



# NAPA VALLEY HOUSING AUTHORITY

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May 20, 2008

**FILED**

JUN 17 2008

Clerk of the Napa Superior Court

By: C. B.  
Deputy

Napa County Grand Jury  
P.O. Box 5397  
Napa, California 94581

Attention: Mr. William E. Trautman, Foreperson, 2007-2008 Napa County Grand Jury

Re: Response of Napa Valley Housing Authority to Napa County Grand Jury 2007-2008  
Final Report on Renovation of Farmworker Housing Centers by the Napa Valley  
Housing Authority

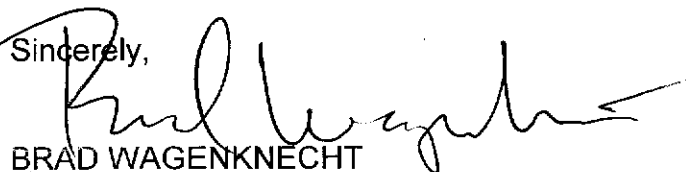
Dear Sirs:

The Napa Valley Housing Authority Board of Commissioners has received and reviewed the above-entitled 2007/2008 Grand Jury Report.

Attached please find the Napa Valley Housing Authority's responses to those Findings and Recommendations related to the items involving the Napa Valley Housing Authority.

These Responses were reviewed and approved at the May 12, 2008 meeting of the Napa Valley Housing Authority.

Sincerely,



BRAD WAGENKNECHT

Chair of the Board of Commissioners  
of the Napa Valley Housing Authority

Received  
Napa Superior Court

JUN 16 2008

Court Executive Office

**RESPONSES TO FINDINGS REQUESTED OF THE NAPA VALLEY HOUSING AUTHORITY BY THE GRAND JURY:**

**Finding #2:** Due to the number of post contract changes in the projects required by the NCCDPD and the County Fire Marshal, there were major costs incurred in excess of the original contract prices on both projects; \$1,020,118 for Calistoga and \$742,264 for Mondavi, resulting in a total overrun of \$1,762,382.

**Response to Finding #2:**

*The NVHA Board of Commissioners ("NVHA Board") generally agrees with this finding.*

**Finding #3:** The Board of Commissioners of the NVHA failed to exercise control over the Calistoga and Mondavi projects when, based on the information available to them during the projects, they knew, or should have known, that the cost of these renovations was far exceeding contract amounts.

**Response to Finding #3:**

*The NVHA Board agrees with this finding, but notes that whenever the Board was informed of cost increases it was also assured, until after the work had been performed and obligations incurred at the end of the summer of 2006, that the funds to cover the costs were being sought and were likely to be received from the State and the County, although the time for such receipt was not specified. The NVHA Board was aware that this had occurred early in the project successfully when new funds were secured for the initial cost increases and therefore had no reason to doubt the accuracy of the Executive Director's statements in regard to subsequent cost increases.*

**Finding #6:** The Commissioners of the NVHA and the members of the FWHOC failed to inquire into who was providing the cash to cover the shortfall so the renovations could be completed.

**Response to Finding #6:**

*The staff reports to the NVHA Board repeatedly emphasized that the cost overruns were caused by County actions in large part and that the County was receptive to providing the funds from the County's Affordable Housing Trust Fund as had occurred in the past. The NVHA Board was not informed by its Executive Director that his requests for new funding had already been rejected by Trust Fund staff due to constraints placed on such additional funding by the settlement of a housing lawsuit to which the NVHA was not a party.*

**Finding #7:** The NVHA and the FWHOC were more focused on having the renovations of the Calistoga and Mondavi Farmworker Housing Centers completed by the fall harvest of 2006, than how they were being financed.

**Response to Finding #7:**

*The NVHA Board cannot speak to the focus of the FWHOC. This statement is generally true in regard to the NVHA Board, in light of the assurances from its Executive Director that the necessary new funding would be forthcoming from other agencies.*

**Finding #8:** During construction of these projects, many of the NVHA Commissioners and FWHOC members did not regularly attend meetings and many meetings had to be canceled for lack of a quorum.

**Response to Finding #8:**

*The NVHA Board agrees with this finding but notes that when meetings were cancelled during the period of construction for lack of a quorum, the proposed agendas for the cancelled meetings generally did not include items requesting Board action relating to cost overruns or change order authorization or reports informing the Board that outside funding of cost increases as earlier suggested by the Executive Director would not be forthcoming.*

**Finding #9:** The Executive Director of the NVHA and HACN, without informing the NVHA Board of Commissioners or the FWHOC and without authorization from the City of Napa and HACN, used City of Napa and HACN funds in excess of \$2,000,000. The ability to manipulate funds was due, in part, to the same incumbent occupying management roles for two distinct organizations (NVHA and HACN) whose funds had been commingled by the managing agency (HACN).

**Response to Finding #9:**

*The NVHA Board agrees with this finding.*

**Finding #14:** The NVHA sent the Mondavi project out to bid before the building permits were issued, resulting in many change orders.

**Response to Finding #14:**

*The NVHA Board agrees with this finding.*

**Finding #15:** The NVHA undertook to manage the Calistoga and Mondavi projects without

sufficient prior experience in construction management.

**Response to Finding #15:**

*The NVHA Board agrees with this finding.*

**Finding #16:** The NVHA Executive Director had both actual and implied authority from the NVHA Board to authorize and approve the change orders on the two projects.

**Response to Finding #16:**

*The NVHA Board agrees that its Executive Director may have appeared to the construction contractors to have authority to authorize and approve change orders on the two projects due to the wording in the industry form contracts put together by the Executive Director and the project architect. However, these contracts were not attached to the authorizing resolution or included in the agenda packet prior to approval of the authorizing resolutions. The authorizing resolutions themselves are silent on the subject of change orders and only speak of authorization to execute the contract documents for the amount stated in the resolutions, which did not include any change order amounts. See Response to Finding #25 on the issue of whether the Executive Director had or could have been given actual authority to authorize and approve change orders on the two projects.*

**Finding #19:** County Counsel's memorandum to the Board of Supervisors dated December 18, 2006, criticizing the NVHA's Executive Director, is based on an incomplete, insufficient investigation.

**Response to Finding #19:**

*The NVHA Board has no direct knowledge of the completeness or sufficiency of a memorandum not drafted by its staff or approved by the NVHA Board prior to issuance of the memorandum by the County Counsel to the Board of Supervisors, or of an investigation not conducted by its staff, the NVHA Board or the NVHA legal counsel.*

**RESPONSES OF THE NAPA VALLEY HOUSING AUTHORITY TO ADDITIONAL FINDINGS:**

**Finding #22:** The NVHA Commissioners agreed with most of the audit findings in a response to the auditors which was apparently never made public.

**Response to Finding #22:**

*The NVHA Board disagrees with the portion of this finding that states, "which*

*was apparently never made public", but agrees with the remainder of the finding. According to the agendas and minutes of the NVHA Board, on June 11, 2007 in open session of a regular meeting of the NVHA Board, the Board accepted the audit report and management letter issued by its special independent auditors Caporicci and Larson, and asked Pam Kindig and Carole Wilson to prepare a response to the management letter recommendations.*

*In open session of a special meeting of the NVHA Board held on June 25, 2007, the NVHA Board reviewed the proposed responses prepared by Pam Kindig and Carole Wilson, which were distributed to the Board members and made available to the public in written form at the meeting. By a 4-0 vote, the members present approved the responses and authorized the Chair to sign and NVHA staff to deliver the written responses to Caporicci and Larson, which the NVHA Board believes then occurred.*

**Finding #23:** The NVHA does not yet have a capital improvements budget.

**Response to Finding #23:**

*The NVHA Board disagrees with this finding to the extent that it suggests that no capital improvement budget has ever been adopted by the NVHA Board for the projects examined in the report. When the fund balance numbers were made available to the NVHA from the financial system of the Housing Authority of the City of Napa ("HACN"), who provided financial management to the NVHA under a support services agreement, allowing the NVHA to determine what funds were actually available at the beginning of each of the fiscal years in question, the NVHA Board acted on March 12, 2007 to ratify and confirm the capital improvement (Fund 41) budgets for fiscal years 2004-2005 and 2005-2006, and adopted the Fund 41 budget for fiscal year 2006-2007. Prior to the time of this Response, final audits including this Fund have been completed and filed for each of these fiscal years.*

*At its special meeting on June 25, 2007, the NVHA Board adopted its overall operational budget for fiscal year 2007-2008 which included certain carryover construction items necessary to complete the water system at the Mondavi Farmworker Housing Center, for this purpose showing revenues and expenditures for Fund 41 expected to occur in 2007-2008 to finish up these construction projects authorized by the Board following and in consequence of acquisition of title to the property. In all other respects, all revenues and expenditures relating to real property owned by the NVHA in 2007-2008 were handled directly by the NCHA to whom sole administrative management (including revenue collection) of the three farmworker housing centers was transferred by agreement effective as of July 1, 2007. Such other revenues and expenditures are therefore included in the NCHA budget for fiscal year 2007-2008, not in the NVHA budget.*

**Finding #25:** The first sentence of Recital L to the Settlement Agreement erroneously states that the Executive Director did not have authority to sign change orders. This Recital was drafted by the County Counsel.

**Response to Finding #25:**

*The NVHA Board has no direct knowledge as to who drafted the first sentence of Recital L. However, by the time the NVHA Board reviewed and executed the Settlement Agreement, it had been advised by its current legal counsel that as a joint powers authority the NVHA can exercise only those powers which all of the members share in common. While housing authorities could have given an executive director authority to sign change orders, one of the member of the NVHA was a general law city rather than a housing authority and lacked that power unless a resolution was adopted (with notice to the State Controller) to use the Uniform Construction Cost Accounting Procedures set forth in Public Contract Code sections 22030 et seq., resulting in the NVHA Board being similarly limited. Even had those alternate procedures been formally adopted by the NVHA Board in the manner required by the Public Contract Code, the limits under these statutory procedures for staff authorization of work without bidding are \$25,000 and with informal bidding are \$100,000. By the time of the Settlement Agreement, it had been determined that the cumulative costs overruns which occurred were in excess of \$100,000 for each of the two farmworker housing projects.*

**RESPONSE TO RECOMMENDATIONS REQUESTED OF THE NAPA VALLEY HOUSING AUTHORITY BY THE GRAND JURY:**

**Recommendation #3:**

Members of these County agencies and advisory groups attend the meetings, read the agenda material before they vote and remain vigilant. As a matter of policy, they not simply rely upon staff but rather follow the precept outlined in Ordinance 05-01, to read and understand what comes before them.

**Response to Recommendation #3:**

*While the NVHA Board agrees with the general sentiment expressed in this recommendation, it should be noted that the NVHA is a joint powers entity comprised of one general law city and the housing authorities of the County of Napa and three other cities, and as such is not a "County agency" or County "advisory group".*

*Ordinance 05-01 is a county ordinance adopted by initiative whose procedures apply by its terms only to the Napa County Board of Supervisors acting in that capacity, and then only to approval of resolutions and ordinances, not contracts*

or other actions.

*Under the 12th Amendment of its joint powers agreement approved in 2007, the NVHA will cease to exist on June 8, 2008, having transferred all of its responsibilities to one or more of its members or to other city or county agencies.*

*The NVHA Board therefore believes that adoption of the precepts in County Ordinance No. 05-01 as a matter of NVHA policy would be an idle act at this time.*

**Recommendation #4:**

The Board of Supervisors, acting as the NCHA, take steps to restore the public's trust in the management of farmworker housing.

**Response to Recommendation #4:**

*This recommendation is not within the purview of the NVHA, which will cease to exist on or before June 30, 2008 under the terms of the 12th amendment of its Joint Powers Agreement . The NVHA Board notes, however, that between the Fall of 2006 and the issuance of the Grand Jury Report, the NVHA Board took a number of steps designed to restore such public trust, including securing of an independent audit and intensified financial and other oversight of the contract operators of the farmworker housing centers. In addition, in cooperation with its member agencies, the City of Napa, City of Napa Housing Authority, and the County of Napa, the NVHA Board simplified the organizational system of the various committees and agencies having oversight responsibility for farmworker housing development within Napa County.*

**Recommendation #6:**

Agreements to which local governmental agencies are parties not contain false statements in the recitals.

**Response to Recommendation #6:**

*While the NVHA Board agrees with the general sentiment of this Recommendation, it disagrees with the implication that NVHA agreements reviewed by the Grand Jury contained false statements in the recitals. The NVHA does not believe that any of the contracts reviewed in the report contained any false statements in the agreement recitals. The construction contracts relevant to the cost overruns for the two farmworker housing centers were form contracts that generally did not contain recitals. The authorizing resolutions for those contracts did not contain statements which were known or reasonably could have been known to the NVHA Board to be untrue at the time the resolutions were approved.*

*The NVHA Board further contends that the recital in the Settlement Agreement which the Grand Jury states was erroneous (See Response to Finding #25) was in fact a true statement, both under the law known to the parties to the Settlement Agreement agreement at the time of signing and in effect up to the present date.*

**Recommendation #7:**

The NCCDPD assure that thorough plan checks are done and that permits are issued on a timely basis.

**Response to Recommendation #7:**

*This recommendation does not relate to any matter that is within the jurisdiction of the NVHA to implement. However, having been a landowner engaged in construction projects requiring building permits, the NVHA would support, like all landowners, implementation of this recommendation by the NCCDPD or any other regulatory agency charged by law with checking plans and issuing permits.*