

# **WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY**

## **EXECUTIVE COMMITTEE MINUTES**

**Wednesday, June 16, 2021**

### **1. CALL TO ORDER**

The meeting of the Executive Committee was called to order by Vice Chair Jeff Hewitt at 12:00 p.m., via Zoom Meeting ID: 816 3676 0176, pursuant to Governor Newsom’s Executive Order N-29-20.

### **2. ROLL CALL**

#### **Members/Alternates Present**

Kevin Jeffries  
Jeff Hewitt  
Lesa Sobek  
Jonathan Ingram  
Kevin Bash  
Crystal Ruiz

#### **Members Absent**

Natasha Johnson

### **3. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by David Knudsen.

### **4. PUBLIC COMMENTS**

Lisa Mobley, Administrative Services Manager/Clerk of the Board, noted correspondence had been received.

Michelle Staples, a representative for the Olsen Canyon property, thanked staff for the updated appraisal that was received a few days ago and addressed most of the issues that were presented at last month’s meeting. However, the updated appraisal does not satisfy the MSHCP, as the appraiser notes in the report that he is not able to determine if mining is the highest and best use of the property. The RCA needs another appraiser who has mining experience to properly appraise this property. When RCA staff responded, it was stated that another appraisal would not be prepared unless the property owner was prepared to move into the MSHCP conflict resolution process. The Board is asked to work with RCA staff to retain a qualified appraiser to evaluate the property’s mining value and negotiate along the lines of the previous offer presented to RCA.

Ed Sauls, a member of the public, wanted to remind the Board of the importance of the perspective of landowners. The MSHCP was adopted and was approved on a leap of faith, as it was committing to buy or otherwise compensate for 153,000 acres of land, without money.

The RCA then set up 300,000-acre criteria cell areas putting the burden on the landowners and holding them hostage to find out whether they would be able to develop their properties by going through a HANS process, paying money to do so. Landowners are looking to the RCA Board to help solve and address acquisitions, treatment of owners, and improve the plan.

Rick Friess, a representative for the EHOV Lakeside property, noted that when the current owner purchased the property, there had already been a HANS determination that development could occur without running afoul of the MSHCP. Years into the development process, the property owner discovered that the County had entitled property in the same cell groups making the previously approved HANS determination no longer valid. Once the RCA started the acquisition process, there was limited communication and appraisals weren't discovered until the litigation process was started by the property owners, where they were identified as willing sellers, which is highly inaccurate.

## 5. ADDITIONS / REVISIONS

There were no additions or revisions to the agenda.

## 6. CLOSED SESSION

At this time, Steve DeBaun, legal counsel, announced the Board would be going in to Closed Session to discuss the one item listed on the agenda.

### 6A. CONFERENCE WITH LEGAL COUNSEL: EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)  
Case No. RIC1901547

### 6B. REPORT OUT FROM CLOSED SESSION

There were no announcements from Closed Session.

## 7. CONSENT CALENDAR – *All matters on the Consent Calendar will be approved in a single motion unless a Board Member(s) requests separate action on specific item(s).*

**M/S/C (Sobek/Ingram) to approve the following Consent Calendar items.**

### 7A. APPROVAL OF MINUTES – MAY 19, 2021

### 7B. WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN FEE COLLECTION REPORT FOR MAY 2021

This item is for the Committee to:

- 1) Receive and file the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Fee Collection Report for May 2021; and
- 2) Forward to the Board of Directors for final action.

## **8. RIGHT OF WAY ACQUISITION OVERVIEW**

Ed Sauls, a member of the public, applauded staff on their efforts, but questioned the problematic policies they are required to follow. The policies don't address several items including: the conflict resolution process is void of good faith negotiations; proposing alternatives to the conflict resolution process; appraisals do not reflecting the terms, a current day fair market value is determined, but it can take years to finish the acquisition; they do not provide compensation or tax relief to landowners due to delays; the MSHCP details removing a property from the cell criteria if it isn't purchased within four years, which should be included in the acquisition policy; and the prospect of land trades.

Royal Borel, a member of the public, raised concerns regarding the conflict resolution process. Currently, in the process of responding to a HANS study, there have been a few instances of appraisals done by the County not being shared with the property owner. When the County decides it needs a property for non-development use the property owners aren't allowed to sell it elsewhere. Also, appraisals are not done completely or competently.

Rick Friess, a representative for the EHOE Lakeside property, noted that the current property owners have been prevented from developing the property. According to the latest correspondence from RCA legal staff, the property owner can't do anything about being listed as a willing seller as the County didn't object to the owners being treated as such, meaning there's no dispute and no way for the owner to go forward with the JPR process. The letter came after it was threatened the RCA wouldn't proceed with the MSHCP or the dispute resolution process because the property owner had ensued a violation of their civil rights, petitioning the court. The property owner now must rely on the County to tell the RCA that the property owner is not a willing seller, to proceed.

Garrett Sauls, a member of the public, thanked staff for their efforts and recognized that efforts are moving in the right direction. The administrative settlement procedure that is included in this agenda item is a great step in the right direction. In May, a desire for a clearer, more communicative process was expressed to the RCA Board. In the past, when issues and conflicts arose, owners were able to have sit down meetings with the RCA and most times agree on solutions. Being able to communicate directly with the RCA staff goes a long way to deal effectively with any issues.

Michelle Staples, a representative for the Olsen Canyon property, agreed with the comments of Mr. E. Sauls and Mr. G. Sauls. It would be helpful to convene a group that includes property owners and representatives to work with RCA staff to fill in the policy summary with negotiated acquisition strategies that have been successful through the life of the MSHCP.

Gary Washburn, a member of the public, believes the MSHCP has merit, but it falls short in its ability to work with landowners especially in the conflict resolution process. The process isn't fair and is unacceptable to landowners.

Lisa Mobley, Administrative Services Manager/Clerk of the Board, noted that correspondence was received from Phil Jones on this agenda item.

Anne Mayer, Executive Director, thanked the public for their comments. This agenda item is not asking the Executive Committee to adopt any new policies, rather this is a receive and file report to bring forward a summarization of the existing policies currently in place and/or requirements of the MSHCP. The goal in providing this information to the RCA Board and the public was to receive comments on where the policies and practices could be improved. This is the start of a conversation on how the processes can be improved for property owners while also adhering to the MSHCP.

Hector Casillas, Right of Way Manager, provided a presentation summarizing the Right of Way acquisition process. Since RCTC took over management of the RCA in January 2021, staff has carried forward the acquisition of 486 acres with a combined value of \$13.5 million. The RCA acquisition activities are best divided into 3 categories.

Willing seller properties are acquisitions where property owners have offered their property for sale to the RCA, or they are listed on the open market. Once the RCA has determined the property fits within the criteria cells and the key objectives of the MSHCP, staff moves through the acquisition process. These properties are typically acquired for the appraised market value, however, there is some reasonable flexibility where staff would use an administrative settlement to acquire the property.

Grant funded properties are acquisitions that were included within a grant application. The RCA is currently managing the non-traditional Section 6 Grant and the Jurupa Mountains Conservation Grant. The process for these properties differs from willing sellers and the HANS process. These property acquisitions have strict deadlines and require coordination with other agencies. This acquisition type requires RCA staff to solicit letters from the property owners expressing an interest in selling their property to the RCA. Once the letter is received, RCA staff proceeds with obtaining an appraiser who is experienced and has been successful with the Department of General Services (DGS). A fair market value offer is prepared and sent to the property owner, if the offer is accepted, the appraisal report is sent to the California Natural Resources Agency or the Wildlife Conservation Board for a formal review. The typical acquisition process follows.

Habitat Acquisition Negotiation Strategy (HANS) property acquisitions are split into two sub-categories, development and non-development. For both sub-categories, the entire property or a portion of the property is deemed for conservation and must be acquired by the RCA after the Joint Project Review (JPR) is complete. These properties are typically acquired for the appraised market value, however, there is some flexibility similar to those of willing seller properties. Under a Development HANS, the RCA and property owner can enter into a 120-day negotiation period to acquire the property. Once an agreement has been reached, the close of escrow is determined by the purchase price and the availability of funding. Under the Non-Development HANS process, development of the property is not proposed, and the property is acquired based on a first come, first served basis as funding permits.

The Conflict Resolution Process for HANS property acquisitions is outlined in Section 6 of the MSHCP. RCA staff turns to this option when they are not able to reach an agreement during the negotiation period. The process includes mediation, arbitration, and appraisal review. Both mediation and arbitration are specific to the proposed development option of the property and the application of the MSHCP conservation criteria. The appraisal review involves the formal review by a third appraiser which has been mutually agreed on and reimbursed by RCA and the property owner. During the review process, the appraiser makes a recommendation as to which appraisal should be approved. In the event a recommendation cannot be made, the appraiser conducts their own appraisal within 90 days to establish fair market value of the property. The fair market value that is determined by the third appraiser is binding.

Ms. Mayer added that while these are the existing policies and processes that are currently in place, some of them are dictated by the MSHCP, and would be more difficult to alter than Board directed policies. The Board will need to consider how our processes are consistent or different for the separate types of acquisitions, if there are questions of equity, and if there is any interest in making modifications to the MSHCP process.

Vice Chair Hewitt asked for an explanation of the difference between mediation and arbitration in the conflict resolution process. Ms. Casillas explained that mediation includes a third-party mediator to assist in negotiations between both parties based on facts and appraisals from both sides. Steve DeBaun, legal counsel, added that arbitration is a dispute resolution process wherein there is a neutral third-party who makes a determination based on the facts. The main difference between mediation and arbitration when determining property value is mediation comes to a voluntary agreement, while arbitration is a finding by a neutral party.

Mr. Borel wanted to know if during the HANS process there any considerations for the type of appraisals that are done. Mr. Casillas noted that the appraisal must comply with the Yellow Book Requirements and the MSHCP. To ensure this, the RCA ensures the appraisers are qualified to deliver reports that comply with both. Once RCTC took over as the managing agency, appraisals began to be formally reviewed by another appraiser to determine if they comply with the Yellow Book Requirements prior to making an offer to the property owner.

Mr. E Sauls wanted clarification of the recommendation for this agenda item, as it states these policies are to be forwarded to the Board for final action and to note that these policies are missing examples other than the conflict resolution process that have been successful.

Board Member Ingram confirmed that the Yellow Book is for best and highest use of a property value at the time of determination. When RCTC took over as managing agency, they inherited the issues and deficiencies and have been working on bringing them forward to resolve them. There are inconsistencies between current Board policies and the MSHCP, which needs to be addressed. The RCA should consider reimbursements when an acquisition is dragged out several years due to lack of funding, as well as when appraisals are done and then sent to governing agencies that factor in constraints after the fact. When RCA staff comes to the table

for negotiations, there are constraints as to where the money comes from, where it has to go, and how it needs to be used.

Board Member Sobek thanked Ms. Mayer for her preface of this item. The recommendation of this item states it is a receive and file, but with the discussion of the policies today, it was unclear whether the Executive Committee would be responsible for making recommendations or changes, or if that responsibility would fall to the Board. Ms. Mayer noted that that decision is up to this Executive Committee. The intent is this item was to start to gather information, and this presentation can be forwarded to the Board to continue the conversation or direction can be given to come back to the Executive Committee again prior to a Board discussion.

Board Member Sobek thought it would be beneficial to have a sit-down conversation with key players, stakeholders, RCA staff, and some Board Members to look at the issues that are occurring and attempt to make it a better policy with the restraints of the MSHCP taken into consideration. Ms. Mayer noted that there is supposed to be an RCA Stakeholder Committee, that has defined membership, including property owners. One of the priorities has been to reestablish that committee.

Board Member Ingram noted that he would be willing to participate in the Stakeholder Committee, to bring his institutional and historical knowledge with respect to the MSHCP. With the help of RCTC, there is sure to be reasonable solutions to the issues that have brought forward today.

Ms. Mayer restated that the RCA is intending to reinstate the Stakeholder Committee, which would be an appropriate place for conversation with property owners. The Joint Powers Authority is specific as to the membership on the committee. The RCA has grant funding that requires approval from the State of California, which is a key component for some property acquisitions. As mentioned previously, RCA staff requested the Department of General Services to conduct a workshop not just for RCA but for others in the state to talk about their processes, allowing for greater success in moving appraisals in a timelier manner. They have agreed to have an RCA specific workshop, which will be used to determine process improvements. Between coordination efforts at the state and federal level with the grants programs and coordinating with stakeholders locally, the RCA should be able to identify where policy improvements can be made and make policy recommendations for the Board.

Vice Chair Hewitt asked that the issues with these policies be resolved prior to bringing this item back to the Executive Committee and then to the Board. Ms. Mayer noted that RCA staff will take the feedback from today and continue to gather input before coming back to the Executive Committee with more detailed information on recommendations for changes. Board Member Sobek concurred with bringing this back to the Executive Committee at a later date.

Board Member Ingram stressed the importance of also doing an overall review of the MSHCP in addition to review of the acquisition processes.

Ms. Mayer noted that another conversation that needs to occur is when the RCA will use and what the priorities should be for grant funding. With the timeline that was recently given to the RCA at a meeting with the Wildlife Conservation Board, Department of Fish and Wildlife, and Department of General Services, the RCA needs to be strategic with the use of grant funding so it doesn't further delay the process for property owners.

At this time, Board Member Bash left the meeting.

- 1) Receive a presentation summarizing the Right of Way Acquisition Process; and**
- 2) Forward to the Board of Directors for final action.**

## **9. LEGISLATIVE UPDATE**

David Knudsen, Legislative Affairs Manager, provided a legislative update for both state and federal activities. The state legislature is in the final stages of approving the state budget. While the legislature approved a balanced budget earlier this week, major changes involving funding will be facilitated by one or more budget junior bills in July or August, if revenue were to dramatically change. The approved budget included a \$3.6 billion climate action package, but the specific allocation of those funds will be identified in subsequent bills. News of RCA's individual funding requests for land acquisition should be forthcoming.

The House Transportation and Infrastructure Committee approved the Invest Act, a 5-year comprehensive surface transportation legislation. Working with Representative Calvert's team, Legislative Affairs staff believes there is an opportunity in the Invest Act to add the Western Riverside County Refuge Bill. Both bills aim at delivering transportation infrastructure projects while meeting climate action policies.

Yesterday, a joint Press Enterprise op-ed, authored by Chair Johnson with RCTC Chair Jan Harnik and Representative Calvert, was published supporting Representative Calvert's bipartisan Refuge Bill. It makes the case that fixing bridges, alleviating traffic, addressing the housing shortage, and protecting the environment do not have to be conflicting priorities. This op-ed is being circulated widely with policy makers and officials in D.C. and Sacramento, demonstrating how conservation and infrastructure are inextricably linked. The Board is encouraged to read and share the op-ed as the RCA advocates for the Refuge Bill to be included in the Invest Act.

- 1) Receive and file an update on state and federal legislation; and**
- 2) Forward to the Board of Directors for final action.**

## **10. BOARD OF DIRECTORS / EXECUTIVE DIRECTOR REPORTS**

Board Member Ingram thanked staff and Anne Mayer for all their efforts, despite issues and the steep learning curve.

Vice Chair Hewitt thanked Hector Casillas for the acquisition presentation as it was helpful to clear up some process issues.

Anne Mayer, Executive Director, congratulated Board Members as all cities and the county have approved the Nexus Study Update and Ordinance. The next steps include working with city and county staff on suggested changes they may have on the implementation manual, both administrative and technical.

Ms. Mayer brought up the prospect of returning to a regular meeting schedule for Board Member input, as was requested at last month's meeting. Currently, the Executive Order relating to remote meetings has been extended until the end of September. From an RCTC staff prospective, as there is one more meeting in July, the RCA should conduct that meeting in a virtual setting as it is rapidly approaching and there are details that need to be worked out with the Board Chambers. The RCA is dark in August, but if the Executive Committee desires, the RCA could start working towards in person meetings after Labor Day.

Vice Chair Hewitt expressed his desire to return to in person meetings in September.

Board Member Ingram proposed the idea of staggered meetings, utilizing both in person and virtual meetings, which would save the cities and RCA from travel reimbursements.

Board Member Sobek concurred with Board Member Ingram. Having a virtual option or staggered meetings to eliminate travel time when there are conflicting city council meetings.

Vice Chair Hewitt confirmed the July meeting would continue to be virtual and the September meetings would at least have a hybrid option.

## 11. ADJOURNMENT

There being no further business for consideration by the Executive Committee, Vice Chair Hewitt adjourned the meeting at 1:51 p.m. The next meeting of the Executive Committee is scheduled to be held on **Wednesday, August 18, 2021**, via Zoom.

Respectfully submitted,



Lisa Mobley  
Administrative Services Manager/  
Clerk of the Board