the legal proceedings referred to finding #9 were instituted.

11. **The District has adopted a method to disburse the \$57,100 held in the LAIF to eligible employees. The District was awaiting cooperation from other affected districts, but has voted to proceed even if the other districts do not.**

Response: The District partially disagrees with the finding. The District is exploring distribution options to determine the proper and most expeditious way to manage and to distribute funds to covered members. The total settlement amount was allocated among the participating districts on a pro-rata basis.

12. **Following the death of the Plan administrator, legal proceedings revealed that he was neither bonded, nor covered by a type of insurance upon which the District could make a claim.**

Response: The District agrees with the finding. Records indicate that when the District started in the program, the administrator was bonded.

13. **Not including the above-referenced settlement amount, approximately \$155,000, plus interest, remaining in the former Plan belongs to the District. This District has attempted, without success, to get the other districts to cooperate in an apportioned disbursement of the Plan's funds.**

Response: The District agrees with the finding. As of this date, the other affected Districts have not agreed to the new plan.

14. **The District has not secured the services of an agent to manage and distribute the funds remaining in the former Plan. Since some of the retired employees have reached the IRS mandatory withdrawal age of 70½, the absence of an agent to handle legally required distributions exposes eligible retirees to potential IRS scrutiny.**

Response: The District disagrees with the finding. Following advice from our attorney representing the affected Districts, the Board of Directors voted to retain Chang, Ruthenberg & Long for legal counsel, professional trustee by ING National Trust, and the administrative Services provided by Poly Comp. However, not all affected districts have agreed. The District is considering the possibility of retaining services on its own. The District is not aware that any participant has been exposed to IRS scrutiny.

15. **The District has not replaced the money its employees lost due to the actions of the District's Plan administrator. The District intends to replace only the money that was contributed by employees through their payroll deductions. The District does not intend to replace the money the District contributed to the Plan.**

Response: The District disagrees with the finding. A number of Districts contributed to the plan. The Board of Directors has requested that the General Manager submit a plan to fully reimburse the affected employees. The Board of Directors will be making that decision after review of the proposed plan.

16. **The District's failure to replace the missing funds for its employees may result in tax problems for employees as they reach retirement age. Since the IRS has no knowledge of the missing funds, it may calculate mandatory minimum withdrawal amounts based on the total amount reported by the District for each employee. The District is aware of this potential. Some affected employees already have reached retirement age.**

Response: The District disagrees with the finding. Based on information supplied by Certified Public Accountants, it would appear that the individual employee has no tax liability for funds that were never received.

17. **The failure of the District to replace missing funds for its employees may result in tax and /or legal implications to the District. The Plan was made available to part-time employees in lieu of Social Security. As with Social Security, the District has Plan funding obligations with which it has not complied.**

Response: The District disagrees with the finding. The District funding obligations were fulfilled once the payment to the Plan was made that represents the employee and District contribution. Social Security has a funding obligation as they have a specified payment amount due to the retiree. There is no such obligation for this Plan to pay a specified amount. The employee is entitled to their account balance whatever that might be.

B. The New Plan

18. **On September 7, 2006, the District Board unanimously authorized the District manager to sign documents for the District that appointed Public Agency Retirement Services (PARS) as the 457(a) FICA (Social Security) Alternative Retirement Plan's Trust Administrator.**

Response: The District agrees with the finding.

19. **On October 2, 2006 the District's General Manager signed an Agreement for retirement fund services with Phase II Systems, a California corporation, which does business as PARS.**

Response: The District agrees with the finding.

20. **PARS is not licensed to provide advice on tax, accounting, legal, investment or actuarial issues.**

Response: *The District agrees with the finding. PARS as Trust Administrator handles agency personnel and participant inquiries, performs monthly valuations of participant accounts, administers the distribution process, handles all reporting to the Agency, the Participant, and the State Controller, and assures that the Trust complies with federal and state government reporting requirements. The District's understanding is that an administrative entity such as PARS cannot legally be licensed to provide the advise referred to in the finding.*

21. **At PARS' suggestion, the District's General Manager signed a contract with Union Bank by which the bank will act as the trustee of the pension funds for the District's part-time employees.**

Response: *The District disagrees with the finding. The Trustee is required as part of the retirement program...not a suggestion. Union Bank of California as Trustee manages plan assets, holds the plan assets for the exclusive benefit of the plan participants, and distributes benefit payments to the plan participant or his/her beneficiary.*

22. **The Union Bank contract does not include effective limits on fees that may be incurred by the bank and charged to the District.**

Response: *The District disagrees with the finding. Union Bank has structured fees for services provided to the Plan. These range from .12% to .005% depending on the collective value of funds under their management.*

23. **The Union Bank contract permits the bank to make potentially risky investments, such as investing on margin (depositing only a small percentage of the funds actually at risk), and investing in its own paper (investing in the bank itself). Current District practices preclude that from happening.**

Response: *The District disagrees with the finding. A written investment policy for this Plan dictates an allowable percentage of various investment options to meet the investment guidelines. Commercial paper from the bank itself or any other corporate entity may be allowed if it meets with written investment guidelines. The bank is required by law to make only prudent investments.*

24. **The Union Bank contract permits oversight by the District, including investment options. The District Board has not done so.**

Response: *The District disagrees with the finding. The Board of Directors authorized the General Manager to select an investment strategy with the investment objective to provide growth of principal and income...it is expected that dividend and interest income will comprise a significant portion of total return, although growth through capital appreciation is equally important. The two investment options include: HighMark Plus – actively managed mutual funds are selected for equity and fixed income portfolios, and Index Plus – Index-based securities are selected for the equity portfolio and actively managed mutual funds are selected for the fixed income portfolio.*

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that the Pleasant Hill Recreation & Park District Board of Directors:

1. **Require the Plan administrator (PARS) to provide the District with quarterly, detailed financial and investment performance reports.**

Response: The recommendation has been implemented. PARS provides the District with monthly financial reports and a detailed quarterly financial and investment report.

2. **Within three months of this report, appoint a qualified employee to oversee the District's part-time employee pension Plan.**

Response: The recommendation has been implemented. The Board of Directors entrusts the day-to-day operations of the District to the General Manager. The General Manager has appointed the Accounting Supervisor to oversee the District's part-time employee pension plan.

3. **Within three months of this report, adopt a Board policy to provide fiduciary oversight of the District's part-time employee pension Plan, not less than quarterly, to monitor Plan performance, establish and review investment guidelines, and monitor pension Plan policies.**

Response: The recommendation has been implemented. The Board of Directors when reviewing the District's quarterly financial report also reviews the PARS quarterly financial and investment report. The Board of Directors also review the overall District's investment guidelines including the PARS Plan.

4. **Within three months of this report, engage the services of a qualified agent to manage the funds in the former Plan, including the transfer of funds to qualified employees.**

Response: The recommendation will be implemented as soon as reasonably possible and before September 25, 2008. The Board of Directors approved retaining Chang, Ruthenberg & Long for legal counsel, professional trustee by ING National Trust, and the Administrative Services provided by Poly Comp. However, not all of the affected Districts have agreed to the agreement. The District is considering the possibility of retaining services on its own.

5. **Within three months of this report, publish and implement a strategy to fully reimburse the part-time employees for the funds (employee and District contributions) lost due to the former Plan manager's malfeasance.**

***Response:** The recommendation requires further analysis. The Board of Directors has requested that the General Manager submit a proposed plan to the Board to reimburse affected employees. The District expects that the matter will be addressed and decided by no later than September 25, 2008.*

- 6. Continue to closely review proposed investment selections to ensure that pension funds are not invested in potentially risky instruments such as margin accounts or commercial paper issued by the trustee bank.**

***Response:** The recommendation has been implemented similar to Recommendation #3. The Board of Directors when reviewing the District's quarterly financial report also reviews the PARS quarterly financial and investment report. The Board of Directors also reviews the overall District's investment guidelines including the PARS Plan.*

CONTRA COSTA COUNTY GRAND JURY REPORT 0804

**REPORT ON THE INSPECTION OF DETENTION FACILITIES
IN CONTRA COSTA COUNTY**

*Response from Contra Costa County Board of Supervisors (BOS)
and Office of the Sheriff, Contra Costa County (OS)*

FINDINGS

- 1. All the facilities inspected were found to meet or exceed the minimum inspection standards established by the State of California Corrections Standards Authority (CSA).**

BOS Response: Agree.

OS Response: Agree.

- 2. Fees charged to detainees that qualify for the work-release program substantially support the Custody Alternative Facility in Martinez. In 2006, fees collected from detainees totaled more than \$1 million, nearly 50% of the cost of operating the facility.**

BOS Response: Agree.

OS Response: Agree.

- 3. In 2006, detainees served approximately 118,000 custody alternative days. Had the detainees been obligated to serve their sentences in a detention facility, the additional cost to the county would have been approximately \$13.5 million.**

BOS Response: Agree, with the clarification that 118,000 custody days at the 2006 calculated daily jail represents a cost of \$13.5 million. More significantly, absent the work alternative program, the average daily detention population would increase by 323 inmates, which would impact the maximum population limits in each facility.

OS Response: Agree.

- 4. The entrance road leading to the Marsh Creek Detention Facility lacks a security gate and entrance monitoring security cameras. Such security devices would reduce the opportunities for contraband to enter the facility.**

BOS Response: Agree.

OS Response: Agree.

- 5. The design of the sewage drainage systems at the Martinez and West County Detention Facilities makes them vulnerable to inmate sabotage.**

BOS Response: Agree.

OS Response: Agree.

- 6. The orientation video shown to new inmates in the Martinez and West County Detention Facilities is recorded in English only.**

BOS Response: Agree.

OS Response: Agree.

- 7. The Martinez Detention Facility is the sole operational intake (i.e., processing) center for all County inmates. The area designed to handle West County Detention Facility processing of new inmates is not staffed. West County sheriff's deputies and West County police department officers are required to transport detainees to the Martinez Detention Facility rather than the West County Detention Facility for processing.**

BOS Response: Agree.

OS Response: Agree.

- 8. The West County Detention Facility has limited medical services as compared with the Martinez Detention Facility.**

BOS Response: Agree.

OS Response: Agree.

- 9. Classrooms in Juvenile Hall lack security cameras. The cameras would allow the staff to more closely monitor the classroom activities and reduce the number of disruptive incidents.**

BOS Response: Agree. At the request of the County Office of Education, no cameras are installed in the classrooms at Juvenile Hall.

OS Response: Juvenile Hall falls under the authority of the Probation Department.

10. **The Orin Allen Youth Rehabilitation Facility is not an option for juveniles undergoing psychotropic drug therapy due to the lack of qualified, on-site, round the clock medical staff to monitor and manage such detainees.**

BOS Response: Agree.

OS Response: Orin Allen Youth Rehabilitation Facility falls under the authority of the Probation Department.

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends:

1. **That the Sheriff expands wherever possible the use of the Custody Alternative Facility.**

BOS Response: The recommendation has been implemented. The Sheriff has expressed his commitment to prioritize the use of custody alternatives and to expand the scope of those alternatives to encompass drug abuse treatment and prevention programs.

OS Response: The recommendation has been implemented. The Sheriff remains committed to prioritizing the use of alternatives to custody and will continue to expand Custody Alternative to include expanding into Drug Treatment and Prevention as an alternative to custody.

2. **That within six months of this report, the Sheriff works with the General Service Department to accomplish the installation of an electrically operated gate and security cameras at the entrance to the Marsh Creek Detention Facility.**

BOS Response: The recommendation requires further analysis. Multiple options could be implemented to deter the infiltration of contraband in the Facility, including gates, cameras, and layered perimeter fencing. The General Services Department will prepare a cost estimate for the various options within six months. Affordable options will be implemented, subject to the County's Adopted Budget.

OS Response: The recommendation requires further analysis. A request for an estimate has been placed with General Services and will be considered dependent on cost and budget constraints.

3. **That within six months of this report, the Sheriff works with the General Services Department to complete a feasibility study and to secure proposals that cover the available alternatives to alleviate the Martinez and West County Detention Facilities' sewage drainage systems' vulnerability.**

BOS Response: *The recommendation will not be implemented because it is not warranted. Staff at the Martinez and West County Detention Facilities has increased its diligence in tracking inmate clothing and bedding since a flooding incident at the MDF in September 2007. Additionally, the General Services Department has installed devices at the MDF, in areas where feasible, to limit the number of toilet flushes per hour and has installed timers on showers to limit the opportunities for inmate sabotage.*

The General Services Department has determined that modifications needed to improve the integrity of the sewage drainage system would require structural changes to the detention facility itself, which are not feasible.

OS Response: *The recommendation requires further analysis. The General Services has been advised of the Grand Jury's recommendation. CSB staff will work with GSD to study any alternatives to reduce the vulnerability of the sewage systems to include the use of flush restrictors and shutoff valves. Plumbing maintenance is the financial responsibility of General Services, and any implementation of recommendations will depend on General Services' ability to budget for them.*

4. **That within six months of this report, the Sheriff obtains and uses additional copies of the Martinez and West County Detention Facilities inmate orientation videotape to include any other languages that account for a significant percentage of the inmate population.**

BOS Response: *The recommendation has been implemented. Spanish versions have been completed and are being loop-played after the English version. The Sheriff will continue to monitor changes in inmate demographics and make adjustments in informational programming as needed.*

OS Response: *The recommendation has been implemented. Spanish versions have been completed and are being loop-played after the English version. We will continue to monitor significant changes in inmate population and adjust as needed.*

5. **That within six months of this report, the Sheriff completes a full evaluation of the costs and benefits of making the West County Detention Facility intake area fully operational.**

BOS Response: *The recommendation will not be implemented because it is not reasonable. Operating the West County intake area has been studied repeatedly since the West County Detention Facility opened 17 years ago. The County recently completed a budget balancing process that required significant service reductions, elimination of staff positions, and employee layoffs. When the County's fiscal position improves, millions of dollars will be required to restore critical County services that were reduced or eliminated. The County is currently not in a fiscal position to consider adding new discretionary programs and services.*

OS Response: The recommendation will not be implemented. Operating the West County intake area has been studied, studied again, and then studied some more to include the original decision by the Board of Supervisors not to open the intake area when West County opened over 17 years ago. The current and prospective budgets of the County, particularly the Office of the Sheriff, have, or will result in staff reductions. When the County fiscal situation improves, at least \$12 million will be necessary to restore the nearly 100 positions that are now vacant or otherwise unfunded.

- 6. That within six months of this report, the Sheriff works with the County Health Services Department to complete a full evaluation of the costs and benefits of providing West County Detention Facility medical services similar to those available at the Martinez Detention Facility.**

BOS Response: The recommendation will be implemented within six months. The Office of the Sheriff will participate with the Health Services Department as it conducts a Request for Proposals to evaluate contracting for health services to be delivered to inmates. However, it should be noted that the County is evaluating more cost-effective ways to maintain current services, but is currently unable to afford augmented services.

OS Response: The recommendation requires further analysis. The Office will be working with the County Health Services Department as they explore contracting health services delivered to inmates. We, of course, will encourage that a primary goal is to provide similar health care at the West County Detention Facility.

- 7. That within six months of this report, the Probation Department works with the General Services Department to install security cameras in the classrooms at Juvenile Hall.**

BOS Response: This recommendation will be implemented within six months if requested funding is granted by the Corrections Standards Authority. The County Office of Education is preparing a grant to apply for funding to purchase the cameras and related hardware. The Probation Department has applied to the Corrections Standards Authority for funding to upgrade the camera system at Juvenile Hall as part of funds made available through Senate Bill 81.

OS Response: N/A

- 8. That within six months of this report, the Probation Department works with the County Health Services Department to complete a full evaluation of the costs and benefits of making specialized medical services available around the clock to detainees being treated with psychotropic drugs at the Orin Allen Youth Rehabilitation Facility.**

BOS Response: This recommendation will be implemented within six months. Probation staff will participate with the Health Services as it conducts a Request for Proposals to

evaluate contracting for specialized medical services to be provided to youth at OAYRF who are being treated with psychotropic medication.

OS Response: N/A

CONTRA COSTA COUNTY GRAND JURY REPORT 0805

THE SUPERVISORS CHIP AWAY AT THE COUNTY'S MOUNTAIN OF HEALTH BENEFIT DEBT

The Next Critical Step Will Require the Supervisors to Take and Hold Tough Negotiating Positions with Labor Unions

Response from Contra Costa County Board of Supervisors (BOS)

FINDINGS

A. Defining the OPEB Problem

1. **Governmental Accounting Standards Board Statement Number 45 (“GASB 45”), “Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions” (OPEB) sets an accounting standard analogous to the governmental pension accounting standard. This standard requires the calculation and disclosure of an unfunded liability for government employee retiree health care benefits similar to the method already in place for recognizing the cost of government employee pensions. Contra Costa County (County) has elected to embrace this standard.**

Response: Agree.

2. **As of January 1, 2006, County’s unfunded OPEB liability for the cost of providing health care benefits to its current and future retirees and their dependents over the course of their lifetimes was estimated by an independent actuarial consultant hired by the Board of Supervisors (Supervisors) to be \$2.57 billion.**

Response: Agree, with the clarification that the County’s unfunded OPEB liability is for the ‘accrued to date’ cost of providing health care benefits.

3. **The 2006 actuarial study indicated that the structure and costs of the County’s retiree health care benefits were not sustainable.**

Response: Partially disagree. The 2006 actuarial study identified the liability and, correctly, made no comment regarding the County’s ability to sustain the liability. The County, however, in its March 1, 2007 report did declare that ‘The cost of the County’s health care benefit is unsustainable’.

4. **According to a March 1, 2007 County OPEB Task Force report, as of January 1, 2006, the estimated unfunded OPEB liabilities for Alameda, Orange, Riverside, San**

Diego, and San Mateo counties were \$613 million, \$598 million, \$257 million, \$640 million, and \$70 million respectively. These five counties have a combined OPEB liability of approximately \$2.17 billion, which is less than the \$2.57 billion estimate for Contra Costa alone.

Response: Agree.

5. **In 2008, the actuarial consultant updated the estimated unfunded OPEB liability. As of January 1, the revised estimate was \$1.74 billion. The reduction results primarily from the use of new actuarial assumptions, and secondarily, from Supervisor action on May 6, 2008 to modify the health care benefits available to County employees that are not covered by a union labor contract; i.e., unrepresented employees. The \$1.74 billion figure is more than the County's total annual operating budget of approximately \$1.2 billion for fiscal year 2007-08, and is still nearly equal to the combined health care benefit liabilities for Alameda, Orange, and San Diego Counties.**

Response: Partially disagree. The reduction results primarily from the Board of Supervisors' action to partially pre-fund our liability in the FY 2008/09 budget (\$20 million), which allowed the use of a higher discount rate (6.32%). Of the \$835 million reduction, over 82% or \$687.5 million is due to partial pre-funding. The new valuation assumption changes and plan changes for non-represented employees both made smaller contributions to the liability savings after the larger discount rate savings due to planned pre-funding.

6. **According to County officials, the growth in the cost of health care benefits has and will continue to compromise the County's ability to provide public services since County general funds earmarked for services will have to be used to pay for increasingly costly employee and retiree health care benefits.**

Response: Agree.

7. **As early as 1994, the Supervisors were briefed by administrative staff about the pending OPEB crisis, but took no action for more than a decade.**

Response: The respondent is unable to verify Supervisor briefings from 1994.

8. **The OPEB liability results primarily from labor agreements in which retirees and their dependents receive the same increasingly costly health care benefits as active employees and their dependents. Other factors that contribute to the OPEB liability include longer life spans, earlier retirement ages, as well as medical costs and health insurance premiums that have escalated dramatically compared to overall inflation.**

Response: Agree, with the clarification that the OPEB liability results from benefits not being fully funded on an annual basis (pre-funded the benefit rather than pay-go).

9. **The Supervisors have the authority and responsibility to establish the labor negotiation policy, to explain it clearly to the County’s negotiating team, and to ensure that the negotiating team carries it out.**

Response: Agree.

10. **There have been occasions in the past in which individual supervisors have had conversations with union leaders about matters being negotiated. Reportedly, these conversations have on occasion undermined the Supervisors’ labor negotiation policy, causing a weakening of that body’s resolve, resulting in labor contracts that were not fiscally prudent.**

Response: Partially disagree. Individual supervisors have had conversations with union leaders about matters being negotiated; however these conversations, rather than undermining the negotiation policy have, on several occasions, encouraged union leaders to continue negotiating when they would have otherwise taken unproductive actions..

11. **The subject of the County’s unfunded OPEB liability has been the topic of four previous Contra Costa County Grand Jury reports:**

- **2004: “Take Action Now to Reduce Costs of Retiree Health Insurance.”**
- **2005: “Code Blue: County Health Care Costs.”**
- **2006: “County Ignores Retiree Health Care Costs: The Financial Tidal Wave.”**
- **2007: “Mayday, Mayday, Mayday! The County Drifts Ever Closer to the OPEB Rocks.”**

Response: Agree.

12. **The Governmental Accounting Standards Board recommends public agencies account for unfunded OPEB costs over the active service life of benefiting employees, rather than reporting current year OPEB costs for existing retirees.**

Response: Agree.

13. **Currently, there is no universal County requirement for eligible retirees to enroll in Medicare Parts A (hospital coverage) and B (physician and ancillary medical coverage), and assign benefits to County sponsored health insurance carriers. When Medicare benefits are assigned to the County’s health insurance carriers by retirees by means of a carrier-provided form, Medicare becomes the primary payer, leaving the County responsible only as a secondary payer. Currently, Medicare health benefits are not uniformly assigned to the County’s health insurance carriers to help pay for the participants’ medical care. This results in higher insurance premium costs for the County.**

Response: Partially disagree. Medicare Part A is required by the Social Security Act for all individuals, including County retirees. Medicare Part A is automatic and requires no

enrollment. Medicare Part B requires the retiree to enroll. Medicare is primary for retirees whether or not assigned, even if the retiree is only covered by Medicare Part A. Assignment of benefits to the carriers means that a retiree can use their Medicare card only for providers within their specific network. Non-assignment means the Medicare card can be used for both network and non-network providers. It is true that the County does not universally require the assignment of these benefits to the County's health insurance carriers.

14. **The County provides combined medical and dental benefits to approximately 8600 active employees, 5800 retirees, plus dependents and surviving spouses of retirees. Approximately 7400 (86%) of the active employees are represented by labor unions. The remaining 1200 (14%) are unrepresented.**

Response: Agree.

15. **The County's \$1.2 billion, fiscal year 2007-08 budget includes \$130 million, 10.7% of the total budget, to pay health premium costs on a pay-as-you-go plan (\$36 million for retirees and \$94 million for active employees).**

Response: Agree.

B. Addressing the OPEB Problem

16. **On September 25, 2007, the Supervisors adopted a plan to finally begin addressing the County's unfunded OPEB liability. It included the following:**
- **A Strategic Plan and timetable addressing the OPEB problem.**
 - **An Irrevocable Trust Account for pre-funding a portion of the County's OPEB liability.**
 - **An initial goal to pre-fund, i.e., deposit into the trust, 40% of the total OPEB liability over the course of the next 30 years. This amount represents only the costs of current retirees' health care costs during that period, not future retirees.**
 - **A pledge to deposit \$588 million between fiscal years 2008-09 and 2022-23, 15 years, into the Irrevocable Trust Account.**

Response: Disagree. The Board of Supervisors' took its first action to reduce the County's future OPEB liability on August 15, 2006. The CNA MOU adopted on that day included 'me too' language. The 'me too' language stated that 'the County agrees that eligibility requirements and implementation date for retiree health for employees covered by this MOU will be the same as agreed to by the majority of County employees'. On October 31, 2006 when they adopted a new fifteen year vesting requirement for the receipt of retiree health care for the majority of County employees, this change became part of the CNA MOU due to the 'me too' clause..

The Board's next action, on June 26, 2007 set a timetable for addressing the OPEB program, an initial pre-funding goal of 100% of the potential liability for the retiree

population (currently 40% of the total liability), and pledged an allocation of resources (\$588 million between fiscal years 2008-09 and 2022-23 and \$100 million annually thereafter).

The Board's next action, on September 25, 2007 approved the selection of an irrevocable trust structure (IRS Code Section 115). The January 15, 2008 Board action established the Irrevocable Trust Account.

17. **Effective January 1, 2007, the County increased the eligibility requirement for retiree health care benefits. Since then, employees, other than deputy sheriffs and firefighters, must work for the County for 15 years. Previously, some new employees had become eligible for retiree health benefits after as little as one day on the job.**

Response: Agree, with the clarification that the new tier excluded all employees covered by CalPERS health plans not just deputy sheriffs and firefighters.

18. **On January 15, 2008, the Supervisors established an Irrevocable Trust Account, under the provisions of Internal Revenue Code Section 115, to deposit future OPEB funds. The funds in such accounts may not be used for any other purpose than as directed in the trust document. The trustees are: the County's Administrator, Auditor-Controller, Treasurer-Tax Collector, Director of Finance, and Health Services Department's Chief Financial Officer.**

Response: Agree.

19. **The County Administrator has conducted information sessions covering the County's OPEB liability problems during which he answered employee and public questions.**

Response: Agree.

20. **On January 23, 2008, the County Administrator presented a report to the County Health Care Coalition, a group that includes representatives of the various labor organizations. This report contained several benefit design change options that, if adopted, would have varying impacts on reducing the County's OPEB liability. The pros and cons, as well as the fiscal impact on the County's unfunded OPEB liability, were presented for each of the options.**

Response: Agree.

21. **The January 23, 2008 report proposed changes to the health benefits available to retired unrepresented employees and their dependents. On May 6, 2008, the Supervisors approved the following changes for retired unrepresented employees and their dependants:**

- **Limit coverage to one County health plan for retired employees, and their dependents, regardless of a spouse or partner's County employee status; i.e., no dual County health coverage.**
- **Require retirees who become 65 on or after January 1, 2009 to enroll in Medicare Parts A&B.**
- **Beginning January 1, 2010, set the County health care insurance premium subsidy at the 2009 premium level.**

Response: Agree, with the clarification that the January 23, 2008 presentation described several different options for liability reduction as a means of expressing the order of magnitude of the problem, it did not present any of the examples as proposed changes to the health benefits.

22. **The January 23, 2008 report proposed the establishment of a second benefit tier for newly hired unrepresented employees intended to limit the County's costs of providing health plan benefits to future retirees. On May 6, 2008, the Supervisors approved the following changes for unrepresented employees hired after January 1, 2009:**

- **Limit coverage to one County health plan for active or retired employees, and their dependents, regardless of spouse or partner County employee status; no dual County health coverage.**
- **Establish separate insurance rating pools for active and retired employees to allow for more accurate cost calculations for each group.**
- **Provide that upon retirement: a) the County would not contribute toward the cost of health care for employees that retire before the age of 65; and, b) the County would permit retirees to enroll in County health plans at their own expense until age 65, when employees are eligible to enroll in Medicare Parts A&B.**

*Response: Partially disagree. The January 23, 2008 presentation described a possible second tier option that could reduce the County's future liability; it did not propose that the new tier be implemented as described. The May 6, 2008 Board Action established a new health care tier for unrepresented employees and officials hired, appointed, or elected after **December 31, 2008**. The separate rate pools are intended to eliminate one group subsidizing the actual costs of another group, not to more accurately calculate costs. Finally, upon retirement, these employees and officials will have access to County health plans, but no County premium subsidy will be paid for any health or dental plan before or after the age of 65. Retirees and eligible family members will participate at their own expense.*

23. **The January 23, 2008 report proposed the establishment of a Benefit Design Task Force to develop a new health benefit program for the County. On May 6, 2008, the Supervisors approved:**

- The establishment of a task force to deal with health care benefits for unrepresented employees. Members of the task force would include unrepresented employees and retirees, County subject matter experts, independent benefit design, actuary, and tax consultants.
- Setting specific achievement goals and parameters to recommend options for sound health care benefits within the County's budgetary limits.
- Setting specific target dates for completion of any re-design recommendations before 2010.
- Pursuing the means to assure portability of employee health coverage and access to health savings mechanisms for unrepresented County employees, retirees, and their dependents.

Response: Agree, with the clarification that the January 23, 2008 presentation described how the establishment of a task force could be used to help to plan benefit design changes that counteract medical cost growth in order to preserve a balance between providing sound health care coverage for our employees and retirees and maintain vital county programs and services.

24. **The County Administrator implemented a hiring freeze effective February 1, 2008, subject to case-by-case exceptions only he and his chief deputies have the authority to grant.**

Response: Agree.

25. **On May 6, 2008, the Supervisors approved a fiscal year 2008-09 budget that directs \$20 million to the OPEB trust.**

Response: Agree.

26. **The County has 39 labor contracts with 17 different employee organizations. Most of the contracts expire on September 30, 2008.**

Response: Agree.

27. **The County Human Resources Department's labor relations services unit coordinates the activities of both in-house staff and contracted labor consultants.**

Response: Agree.

C. The OPEB Problem Continues

28. **In October 2007, the Supervisors approved a new contract with the United Professional Firefighters, Local 1230 that did not include any changes in health benefits.**

Response: Agree.

29. **In December 2007, the Supervisors approved a new contract with the Costa County Deputy District Attorneys Association that did not include substantive changes in health benefits.**

Response: Agree, with the clarification that the new contract eliminated dual coverage for Contra Costa County Deputy District Attorneys' Association employees.

30. **In April 2008, the Supervisors approved a new contract with the California Nurses Association that did not include substantive changes in health benefits.**

Response: Agree, with the clarification that the new contract eliminated dual coverage for California Nursing Association employees not enrolled in dual coverage as of March 24, 2008.

31. **Based on 2008 estimates from the independent actuary hired by the Supervisors, the County will need to set aside \$130 million per year, for 30 years, to pay down 40% of the OPEB liability. The Supervisor-approved 40% target level represents the estimated cost of the County's current retiree health care benefits, not the total amount required to also cover the health care benefit costs for all future retirees. Recent steps by the Supervisors, including the May 6, 2008 approval of the fiscal year 2008-09 budget, will reduce the liability over time. However, in the absence of any further action by the Supervisors to increase the target level, the gap between the required and planned contributions is estimated to be \$54 million per year.**

Response: Partially disagree. The \$130 million annual funding gap to reach the County's 40% target was calculated by CAO staff, not the independent actuary. Additionally, the approved 40% funding target represents 100% of the estimated cost of the County's current retirees' health care benefits or 40% of the total amount required to cover the health care benefits costs for the County's current active and retired population.

RECOMMENDATIONS

The 2007-08 Contra Costa County Grand Jury recommends that:

1. **The Supervisors establish the County's labor negotiation policy, explain it clearly to its negotiating team, and see that the negotiating team carries it out.**

Response: Has been implemented. The establishment and policy of labor negotiations has always been within the purview of the Board of Supervisors.

2. **The Supervisors refrain from individually communicating with labor leaders regarding any contract item being negotiated.**

Response: Will not be implemented. There are policy and management reasons for elected officials to communicate with labor leaders on pending negotiations. Additionally, it is within the purview of each individual elected official to decide what they wish to communicate to labor leaders as long as (per the Brown Act) they do “not disclose confidential information that has been acquired by being present in a closed session ... to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.” (Government Code, sec. 54963(a)).

3. The Supervisors only approve labor contracts that are fiscally prudent and that reduce the County’s unfunded OPEB liability.

Response: Will not be implemented because it is not reasonable to expect every labor contract to reduce the County’s unfunded OPEB liability. Some labor contracts, IHSS for example, contain no provision for retiree health care and therefore have no impact on the County’s unfunded OPEB liability; this recommendation would eliminate the Supervisors ability to approve labor contracts with these organizations. The Supervisors will continue to only approve labor contracts that are fiscally prudent.

4. The Supervisors develop and implement a new health benefit program for County employees and retirees that will reduce the OPEB liability.

Response: This recommendation is in process. The County Administrator is working to form a task force to assist in the development of a new health benefit program for County employees and retirees. The work of the task force is then subject to negotiation with the affected unions, whose contracts are mostly scheduled to expire at the end of September, 2008.

5. All Medicare eligible employees, retirees, and their dependants receiving health care benefits from the County be required to enroll in Medicare Parts A and B, and to assign their Medicare benefits to the County’s authorized health insurance carriers.

Response: Will not be implemented because older retirees who have never enrolled in Medicare Part B would pay more in extra Medicare premiums than the benefit of their Medicare assignment would save. This recommendation is being pursued for future retirees.

6. The Supervisors approve only County budgets that incorporate features of the approved OPEB funding strategy. These must include reductions and/or containment of employee and retiree health plan costs, program and service reductions, and redirecting funds into the OPEB irrevocable trust.

Response: The recommendation has been implemented in the FY 2008/09 budget. The FY 2008/09 budget includes \$20 million in partial pre-funding which significantly impacted the County’s OPEB liability and a fixed health care budget.

7. **Within six months of this report, the Supervisors develop a plan to incrementally increase the OPEB Irrevocable Trust funding from the current 40% target level to 85% over the course of the next 30 years.**

Response: Will not be implemented because it is not currently warranted or reasonable to set an 85% funding target. An 85% funding target is higher than CCCERA's current funding level. The County's goal is to reduce the unfunded liability not attempt to fund it at its current level. Additionally, the County did not adopt a fixed 40% funding goal. The funding goal is based upon 100% of the liability for its current retirees. Over time, the combination of current resource redirection, new tiers for new hires, and a budget for health care costs will fully fund the County's liability.

CONTRA COSTA COUNTY GRAND JURY REPORT 0806

SHOULD THE MT. DIABLO HEALTH CARE DISTRICT BE DISSOLVED?

The Sixty-Year-Old Agency Has Outlived Its Usefulness

Response from Board of Directors, Mt. Diablo Health Care District

FINDINGS

- 1. The District was formed in 1948, and in the early 1950's, acquired the Concord Community Hospital, later known as Mt. Diablo Medical Center. The District owned and operated the hospital until 1996.**

Response: We agree.

- 2. The District boundaries encompass the cities of Concord, Martinez, portions of Lafayette and Pleasant Hill, and adjacent unincorporated areas.**

Response: We agree. The population of the three cities is 195,241. The assessed property value is \$19,240,094,703.00. That is less than \$1.00/person. This is not adequate to run a Health Care District.

- 3. The District is governed by a five-member Board of Directors (Board) elected by the voters within the District.**

Response: We agree.

- 4. In 1996, under threat of financial insolvency, the District transferred the Mt. Diablo Medical Center and all related property and assets to John Muir Medical Center (now John Muir Health), a private, non-profit corporation. Mt. Diablo Medical Center is now operated as the Concord Campus of John Muir Health.**

Response: We agree.

- 5. Since 1996, the District has not owned or operated a hospital and has not provided hospital, physician or emergency medical services of any kind.**

Response: We agree and wish to clarify. There are more ill people in the community than there are in hospitals. The Legislature has challenged all Health Care Districts to serve the health needs of the community outside the hospital walls. Now that our legal debt is retired, we have redefined our role to serve that population.

6. The District has not had permanent, full-time employees for many years. In March of 2008, a part-time clerical employee was hired. The 2008 budget for this employee is \$12,000. Board members have performed all District administrative tasks, and some Board members have been occasional volunteers disseminating health-related information and services in the community. John Muir Health provides the District with office, meeting, and conference space.

Response: We agree.

7. The primary source of District income comes from property taxes levied on District homeowners and businesses. The District also receives an annual \$25,000 subsidy from John Muir Health.

Response: We agree.

8. The District’s total annual revenues are as follows:

<u>Year</u>	<u>Property Tax Revenue</u>	<u>Total Revenue</u>
2004	\$203,594	\$236,783
2005	223,369	266,869
2006	255,649	296,638
2007*	241,000	266,200
2008*	241,000	<u>266,000</u>
Total five-year revenue:		\$1,322,490**

*Budgeted

**Total revenues include miscellaneous income; e.g., interest earnings

Response: We partially disagree. The Grand Jury included 2007 and 2008 in statements which are estimate revenue compared with 2004, 2005, 2006 which are actual revenues received. This presents a negative bias. The results are misleading and the assumption is that nothing would be done in 2008. (Please see attachment)

9. District administrative and operating expenses have consumed nearly all of its revenues over the past four years. Expenses have included the cost of elections, legal and audit fees, Board member stipends, and the premiums for medical and dental insurance provided to current and retired directors. A percentage of expense summary, based on audited financial statements, follows:

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Post-Retirement Costs	0%	0%	46%
Election Costs	40%	0%	24%
Insurance	17%	45%	14%
Professional Fees	4%	20%	0%
Legal Fees	27%	16%	9%
Director Stipends	5%	7%	0%
Other Expenses	7%	12%	7%
Total:	100%	100%	100%

Response: We agree. A large part of our expenses from mandated insurance premiums, operation costs and state required dues as well as legal fees from conflict over the merger agreement have absorb so much of our revenue, that until legal debt was paid, monies were not available.

- 10. In 2004, 2005, and 2006, the District did not spend any of its total revenues to provide or advance health care for the District's taxpayers or residents. The District spent 100% of its total revenues for administrative and operating expenses.**

Response: We disagree. The Board with the support of the community entered into litigation over a breach in the merger agreement with John Muir Health. The Birthing Center was removed from the Mt. Diablo Hospital and relocated to Walnut Creek. John Muir removed much needed health services from our community. The legal expenses of this conflict were very costly. This was spent to benefit the community. In 2004, 2005, 2006 the District was decreasing the legal debt incurred. Legal fees were paid in full by August 2007.

- 11. Budget projections and unaudited accounting statements for a part of 2007 reveal a similar pattern as that shown for 2004-2006; no money was spent for health care.**

Response: We disagree. Budget projections were unsure at the beginning of 2007. However, with the payment of the legal fees behind us the Board began strategic planning for programs to be implemented in 2008. Programs developed by the strategic plan are; Healthy Lifestyles, Health Services, Health Access, Support Services, Work Force Development.

- 12. Some District board members participated in volunteer activities during 2004-2007 at no cost to the District. For example, volunteers distributed health-related brochures and conducted blood pressure screenings. They offered such services a half dozen times in 2007 at community activities such as farmers' markets. District director volunteers also promoted an anti-truancy program for local students.**

Response: *We agree and clarify. Health booths were provided by the district at farmer's market as a preventive approach to improving the health of the district. These booths have been very successful in challenged life-style choices and uncovering undiagnosed hypertension. When the District did not have extra funds to spend on programs, Board members were committed to serve the community by volunteering there time and their personal funds.*

- 13. The District claims credit for a single \$5000 donation in 2007 to the nursing program at California State University East Bay. The purpose was a scholarship. The donation was not a budget item, but represented re-directed funds that reportedly had been set aside for a director's stipend.**

Response: *We disagree. The discrepancy over budget and monies actually available after all monies received by the end of the year carried over to provide funds for a nursing scholarship.*

- 14. The scholarship donation is the only expenditure the District has made for a health-related purpose since 1996.**

Response: *We disagree. The expenditure of funds for the return of the Birthing Center is health related. Health booths and projects –*

- *“Project: HEROES” a children's obesity prevention program took an enormous amount of organization with various members of our community.*

The program was developed last year for the Martinez Unified School District. Kaiser Health Foundation granted the committee for this project \$15,000 and the District Board granted \$25,000 for implementation.

However, the project is on hold because the Martinez School District backed out at the last minute.

We are working to establish this program in the Mt. Diablo School District.

- 15. On February 8, 2008, the District's Board adopted a budget for calendar year 2008. The budget contains a line item allocating \$70,000 to “community Activities.” No specific activities or projects were approved at the time the budget was adopted.**

Response: *We agree and clarify. The District Board was working on several projects:*

The HeartSafe/AED program. This program is in collaboration with Los Medanos Community Health Care District. We Will have distributed 5 AEDs by the end of the

year and placed each in areas based on public need. Amount of \$14,000 has been budgeted.

Community Health Fund Grant Program. The grant fund is a partnership of moneys between John Muir Health and Mt. Diablo Health Care District. The Board has contributed \$133,000, Interviews with potential grantees are already underway and funds should be distributed by the end of October. Grants will fund an organization for one year. The areas of focus based on the strategic plan are:

- Senior health
- Teen awareness of STD's
- Continuation of the Isabelle Chenoweth Nursing Scholarship started last year
- Children and Obesity
- Dental

John Muir/Mt. Diablo Community Health Fund. As part of the merger agreement, every year this fund gives out approximately 1 million dollars to organizations who meet health needs of high risk populations within the community. Five members from John Muir Health and 5 members from Mt. Diablo Health Care District sit on the Board that distributes these funds. (See Attachment)

- 16. The parties to the 1996 agreement between the District and John Muir Health continue to perform their obligations pursuant to their agreement.**

Response: We disagree. John Muir Health removed the Birthing Center that they promised to expand on the Concord Campus. They promoted a merger of "equals" and then removed our CEO, our CFO, and removed 2 District Board Members from the System Board and one District Board Member from the Network Board, and there were plans to remove the Heart Institute.

The Mt. Diablo Health Care District is the "watch dog" for the Merger Agreement.

The Mt. Diablo Health Care District Board has the responsibility to reject any transactions that would have the effect of transferring control over Mt. Diablo Concord Campus from John Muir Health to some other entity.

- 17. John Muir Health created a Community Health Fund pursuant to the agreement, to which it has made contributions of \$1 million annually intended for community grants to improve public health.**

Response: We agree and wish to clarify. It was Mt. Diablo Health Care District that insisted that the John Muir/Mt. Diablo Community Health Fund be part of the Community Benefit Agreement and disburse \$1 Million annually to the community.

- 18. The District contends that under the terms of the 1996 agreement with John Muir Health, it has continuing responsibilities. For example, the agreement provides that certain defaults by John Muir Health would result in termination of the agreement and permit the District to recover assets from John Muir Health, including the Mt. Diablo Medical Center building and property transferred by the District in 1996.**

Response: We agree.

- 19. There is no suggestion by the District in the public record, including the District's submissions to LAFCO, that there is any reasonably foreseeable possibility of default by John Muir Health under the 1996 agreement that would trigger the rights reserved by the District to recover the hospital. John Muir Health recently began a major addition to its Concord campus, an event that makes such a default highly unlikely.**

Response: We disagree. There was no suggestion that foresaw the breach in the agreement, that John Muir Health would violate the Merger Agreement when they removed the Birthing Center from Mt. Diablo Medical Center. Recently, they had plans to move the Heart Institute to John Muir Health. Several district hospitals in California have now been returned to their districts after a merger failed, i.e. nearby hospital in west Contra Costa County. Many hospitals across the country have been forced to close their doors. If Contra Costa County becomes limited in the ability to care for poor and indigent due to budget cuts, those people will seek care at the private hospitals. Beds would be filled with patients who cannot pay for care or where reimbursement is minimal.

- 20. The District controls neither the board of directors of John Muir Health nor the Community Health Fund established through the 1996 merger agreement.**

Response: We disagree. The John Muir/Mt. Diablo Community Health Fund was a obligation of John Muir as a result of the merger agreement. The John Muir/Mt. Diablo Community Health Fund Board is made up of 5 members from John Muir Health and 5 members from the Mt. Diablo Health Care District. The District controls 50% of the decision makers to that Board. Over \$12 Million has been granted to the community through grants agreed on by this Board.

21. **The District and John Muir Health are currently negotiating another agreement. This proposal would establish a conduit to provide grant funds to the District to be passed through the District to selected organizations. A one-year agreement is likely. The District would incur administrative expenses in its role as a conduit for the grants.**

Response: We agree and clarify. The District is pleased to have negotiated a Public/Private Partnership with John Muir Health. Mt. Diablo Health Care District will contribute \$133,000 and John Muir Health will contribute \$140,000. This collaboration will benefit the Mt. Diablo Health Care District. (See attachment and Dudek report to LAFCO) The board has budgeted \$12,000 in clerical fees. A program manager may be needed in the future.

22. **As part of the arrangements to secure the grant contract with John Muir Health, the District's 2008 budget line item entitled "Community Activities" was increased from \$70,000 to \$130,000, effective May 1, 2008. The District also has plans to hire a part-time executive director to administer the anticipated grant program. A new budget line item, also effective May 1, 2008, allocates \$39,996 for a "CEO/Administrator." As of that date, the District had not created a job description for the new position.**

Response: We agree.

23. **The District's revised budget, as of May 1, 2008, calls for a total annual operating budget of \$328,300. Anticipated 2008 revenues remain unchanged, at \$266,200.**

Response: We agree and clarify. On May 16, 2008, the board was notified of estimated tax revenue to be paid. The updated estimated revenue for 2008 would be \$323,500.

24. **The Contra Costa County Local Agency Formation Commission (LAFCO) is responsible for studying special districts and the services they provide. LAFCO accomplishes this by completing periodic Municipal Services Reviews (MSR). Typically, the MSR process is completed every five years for special districts such as the Mt. Diablo Health Care District.**

Response: We agree.

25. **In August 2007, LAFCO completed its MSR for the District. While it did not recommend dissolution of the District, LAFCO recognized that additional scrutiny was warranted and directed the District to provide it with an interim report in 2008 on its activities and expenditures.**

Response: We agree and clarify. The reported stated “Maintain status quo, with annual reports to LAFCO”. Under Suggestions: Mt. Diablo Health Care District, “Pursue opportunities to participate in Joint Powers Agreements and other programs to reduce liability and medical insurance costs.”

26. Dissolution of the District may be initiated by either Board action or a petition of District voters.

Response: We partially disagree. While the Board may initiate the dissolution of the District it requires a vote of the people to dissolve the District, not merely a petition.

27. Upon dissolution, the District’s rights and obligations, both existing and contingent, would have to be taken over by another agency.

Response: We disagree.

- *The succession as described in the Cortese-Knox-Hertzberg bill states that the city in which the District resides is the successor.*
- *The city of Concord would have to administer the District Funds, which could only be spent for health related projects.*
- *Mt. Diablo Health Care District as a Special District is focused on health care only.*
- *This means the city would have to hire a Health Program administrator. The city would move in an unfamiliar direction.*
- *The city would have to absorb the future cost of Board Health Benefits.*
- *There would be election costs to dissolve the District (\$80,000)*
- *Litigation to dissolve the Merger Agreement is costly*
- *Loss of the \$1 million annual grant from the John Muir/Mt. Diablo Community Health Fund. (part of the merger agreement).*
- *Litigation with the State of California regarding the District’s oversight of 2 employee pension funds (which they would not allow the District to turn over to John Muir Health).*

28. The District has never adopted a plan for its dissolution, nor has the Board ever proposed a study of how to accomplish the District’s dissolution.

Response: We agree. The board majority feels there is much to accomplish and we have a job to do. We see no reason to adopt a plan for dissolution although one is spelled out in the Cortese-Knox Hertzberg.

CONCLUSIONS

1. **Since the last Grand Jury report in 2003, the District has not contributed any significant financial support to benefit the health and welfare of its residents. It has collected and spent over \$1.3 million of taxpayer money, virtually all of which was used to pay for administrative and operating expenses--to perpetuate the District's existence.**

Response:

- *The District has spent much of the revenue collected on legal fees attempting to keep health resources in our community. State mandated requirements has also eaten up a large amount of revenue. Since legal fees are no longer a cost to the District, that money being channeled into programs that benefit the health our community.*
 - *The District is one half of the John Muir/Mt. Diablo Community Health Fund Board and has contributed over \$12 Million in "tax-free dollars" to our community through collaboration with other foundations.*
 - *The District paid a significant price defending the Birthing Center to remain in our community.*
 - *The District is mandated to pay \$80,000 for election costs plus insurance, and professional services of a CPA and Auditor. It is true the District does not receive what other Health Care Districts do in the State because of the County Auditor's questionable view of Prop 13 resource distribution in our district.*
 - *As with any office conducting business, costs are incurred. The costs have not been extravagant but suitable to our mission.*
 - *The Grand Jury has made its report with most of its conclusions based on negative input. The summary of this report gives the positive side of the Mt. Diablo Health Care District working to increase the health of our constituents.*
 - *The District, despite all of its challenges, is dedicated to serve the health needs of our community.*
2. **The proposed grant donation agreement between the District and John Muir Health, which is likely to result in new administrative costs, including the salary and benefits of new staff, will not benefit the District. The District's 2008 budget allocations for staff expense and its "Community Activities" appear to be unrealistic, especially since budgeted 2008 expenses exceed anticipated revenues by \$62,000 (23%).**

Response: The proposed grant agreement stipulates all monies to be spent only in the district. The estimated revenues for 2008 have increased and meet budget requirements.

3. **During the course of its investigation, the Grand Jury did not find any instances of malfeasance, and does not imply that any such culpability exists. Volunteer activities are commendable, but they do not require the cachet of a government agency.**

Response: We agree as this proves the value of operation costs and mandated expenses are important to good financial management and transparency.

4. **Public officials who preside over obsolete organizations like the Mt. Diablo Health Care District need to act responsibly and provide for the agency's demise, including the orderly and efficient transfer of assets to, and assumption of liabilities by, successor agencies.**

Response: It is obvious that the Grand Jury has not considered the evolution of the Mt. Diablo Health Care District post legal obligations. Over the past 18 months, the Board has planned and prepared programs only now coming to fruition. That the Grand Jury chose a time of financial ebb without any thought given to potential, is a deceptive perspective. The district board is well aware of the Cortese-Knox-Hertzberg Local Government Reorganization Act 2000. It's far too costly to implement.

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that:

1. **Within six months of this report, the District's Board of Directors drafts a written plan for the dissolution of the District. The dissolution plan should include:**
 - a. **A detailed task list, including time estimates for completion, of all steps required to complete the dissolution in an orderly and efficient manner.**
 - b. **Identification of problems related to District obligations to provide health insurance benefits to present and former District Board members, and recommended solutions to those problems.**
 - c. **Identification of all possible future events that likely would be necessary to create either rights in, or obligations of, the District under the 1996 agreement with John Muir Health or any other long-term contracts.**
 - d. **Evaluations of other public agencies that are qualified to act as successors to the District in connection with any possible future events or transactions, and corresponding rights and obligations.**

***Response:** The recommendation will not be implemented because it is not warranted or is not reasonable. The district does not intend to create a plan for dissolution instead; we will complete the strategic plan that we have for 2008 to contribute \$250,000 to better serve the health of the community.*

- 2. Within six months of this report, the District submits the dissolution plan to LAFCO as part of the report required by that agency during the District's 2007 Municipal Services Review.**

***Response:** LAFCO is aware of our past and present position and has not recommended dissolution. Your conclusions have been misleading and biased on the present course for the Mt. Diablo Health Care District. A representative of the District Board met with the CEO of LAFCO and presented the new Strategic Plan and recommends the Board proceed. She understood that "planning is a process and not an overnight event."*

CONTRA COSTA COUNTY GRAND JURY REPORT 0807

**COUNTY EMPLOYEES MUST KNOW HOW TO RESPOND
TO PUBLIC RECORD REQUESTS**

Inconsistent Compliance with State Law Limits Access to Public Records

Response from Contra Costa County Board of Supervisors

FINDINGS

- 1. The California Public Records Act (PRA), Government Code Section 6250, was enacted in 1968 by the state legislature. At that time, the legislature declared, “that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”**

Response: Agree. The current version reads, “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.

- 2. The PRA has been amended from time to time, and the courts have interpreted and applied its provisions in many published appellate court opinions. In a recent opinion, the California Supreme Court described the importance of access to public records as follows: “Openness in government is essential to the functioning of a democracy.” International Federation v. Superior Court, 64 Cal.Rptr.3d 693, 697. (2007)**

Response: Agree.

- 3. The PRA provides that the public shall have access to all public records except for selected records that are specifically exempt from disclosure. Exempt records include personnel files, medical records, and many types of records that are part of ongoing criminal investigations.**

Response: Agree, with clarification. There are many kinds of records that are statutorily exempt from public disclosure. For example, exempt County records generally also include but are not limited to preliminary drafts, notes, and inter/intra-agency memoranda that are not retained by the County in the ordinary course of business; certain records pertaining to pending litigation; test questions, scoring keys, and other examination data for employment examination; real estate appraisals or engineering studies relative to the acquisition of property, etc. The majority of the Public Records Act is devoted to describing exempt records, which is why it can be challenging

for staff at every level of the County organization to understand the Act and respond with perfect confidence to myriad public records requests.

- 4. Contra Costa County (County) and its various departments and functional organizations are subject to the PRA and must comply with its terms.**

Response: Agree.

- 5. Grand Jurors, who did not identify themselves as such, visited 12 County offices and asked to inspect or to secure copies of records that were known, or were likely, to be kept in those offices. Grand Jurors made a total of 17 separate record requests. Grand Jurors did not request records that were exempt from disclosure under the PRA. Requests were always made to the person who was the first point of contact at each office, usually a clerk or receptionist.**

Response: Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding.

- 6. Grand Jurors found that, in some instances, County departments and their staff members responded appropriately to requests for access to or copies of public records.**

Response: Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding.

- 7. Grand Jurors experienced other instances when the clerk or receptionist expressed no knowledge of the PRA, or the County's duty to provide access to records. On one occasion, a Grand Juror was sent to another office, in a different building, that did not have the requested records. On several other occasions, first point of contact employees posed questions such as: "Why do you want it?" "Are you an attorney?" And, "Who are you with?" Other employees made statements such as: "I'm swamped right now," "I'm very busy," and, "We are an impacted office."**

Response: Since the Grand Jury did not identify the test departments, the County cannot accurately respond to this finding. However, the County would agree that such responses to public record requests as described in the Finding are inappropriate.

- 8. On several occasions, Grand Juror requests for records were referred to a more senior clerk or office manager who was able to comply with the request. In one instance, the Deputy Director of Animal Services promptly met with the Grand Juror who made the request and the records were produced for inspection. Not all County offices visited had senior staff members available to handle requests.**

Response: Agree.

9. **The County’s Animal Services Department was not always responsive to PRA requests. One Grand Juror made a written request for copies of records on wild animals picked up in 2007, including information as to whether any had tested positive for rabies, and paid the requested \$1.00 copying fee. The request was made at the front desk, on a busy day, and the records had not been received four months after the request. No explanation or refund has been offered.**

Response: Lacking the name of the requestor, the Animal Services Department was unable to verify the finding. However, the County would agree that such lack of response to a public record requests as described in the Finding is unacceptable.

10. **On December 18, 2003, the County Administrator issued Administrative Bulletin 120.4, entitled, “Public Access to County Records.” The preamble states, “The purpose of this bulletin is to inform County departments about their legal responsibility under the California Public Records Act...with regard to requests for inspection of or copies of County records.” Knowledge of the bulletin’s existence, and compliance with the policies and procedures detailed therein, is inconsistent from one County office to another.**

Response: Agree. Maintaining the institutional knowledge of organizational policies and procedures is an ongoing challenge and training issue for many organizations, but particularly for a county government agency with over 9,000 employees and service providers in more than 450 separate offices. Building a uniform knowledge base among all County employees continues to be a high priority and goal of the County.

11. **County Administrative Bulletin 120.4 contains information organized under the following major headings:**

- I. Confidential documents and documents not required to be disclosed**
- II. Confidential legal documents**
- III. Employee information disclosure**
- IV. Access to public records**

Sections I through III deal with exceptions to the law requiring disclosure; i.e., the reasons public access to records may be denied. Only section IV outlines how the public is to be afforded its rights under the PRA.

Response: Agree. The policy is organized in this way in order to avert the release of confidential/exempt documents, which, if it should occur, could compromise someone’s privacy and expose the County to liability. Before a County employee discloses County records, he or she must gain a good understanding of what is a disclosable public record and what is a confidential/exempt record, and must also learn to recognize the need to

consult legal counsel when that distinction is unclear. If Section IV was moved to the beginning of the policy, an unknowing staff person might read no further than Section IV and mistakenly release a confidential record. The whole policy is important and is organized to encourage staff to read the whole policy and not just the procedures.

12. **California Government Code Section 6253.1 states that the public agency shall assist the member of the public to make a focused and effective request that reasonably describes an identifiable record or records by making certain specified actions to the extent they are reasonable under the circumstances. County Administrative Bulletin 120.4 is silent on this duty.**

Response: Agree.

13. **County Administrative Bulletin 120.4 includes a policy that requests for public records ‘should be made in writing.’ Grand Jurors found that four of the offices visited, Environmental Health, the Animal Services and Building Inspection departments, and the Assessor required written requests, and had forms available for that purpose.**

Response: Agree. Written requests are not required by County policy but are “recommended”. While many public records requests can be filled immediately upon oral request, a written description of the request facilitates an understanding between the requester and County staff as to what documents are being sought. Some County departments have developed forms for this purpose that relate to the types of documents retained by the departments.

14. **A Grand Juror asked representatives of two County law offices to permit inspection of any written policies related to the e-mail transmission of confidential documents. The District Attorney’s office produced County Administrative Bulletin 120.4. The Public Defender’s office advised that no policy existed.**

Response: Agree. County Administrative Bulletin 120.4 provides guidance on public access to county records but does not pertain to the e-mail transmission of confidential documents. The County has a written policy on e-mail but not on the transmission of confidential documents via e-mail. Confidential e-mail documents are treated no differently than other confidential documents.

15. **Some County records are only accessible by computer. The PRA also applies to such records. In one instance, a Grand Juror asked the General Services Department to inspect maintenance records on County automobiles, specifically a hybrid model. An employee in the automotive maintenance office informed the Grand Juror that all the records were computerized. After purportedly conferring with a superior, the employee informed the Grand Juror that the records could not be viewed**

because no computer terminal was available for use by the public, and that only County employees had access to the database.

Response: Partially disagree. The Grand Jury failed to fully describe the staff response in its Finding.

In an effort to reduce the amount of paper and paper transmittal, the County maintains a significant amount of business information on database systems. Some of these systems can be accessed by the public via a kiosk or internet search site. However, most County data systems are designed for business purposes and/or also store confidential information. Reports can be produced from these data systems in order to tabulate and display data for the public. When a request is made for public information that is stored in an electronic data system, the County produces the information in the electronic format in which it is stored provided its release does not compromise confidential information or proprietary software and the information is available in electronic format. In other circumstances, the County provides copies of responsive data system reports or compiles a report that displays the requested information. The Public Records Act permits the agency to recover its costs associated with electronic media, paper copies, or system programming required to produce the requested records or data.

In the specific example described in this Finding, the requester asked to inspect hybrid vehicle maintenance records. The Fleet Services Manager explained to the requester that physical vehicle maintenance records are not maintained by the County and described the information technology in which the records exist. He offered to compile and print out records from the fleet system to meet the requester's needs. He attempted to assist the requester to define the request by describing the types of data maintained on the system, e.g., types of repairs, dates, etc. He followed up by calling the requester twice in an effort to satisfy the request.

Although County staff was unable to identify the requested information, staff satisfied the requirements of the Public Records Act by making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records (reference Finding No. 12).

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that:

- 1. Within six months of this report, County Administrative Bulletin 120.4 be reviewed and revised as necessary to comply with legislative changes and court decisions. The revised bulletin also should include:**
 - a. A requirement that each department's written policy with regard to public record requests be conspicuously posted or otherwise made available at each County office.**

- b. A standard form for use in all County offices for requests to inspect or obtain copies of public records.**
- c. A policy and procedure to allow public access to records that are accessible only by computer.**
- d. The public's rights under the PRA should be emphasized rather than the exceptions to the law. Section IV of County Bulletin 120.4 should appear as section I. The County's duty to assist members of the public should also be described.**

Response: The recommendation will be partially implemented within six months. The Board of Supervisors has directed County staff, under the guidance of the Internal Operations Committee, to develop the following materials:

- a. A standard County pamphlet on the County's policies and general procedures on public records requests will be developed and made available at County offices and public reception areas. This is not a statutory requirement for counties, but a good customer service practice.*
 - b. A standard public records request form will be developed and made available on the County's website and for use by County departments.*
 - c. County Administrative Bulletin No. 120 will be expanded to include procedures for responding to requests for records that are stored in an electronic data system.*
 - d. An introduction will be added to Administrative Bulletin No. 120 that more thoroughly explains the County's obligations to provide public records.*
- 2. Within six months of this report, all County departments be required to have written policies and procedures, based on revised Administrative Bulletin 120.4, intended to ensure consistent, timely, and lawful responses to requests for public records.**

Response: The recommendation will be implemented within six months. The County will update and redistribute its existing policy on public records accessibility and will provide training to staff on procedures for responding to public records requests. A single County policy is the most effective way to achieve consistent and appropriate responses to public records requests. Therefore, departments will be required to utilize the County's written policy on public records accessibility. Departments may supplement the Countywide policy with policies and procedures associated with the specific method in which they store and access County records.

3. **Within six months of this report, all employees that interact with the public at County offices where records are maintained receive training as to the County's responsibilities, including County and department procedures, to comply with the California Public Records Act.**

Response: The recommendation will be implemented within six months. The County will provide training for County managers and those employees that perform primary reception duties with the general public.

In response to the Grand Jury report and for the interim period pending implementation of the recommended actions, the County Administrator sent the attached memo to County department heads redistributing current applicable County policies and directing departments to review their operating policies to ensure conformity with County policies. Departments were also asked to re-circulate the County policies with staff most likely to receive or respond to a public records request, such as managers, supervisors, and receptionists.

CONTRA COSTA COUNTY GRAND JURY REPORT 0808
AQUATIC JUNKYARDS EXIST IN CONTRA COSTA COUNTY

*Response from Contra Costa County Board of Supervisors (BOS)
and Office of the Sheriff, Contra Costa County (OS)*

FINDINGS

- 1. Sections 663 and 663.5 of the California Harbors and Navigation Code specify that county sheriffs have the primary law enforcement responsibility for waterways within their respective jurisdictions.**

BOS Response: Agree.

OS Response: Agree.

- 2. Contra Costa County (County) shares waterway boundaries with Sacramento, Solano, San Joaquin, and Alameda Counties.**

BOS Response: Agree.

OS Response: Agree.

- 3. The County is responsible for approximately 200 miles of waterways and shorelines.**

BOS Response: Agree.

OS Response: Agree.

- 4. These waterways are important to the county and the state, not only because they are the source of drinking and irrigation water for millions of the state's citizens, but because they also offer fishing and recreational opportunities.**

BOS Response: Agree.

OS Response: Agree.

5. **There are places in the County where waterways, shorelines, and adjacent land are littered with debris, abandoned vessels, docks and pilings, gutted mobile homes, and houses that have fallen into the waterway.**

BOS Response: Agree. Further cleanup of county waterways is necessary. The County Department of Conservation and Development (DCD) code enforcement staff has been diligent in identifying code violations, discussing building, zoning, and health concerns with property owners, citing violations, and pursuing code enforcement action as necessary.

OS Response: Agree.

6. **Residences like those shown below have been constructed adjacent to Delta waterways without the necessary building permits and are not in compliance with County codes in regard to electrical wiring, plumbing, sewerage disposal, treated water, fire protection, and building integrity.**

BOS Response: Agree. There remain many substandard buildings and structures, and junkyard conditions adjacent to Delta waterways. However, the DCD has been active in code enforcement related to structures on islands in the Delta waterways. These activities include:

- *Bradford Island residents were provided with eight 20-yard trash dumpsters free of charge in 2000, courtesy of DCD and the Public Works Department.*
- *Salisbury Island was abated of 110 structures, including 39 residences and 42 docks in 2004.*
- *Golden Gate Island was approved for abatement by the Board of Supervisors in 2005, and that decision was upheld by the Superior Court. On July 25, 2008, the First District Court of Appeal ruled in the County's favor, triggering a new 40-day appeal period. Absent any further appeal, the County can begin abatement.*
- *Bradford Island has two current code enforcement cases that include the issues in the pictures in the Grand Jury report. On August 5, 2008, the Board of Supervisors denied the appeal on one case and granted the owners 90 days to comply with abatement order. The other case is still pending.*
- *Quinn Island has five current code enforcement cases that include the issues shown in the pictures in the Grand Jury report.*
- *Quimby Island has two pending code enforcement cases.*
- *Hammer Island has one pending code enforcement case.*
- *Holland Tract has one pending code enforcement case.*

The DCD has worked extensively in the past with the Sheriff's Department and other local agencies to clean up the County's waterways and shorelines. In fact, the barge, floating home, and derelict vessels shown in the picture on the top of page 22 of the Grand Jury report no longer exist because of just such a joint effort, which was featured in the cover story of the March 2007 edition of the Building Inspection newsletter (copy

attached). Notably, the County's code enforcement efforts on Salisbury Island garnered national recognition, with the County being named a "2005 Achievement Award Winner" by the National Association of Counties.

OS Response: Partially Disagree. The Office of the Sheriff does not maintain information regarding building permits and County code compliance with respect to electrical wiring, plumbing, treated water, fire protection and building integrity.

- 7. Derelict vessels and many other abandoned objects in the County's waterways contain toxic substances. Examples include creosote-treated pilings, lead-acid batteries, fuel tanks, asbestos, and lead paint.**

BOS Response: Agree.

OS Response: Agree.

- 8. Abandoned commercial vessels in the waterways include tugboats, commercial fishing boats, schooners, houseboats, barges, cranes, and dredges. Some vessels exceed 300 feet in length. These vessels are often accompanied by junk and debris, including butane and propane tanks, kitchen appliances, tires, barrels, scrap iron, and portable toilets.**

BOS Response: Agree, with the clarification that houseboats are generally considered recreational, not commercial, vessels.

OS Response: Partially disagree. Houseboats are defined as recreational vehicles.

- 9. Abandoned creosote-covered pilings, some with the remnants of buildings on them, number in the thousands.**

BOS Response: Agree. The DCD pursues code enforcement cases through the owner of the property on which the violation exists. Many of the pilings are located on land that is under the jurisdiction of the State Lands Commission.

OS Response: Agree.

- 10. The Office of the Sheriff (Sheriff) reports that some individuals have purchased derelict vessels and moved them into out-of-the-way locations. These derelict vessels are then inhabited in violation of County codes. Squatters also have moved into abandoned vessels. They pollute the waterways with garbage and untreated human sewage.**

BOS Response: Agree.

OS Response: Agree.

11. **Counties adjacent to Contra Costa have not enacted ordinances that would enable them to participate with Contra Costa in removing derelict or abandoned vessels in the Delta.**

BOS Response: Disagree. Solano County has enacted an ordinance similar to Contra Costa County's Vessel Mooring and Sanitation Ordinance in an effort to enforce illegal sewage disposal and mitigate the potential for future abandoned vessels. Sacramento and San Joaquin Counties have drafted similar ordinances, which are currently in the legislative review process.

OS Response: Disagree. Solano County has enacted an ordinance similar to Contra Costa County's Vessel Mooring and Sanitation Ordinance in an effort to enforce illegal sewage disposal and mitigate the potential for future abandoned vessels. Sacramento County and San Joaquin County have written similar ordinances and are currently in the legislative review process.

12. **Several County agencies administer regulations pertaining to the waterways. The primary agencies are the Sheriff and the Building Inspection Department.**

BOS Response: Agree. The Office of the Sheriff and the DCD will continue to work in conjunction with the Public Works Department, HSD-Environmental Health Division, and federal and State agencies to address code enforcement issues in the Delta.

OS Response: Agree.

13. **Four of the County's five supervisorial districts have waterways that are polluted by abandoned watercraft, junk, and debris as shown on the following map.**

BOS Response: Agree. See the County's response to Finding No. 6.

OS Response: Agree.

14. **The Sheriff started patrolling the Delta in the 1960's with its Marine Patrol Unit (MPU).**

BOS Response: Disagree. The Sheriff's Department started patrolling the Delta in 1954.

OS Response: Disagree. The Sheriff's Office started patrolling the Delta in 1954.

15. The Sheriff began removing abandoned recreational vessels from the Delta in 1987.

BOS Response: Disagree. The Sheriff's Department began removing abandoned recreational vessels from the Delta in 1997.

OS Response: Disagree. The Sheriff's Office began removing abandoned recreational vessels from the Delta in 1997.

16. The County's Building Inspection Department is responsible for the removal of derelict vessels, illegal buildings, junk, and debris on land adjacent to the waterways.

BOS Response: Agree. See the County's response to Finding No. 6.

OS Response: Agree.

17. Since 1997, the California Department of Boating and Waterways has provided grants to the County for derelict vessel removal. The use of this money is restricted to the removal of recreational vessels as well as pilings that are a threat to navigation.

BOS Response: Agree. The Sheriff's Department in 2007/08 received approximately \$102,000 in grant funding for derelict vessel removal and removed 22 vessels, 8 pilings, and 4 docks.

OS Response: Agree.

18. The Sheriff is not aware of the total number and location of all abandoned commercial vessels located in the County's waterways.

BOS Response: Partially disagree. The Sheriff's Department maintains an inventory of identified abandoned recreational and commercial vehicles. The inventory is updated on a semi-annual basis.

OS Response: Partially disagree. The Office of the Sheriff does not maintain an up to the minute inventory; however the Marine Services Unit maintains a semi-annual inventory of identified abandoned recreational and commercial vessels.

19. **Over the past 10 years, the MPU has removed an average of 30 abandoned recreational vessels per year.**

BOS Response: Agree.

OS Response: Agree.

20. **The MPU is funded by state boat registration fees, the County's general fund, and the state's Boating and Waterways Agency. The MPU annual budget is approximately \$1.3 million. The budget does not include funding for the Sheriff's Air Support Unit. This unit is funded through the federal Drug Enforcement Administration.**

BOS Response: Partially disagree. The Sheriff's Department Marine Patrol Unit is funded by County boat tax revenue, financial aid from the California Department of Boating and Waterways, and the County General Fund. The Sheriff's Department Air Support Unit is primarily funded by State and federal grants. Neither program is funded with vessel registration fees.

OS Response: Partially disagree. The Sheriff's Office Marine Services Unit is funded by County boat tax revenue, (not vessel registration fees) financial aid from the Department of Boating and Waterways and the County General Fund. The Sheriff's Office Air Support Unit is primarily funded by State and Federal Grants.

21. **The MPU has 11 full-time-equivalent staff consisting of 4½ deputy sheriffs, one sergeant, 1½ staff in the air support unit, one lieutenant, and three full-time equivalent positions to provide part-time support. The MPU has seven boats, six vehicles, six trailers, and two helicopters.**

BOS Response: Partially disagree. The Sheriff's Department Marine Patrol Unit has 8 full-time equivalent staff comprising 4 ½ deputy sheriff, 1 sergeant, 1 lieutenant, and 4 per-diem positions. The Sheriff's Department Air Support Unit has 1 ½ full-time equivalent deputy sheriff positions, contract pilot services, and two helicopters.

OS Response: Partially disagree. The Marine Patrol has 8 full-time-equivalent staff consisting of 4 ½ deputy sheriffs, one sergeant, one lieutenant, four Per-Diem positions to provide part-time support and 1 ½ deputy sheriffs assigned to the Air Support Unit. The Air Support Unit has two helicopters.

22. **In fiscal year 2007-08, the MPU received a grant of \$102,000 from the California Department of Boating and Waterways for derelict recreational vessel removal. This grant requires 10% matching funds from the County.**

BOS Response: Agree.

OS Response: Agree.

- 23. The Sheriff has participated, and continues to participate with state legislators, to develop maritime policing legislation.**

BOS Response: Agree.

OS Response: Agree.

- 24. The California Department of Motor Vehicles charges a \$20 registration fee every two years for recreational boats, but it fails to track ownership changes. After seven years of registration inactivity, the records are purged.**

BOS Response: Agree.

OS Response: Agree.

- 25. Abandoned vessels are often stripped of state registration numbers. This makes it impossible to identify vessel owners to charge them for removal of their property.**

BOS Response: Agree.

OS Response: Agree.

- 26. Based on available funds, 30 derelict recreational vessels are scheduled for removal in fiscal year 2007-08.**

BOS Response: Agree.

OS Response: Agree.

- 27. Submerged derelict vessels are difficult to locate, identify, and remove. The cost to remove and dispose of sunken vessels is approximately twice the cost to remove and dispose of floating abandoned vessels.**

BOS Response: Agree.

OS Response: Agree.

- 28. There is no County funding source for the removal of derelict commercial vessels.**

BOS Response: *Partially disagree. The County allocates 10% matching funds (\$9,325 in 2007/08) to secure the California Department of Boating and Waterway grant funding. There are no other County funds designated specifically for the removal of derelict commercial vessels.*

OS Response: *Agree.*

- 29. No County agencies are charged with removing garbage, debris, and junk from within the County's waterways.**

BOS Response: *Agree.*

OS Response: *Agree.*

- 30. The Sheriff is authorized by County ordinance to cite individuals who litter the waterways.**

BOS Response: *Agree.*

OS Response: *Agree.*

- 31. The MPU spends an average of 20 hours of staff time per week dealing with abandoned vessels. This represents 15% of the MPU's total staff hours.**

BOS Response: *Agree.*

OS Response: *Agree.*

- 32. The MPU assists other County departments and agencies by providing water transportation to help them fulfill their duties.**

BOS Response: *Agree.*

OS Response: *Agree.*

- 33. The Health Services Department's Environmental Health Division and the Building Inspection Department do not proactively address code violations on or adjacent to the County's waterways. They only respond to complaints.**

BOS Response: *Partially disagree. Since the abatement of Salisbury Island in 2003, The DCD has actively pursued code violations in the Delta. As indicated in the County's response to Finding No. 6, there are 12 active code enforcement cases, including Golden*

Gate Island, and this list will expand as the County becomes aware of other similar situations.

OS Response: Partially disagree. The Office of the Sheriff is not aware of the operating procedures of the Environmental Health Division or the Building Inspection Department.

RECOMMENDATIONS

The 2007-2008 Contra Costa County Grand Jury recommends that:

- 1. Within six months of this report, the Supervisors and the Sheriff create a joint task force to develop and present to the Supervisors a plan for the cleanup up of the County's waterways and adjoining shoreline. Task force members should include, but may not be limited to, representatives from the Office of the Sheriff and the County's Public Works, Building Inspection, and Health Services Departments.**

BOS Response: The recommendation will be implemented within six months. The Board of Supervisors will request its Transportation, Water & Infrastructure Committee (TWIC) to study this matter with input from the Office of the Sheriff, the DCD, and the Public Works and Health Services Departments.

OS Response: The recommendation requires further analysis. A minimum of six months is required to identify funding sources, create a joint task force, identify and determine the nature and scope of work to be done and prepare a formalized cleanup plan for presentation to the Board of Supervisors.

- 2. The Supervisors direct the joint task force to address the following elements in its Delta cleanup plan:**
 - a. The identification of state, federal, and adjoining county agencies, and representatives that are responsible for monitoring and addressing problems related to the Delta waterways, especially those involving abandoned recreational and commercial vessels, navigational hazards, and possible health and water quality issues.**
 - b. The identification of all state, federal, private sector, and non-profit organization funding that might be available to allow for the more timely and efficient removal of all abandoned vessels, dilapidated buildings, pilings, junk, and debris from the water and adjacent shoreline.**
 - c. An investigation of the practicality of establishing a non-profit organization to assist in fund raising efforts in support of the effort to clean-up the County's waterways and adjacent shoreline.**

- d. **An investigation of the practicality of establishing a program similar to the state’s “Adopt-a-Highway” effort to allow citizens and the private sector to actively and visibly support the effort to clean-up the County’s waterways.**
- e. **An investigation of the practicality of establishing and promoting a dedicated telephone tip line to allow citizens to report abandoned vessels and aquatic dump sites that are detrimental to the County’s waterways.**

***BOS Response:** The recommendation will be implemented within six months. The Board of Supervisors will request the TWIC to address in its study the elements described in Recommendations 2(a)-(e), and report back to the Board with its findings and recommendations on the scope of and possible financing for a cleanup plan.*

- 3. **The Supervisors identify the amount of general funds necessary to support the recommendations of the task force, including those that may be required to match state, federal, and private sector grants.**

***BOS Response:** The recommendation will be implemented within six months. The cost to implement any recommendations of the TWIC will be identified in the report that results from the TWIC study described in the County’s response to Recommendation Nos. 1 and 2.*

- 4. **The Supervisors and the Sheriff should be proponents of legislation and actions regarding the identification and removal of both recreational and commercial derelict or abandoned vessels and other debris. They should consider advocating for an increase to the state’s recreational watercraft registration fee and for a change in state law that would allow the additional revenue to be used for the abatement of abandoned commercial as well as recreational vessels.**

***BOS Response:** The recommendation has not been implemented, but will be implemented in the future. The Sheriff’s Department, in cooperation with the California State Sheriff’s Association, has committed to propose a change in state law that would allow the existing annual funds available in the California Department of Boating and Waterways, Abandoned Watercraft Abatement Program to be used for the abatement of abandoned commercial as well as recreational vessels.*

***OS Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Office of the Sheriff, in cooperation with the California State Sheriff’s Association, will propose a change in state law that would allow the existing annual funds available in the Department of Boating and Waterways Abandoned Watercraft Abatement Program to be used for the abatement of abandoned commercial as well as recreational vessels.*

5. **The Sheriff conducts a semi-annual inventory of all abandoned vessels to provide additional evidence and documentation to support the department's requests for additional funding.**

BOS Response: The recommendation has been implemented. The Sheriff's Department Marine Patrol Unit maintains an inventory of identified abandoned vessels that is updated semi-annually.

OS Response: The recommendation has been implemented. The Office of the Sheriff Marine Services Unit maintains a semi-annual inventory of identified abandoned vessels, both recreational and commercial, and is able to provide additional evidence and documentation to support a request for additional funding.