

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

916



FROM: Executive Office

SUBMITTAL DATE:
June 12, 2007

SUBJECT: Response to 2006-2007 Grand Jury Report: Riverside County Habitat Conservation Agency – Disposition and Sale of Surplus Property

RECOMMENDED MOTION: Receive and file, and, on behalf of the Riverside County Habitat Conservation Agency Board, direct the Clerk of the Board to immediately forward the attached response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: The attached report has been issued by the Grand Jury.

The Riverside County Habitat Conservation Agency is independently governed by its own Board and has no reporting relationship with regard to the Grand Jury reports to the Riverside County Board of Supervisors. This report is filed for purposes of providing general information to the public regarding the Grand Jury's findings.

Departmental Concurrence

Attachment

Gary M. Christmas
GARY M. CHRISTMAS
Deputy County Executive Officer

H:\DGRANT\GJURY\90day\RHCA8.07.doc

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
Larry Parish

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above report is received and filed and forward to the grand jury without comment.

Ayes: Stone, Wilson and Ashley
Nays: Buster
Absent: Tavaglione
Date: June 12, 2007
xc: E.O., Grand Jury, Co. Clerk-Recorder(2)

Nancy Romero
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.:

District:

Agenda Number:

3.5

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Riverside County Habitat Conservation Agency

*City of Corona ◊ City of Hemet ◊ City of Lake Elsinore ◊ City of Moreno Valley
City of Murrieta ◊ City of Perris ◊ City of Riverside ◊ City of Temecula ◊ County of Riverside*

SPECIAL MEETING

AGENDA

Wednesday, May 9, 2007

8:30 a.m.

**Riverside County Administrative Center
Annex – Board Hearing Room
4080 Lemon Street
Riverside, CA 92501**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in a Board meeting, please contact the Clerk of the Board at (951) 955-6097. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT**

At this time members of the public can address the RCHCA Board of Directors regarding Agenda Item No. 4. Any person wishing to address the Board on this matter is requested to complete a Request to Speak form available at the door. The completed form is to be submitted to the Clerk of the Board prior to an individual being heard. Whenever possible, lengthy testimony should be presented to the Board in writing and only pertinent points presented orally.

4. ACTION ITEMS

4.1 Consideration of the Responses to the Grand Jury Report

5. ADJOURNMENT

Meeting to be adjourned to June 21, 2007, at 9:00 a.m.

**RCHCA BOARD MEETING
MAY 9, 2007
AGENDA ITEM NO. 4.1**

ACTION ITEMS

**ITEM: Consideration of the Responses to the Grand Jury
Report**

Agenda Item No. 4.1

2006-2007 Grand Jury Report and Response

Background:

The attached report has been issued by the Grand Jury. RCHCA staff has responded accordingly, as has the County of Riverside concerning matters specific to those mentioned County Departments. These responses are attached to the Grand Jury Report.

Staff Recommendation:

Receive and file. In addition, forward the aforementioned report and responses to the County Board of Supervisors pursuant to Section 933(c) of the Penal Code.

Board of Supervisors and Clerk of the Board
RCHCA's Response to Findings and Recommendations

FINDINGS:

Number 1:

The RCHCA did not obtain its own appraisal or conduct an independent review of the buyer's appraisal. The appraisal report included as comparable property, land that had closed escrow twenty-nine months prior to this sale. It also included another parcel as far away as seven miles from the subject property.

During the period of the sale transaction, property values were increasing in the Sage area. Our investigation revealed a 19.05 acre parcel (APN 470-180-028) contiguous to the subject parcel (See *Attachment #1*) sold for \$500,000 in April 2004. This property was within the parameters, though not included, in the comparable property appraisals.

Response: Respondent disagrees partially with the finding.

The appraisal report, utilized by the RCHCA, was conducted by a Certified General Real Estate Appraiser (#AG006343) who is also a Licensed Real Estate Agent (#01192406) with 30 years of experience conducting appraisals. It was within the appraiser's professional discretion on which comparables to use in the appraisal process.

Number 2:

RCHCA does not have policy and procedure in place for sale of surplus property or any other operational functions of the Agency. Other than a conflict of interest code, the RCHCA did not produce any other rules and regulations as mandated by the JPA at the time of its creation.

Response: Respondent disagrees partially with the finding.

The RCHCA does have adopted policies and procedures in place for various operational functions. These policies include but are not limited to purchasing, distribution of SKR Reserve management endowments, and reimbursement for travel and other expenses. The Joint Exercise of Powers Agreement (JPA) creating the RCHCA only requires the Board to adopt rules and regulations that it may deem necessary for the conduct of the RCHCA's affairs.

Number 3:

On November 10, 2005, Economic Development Agency (EDA) received a Real Property Work Order Request Form to prepare a purchase and sale agreement and open and close escrow to sell the subject land, owned by RCHCA, to a private party. EDA did not follow their own general practice to provide the following services:

- Obtain the appraisal and/or conduct an independent review of the buyer's appraisal to determine "fair market value"
- Notify required public entities
- Notify adjacent property owners
- Post notification to the general public

Response: Respondent disagrees partially with the finding.

EDA provided the real property services requested by the RCHCA in accordance with the laws applicable to the RCHCA as a Joint Powers Authority. See also Response to Finding Number 4.

Number 4:

RCHCA did not notify adjacent property owners whose land abutted the subject property (See Attachment #1), denying them the right to purchase the parcel and to participate in competitive bidding in accordance with Government Code §25530.

Response: Respondent disagrees wholly with the finding.

*Government Code Section 25530 only applies to counties. As indicated in the Grand Jury's report, the JPA provides that the laws of the State of California applicable to the general law city of Moreno Valley shall govern the Agency in manner of exercising its powers. Therefore, any laws that apply specifically to counties do **not** apply to the RCHCA. The laws of the State of California contain no similar provisions applicable to cities. Additionally, the city of Moreno Valley has no ordinances, rules, regulations or policies requiring notification to adjacent property owners or the right to participate in competitive bidding involving the sale of city owned surplus property.*

Number 5:

At the request of staff, the General Counsel reviewed the Joint Powers Agreement, Section 3.3.3, to determine whether the Agency had authority to sell the surplus land. General Counsel's opinion was that the Agreement specifically authorizes the RCHCA to dispose of property it owns, and that the Agency could proceed with the sale. The JPA further requires under Section 3.9 Rules and Governing Law, "This Agreement shall be construed and enforced in accordance with the laws of the State of California. **The laws of the State of California applicable to the general law city of Moreno Valley shall govern the Agency in manner of exercising its powers...**"

General Counsel gave no advice regarding compliance with state laws or county policies.

Response: Respondent disagrees wholly with the finding.

In the context of the question posed, General Counsel's advice was specific to the issue of whether the JPA authorized the RCHCA to sell the property in question. Therefore, General Counsel responded appropriately. See also Response to Finding Number 4.

Number 6:

The subject property was the first surplus land that was sold by the Agency. Our investigation found that the BOD did not review the transaction of the sale for accuracy and five of the seven directors interviewed were not aware of the transaction, nevertheless they did authorize the executive director of the agency to proceed with the sale. The Board of Directors did not require staff to keep them updated and signed off on incorrect minutes from the meeting on September 29, 2005 regarding the sale of the parcel. The BOD did not require staff to develop a complete policy and procedure manual, including purchase and sale of land. The BOD failed to carry out their fiduciary responsibility to obtain optimal value, therefore depriving the County Agency of significant revenue.

Response: Respondent disagrees partially with the finding.

The RCHCA Board of Director's (BOD) meets on a quarterly basis in which they consider many items. A significant amount of time transpired between the times that this item appeared on the BOD agenda and when the BOD members were interviewed by the Grand Jury. This may account for any apparent lack of recollection.

The BOD did review the sale for accuracy and was aware of the transaction. A closed session was held on September 29, 2005 where the sale of the surplus property was considered and memorialized through an exhibit as well as photos.

The minutes reflect that the BOD authorized the Executive Director to proceed with the sale of APN 470-230-001 at fair market value. However, the BOD did not sign off on incorrect minutes in that the Assessor's Parcel Number (APN) cited was taken directly from the Board meeting agenda. The APN referenced in the agenda did not correlate to the surplus property under consideration. The surplus property was located adjacent to the north of the parcel cited in the Board meeting agenda and was documented in the aforementioned exhibit and photos.

Additionally, the JPA creating the RCHCA only requires the Board to adopt rules and regulations that it may deem necessary for the conduct of the RCHCA's affairs. This was the first sale of surplus land since creation of the RCHCA over 17 years ago. The BOD did not have a policy or procedure specific to the sale of surplus land for this reason. See also Response to Finding Number 4. The BOD carried out its fiduciary responsibilities concerning this sale.

RECOMMENDATIONS:

Number 1:

The RCHCA obtain its own appraisal or conduct an independent review of the buyer's appraisal when selling surplus property.

Response: The recommendation has not yet been implemented, but will be implemented within the next 6 months.

Number 2:

RCHCA develop a comprehensive procedure manual that will instruct the Agency in selling and purchasing land, as well as other operational functions of the Agency.

Response: The recommendation concerning other RCHCA operational functions has been implemented while the RCHCA will develop procedures for the purchase and sale of land within the next 6 months.

Number 3:

RCHCA coordinate with EDA on all real estate transactions. EDA will provide their full complement of real estate related services, regardless of the point in which the request was received.

Response: The recommendation will be implemented in connection with any future real estate transactions.

Number 4:

RCHCA through EDA notify adjacent property owners to allow them the right to purchase the property or engage in competitive bidding to generate increased revenue for the Agency.

Response: The recommendation will not be implemented.

The cost in delays associated with such notification is not warranted at this time.

Number 5:

The Office of the County Counsel replace the General Counsel assigned to RCHCA with an attorney who has experience in real property transactions and knowledge of related laws and policies. Whoever serves as General Counsel advise RCHCA not only the requirements of the Joint Powers Agreement, but of the laws of the State of California and the policies of the County of Riverside.

Response: The recommendation will not be implemented.

The current General Counsel for the RCHCA has extensive knowledge and experience with respect to Federal and State Endangered Species laws, open meeting laws, and the California Environmental Quality Act (CEQA). Additionally, Counsel has in depth familiarity with the Stephen's Kangaroo Rat Habitat Conservation Plan (SKR HCP) and it's implementation. This area of practice is extremely unique and specialized. It is limited to only a few attorneys in the state. Since the RCHCA completed the reserve system established by the SKR HCP in 1998, the only real estate transaction approved by the BOD is the sale of the property in question. Thus, the purchase and sale of real property is negligible compared to other RCHCA activities. The Office of County Counsel is available to provide assistance in any future real estate transactions.

Number 6:

The member agencies appoint new representatives to the Board of Directors, as soon as possible, who demonstrate a stronger commitment to the fiduciary responsibility to optimize revenue from the sale of property.

Response: The recommendation will not be implemented.

The members that currently comprise the Board of Directors have considerable knowledge and experience in overseeing implementation of the SKR HCP. Implementation of the SKR HCP is the sole purpose of the RCHCA. During the past decade, this BOD successfully completed the reserve system established by the SKR HCP consisting of land in excess of 41,000 acres. Their institutional knowledge of Federal and State laws is invaluable in conducting the business of the RCHCA. The RCHCA is audited annually by an outside firm who has found no irregularities, financial or otherwise. It is the member agencies who are responsible for appointing representatives to the BOD.