

2006-2007 GRAND JURY REPORT

Riverside County Habitat Conservation Agency

Disposition and Sale of Surplus Property

Background

The Riverside County Habitat Conservation Agency (RCHCA) administers the Stephens' Kangaroo Rat Habitat Conservation Plan (SKR HCP). RCHCA has established seven (7) core preserves permanently dedicated to conservation of SKR and other species throughout western Riverside County. In total, these preserves encompass over 41,000 acres, including 12,500 acres from the SKR occupied habitat.

RCHCA was formed in 1990 by a Joint Exercise of Powers Agreement (JPA) pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I of the Government Code of California. RCHCA is governed by a Board of Directors (BOD) consisting of one representative each from the cities of Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Perris, Riverside, Temecula and the County of Riverside, herein called "member agencies."

As stated in the Joint Powers Agreement, the purpose of the RCHCA is to:

"...plan for, acquire, administer, operate, and maintain land and facilities for ecosystem conservation and habitat reserves to implement habitat conservation plan for the Stephens' Kangaroo Rat and other listed or candidate threatened and endangered species."

The RCHCA's adopted budget for the past two years is summarized in the table below.

RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY SUMMARY OF ADOPTED BUDGET

REVENUES	FY 05/06	FY 06/07
SKR Mitigation Fees	\$1,800,000	\$2,100,000
Interest Income	55,000	150,000
Other Miscellaneous	100	100
TOTAL REVENUES	\$1,855,100	\$2,250,100

EXPENDITURES	FY 05/06	FY 06/07
Land Acquisition		
Core Reserve	\$825,000	\$400,000
BLM Exchange	9,000	25,000
Land Improvements	-----	600,000
Legal Services	80,000	80,000
Consultants	500,000	500,000
Other Administration	344,661	569,539
TOTAL EXPENDITURES	\$1,758,661	\$2,174,539

In October 2004, the Riverside County Board of Supervisors created the Environmental Programs Department (EPD) under the umbrella of Transportation and Land Management Agency. The EPD provides the administrative staff for RCHCA, which includes an Executive Director, Senior Administrative Analyst, Senior Planner, and an Executive Assistant. The staff coordinates all aspects of the RCHCA Board Meetings, prepares the requisite annual reports to the state and federal wildlife agencies, develops and administers the Agency's annual budget, and serves as a voting member on several reserve management committees. An attorney from the Office of the County Counsel serves as General Counsel for the Agency and the administrative staff.

Findings

On September 29, 2005, RCHCA agreed to sell 40 acres in the Sage area of Hemet, APN 470-180-012 (*See Attachment #1*), for \$230,000 based on the buyer's appraisal. The County Agency did not have sufficient real estate knowledge or understanding of the laws that govern the sale of surplus land. Consequently, it appears optimal price was not obtained.

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.

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.
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

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.
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.

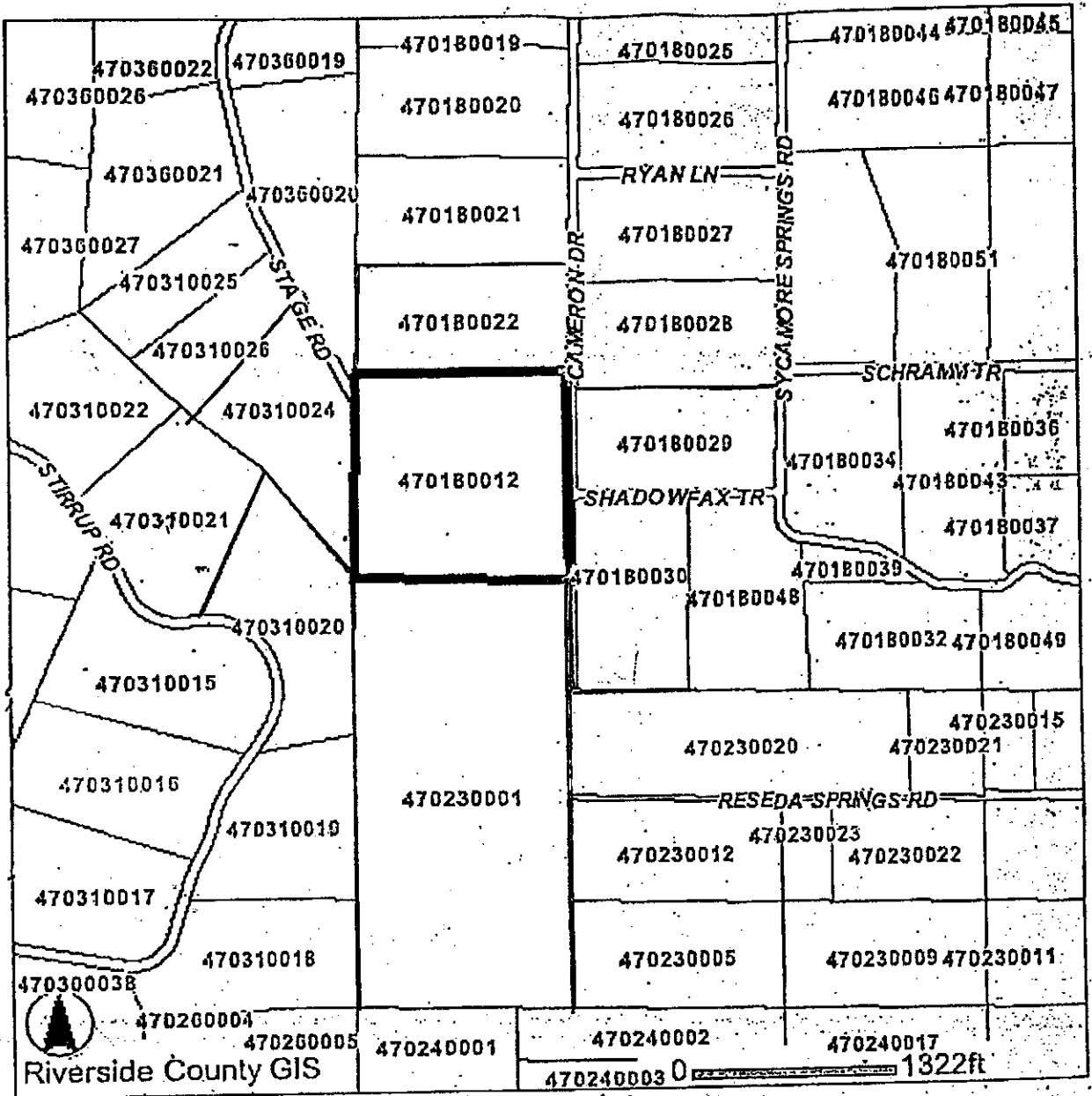
6. The subject property was the first surplus land that was sold by the Agency. Our investigation found that the BOD did not review the transaction of the sale for accuracy and five of the seven directors interviewed were not aware of the transaction, nevertheless they did authorize the executive director 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.

Recommendations

Riverside County Board of Supervisors
Riverside County Office of County Counsel
Riverside County Transportation and Land Management Agency
Riverside County Economic Development Agency
Riverside County Habitat Conservation Agency Board of Directors
City of Corona, City Council
City of Hemet, City Council
City of Lake Elsinore, City Council
City of Moreno Valley, City Council
City of Murietta, City Council
City of Perris, City Council
City of Riverside, City Council
City of Temecula, City Council

1. The RCHCA obtain its own appraisal or conduct an independent review of the buyer's appraisal when selling surplus property.
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.
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.
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.
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.
6. The member agencies appoint new representatives to the Board of Directors, as soon as possible, who demonstrate a stronger commitment to their fiduciary responsibility to optimize revenue from the sale of property.

Report Issued: 03/20/07
Report Public: 03/22/07
Response Due: 06/18/07



Attachment #1

Bold outline indicates subject property.