

YOLO HABITAT CONSERVANCY: A NEVER ENDING STORY

SUMMARY

The 2015-16 Yolo County Grand Jury (YCGJ) conducted an investigation of the Yolo Habitat Conservancy (YHC) which is a Joint Powers Authority (JPA) consisting of voting members from the County of Yolo and the cities of Davis, West Sacramento, Winters, and Woodland. The University of California, Davis, occupies a non-voting YHC board position.

Efforts to form a Habitat Conservancy Plan and the Natural Community Conservation Plan (HCP/NCCP or *the plan*) began approximately 25 years ago, with the now defunct Yolo Natural Heritage Program. In 2002 the YHC was formed to replace the Yolo Natural Heritage Program. The JPA was restructured in 2012. Prior to 2012, estimated expenditures incurred toward development of a conservation plan well in excess of \$6.5 million. To date, several draft plans have been prepared, but no plan has been finalized or adopted.

A 2010-2011 fiscal year audit found \$1.8 million in unauthorized and misappropriated spending. During further investigation, it was also determined the agency, with little to no oversight, had been mismanaged, leading to the restructuring of the JPA to its current form. In 2012, the JPA adopted policies and procedures in an effort to operate with more transparency. Safeguards were put in place to protect against misappropriation of funds. The Grand Jury determined that many 2012 policies and procedures are being followed; however there are still areas of concern such as submission of invoices by vendors in a timely manner. No competitive bidding was performed by the JPA before hiring the current consulting firm which manages the YHC. Oversight by the YHC Board could be greatly improved with implantation of a performance audit.

GLOSSARY

Joint Powers Authority (JPA) also known as a Joint Powers Agency – A joint powers authority/agency is formed by a contract between two or more public agencies to exercise, jointly, all power(s) common to each of them, for the purpose of accomplishing specific goals they may have in common. The California Government Code (GC) sections 6500-6536 provide the authority for public agencies to enter into Joint Powers Authority.

Consultant – A person, a firm, or an agency that provides professional or expert advice for a fee.

Mitigation Trust Account – Funds identified to satisfy a mitigation requirement. These funds derive from developer fees to offset the effects of development on Swainson's Hawks in Yolo County.

Mitigation funds – A method of satisfying a mitigation requirement is the payment of a fee or other monetary assessment from developers and other permittees to reduce or offset impacts to protected resources in order to receive the benefit of the permit for which they applied.

Mitigation funds are designed to counteract a specific loss caused by a particular project.

BACKGROUND

California Penal Code Section 925 authorizes the Grand Jury to investigate and report upon the operations, accounts, and departments of Yolo County. Penal Code Section 925a states the grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. Pursuant to those statutes and following up on recent media reports,¹ the YCGJ investigated Yolo Habitat Conservancy.

METHODOLOGY

YCGJ followed three primary methods for this investigation: initial research, interviews, and detailed research. The investigation included interviews of county staff and elected officials.

The grand jury requested YHC information for review and analysis.

The grand jury reviewed the 2012-2013 Yolo County Grand Jury Final Report, specifically, *Yolo County Finance: Tracking Changes* and *Yolo County Probation Department: A Troubling Contract, Questionable Ethics*. The Grand Jury also reviewed Yolo Habitat Conservancy Policies.

The grand jury visited the websites of the following agencies:

- The County of Yolo (<http://www.yolocounty.org/>)
- Yolo Habitat Conservancy (<http://www.yolohabitatconservancy.org/>)
- California Department of Fish and Wildlife (<https://www.wildlife.ca.gov/>)
- Friends of the Swainson's Hawk (<http://www.swainsonshawk.org/>)

DISCUSSION

In 1992, a JPA was formed to develop a HCP/NCCP to accommodate continuing development within Yolo County while protecting habitats of designated species. Yolo Habitat Conservancy describes the organization as follows:

The members of Yolo Habitat Conservancy (YHC) are the County of Yolo and the cities of Davis, West Sacramento, Winters, and Woodland. These local agencies formed a Joint Powers Agency (JPA) in August 2002 to begin drafting the HCP/NCCP. Through the Yolo HCP/NCCP, the YHC and its member agencies will obtain long-term permits under the federal Endangered Species Act (FESA) and California Natural Community Conservation Planning Act (NCCPA) that cover an array of public and private economic activities in Yolo County. To ensure compliance under these regulations, the YHC is collaborating with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) to develop biological goals and conservation measures that provide for the conservation of species covered by the plan and the natural communities on which they depend. The YHC is also responsible for an interim Swainson's hawk mitigation program.

Absent a regional HCP, local governments, private entities, or individuals, evaluate projects and activities with a variety of federal and state regulators to mitigate for potential impacts on

selected species. This is a lengthy process that can cost all parties considerable time and money. This approach also does less to protect wildlife because mitigation measures result in land being set aside haphazardly. This haphazard process is less ecologically viable and more difficult to manage. The YHC's goal continues to be the development of a "one stop" type of permitting system for developers and builders in Yolo County.

The YHC receives funding from several sources including California Wildlife Conservation Board grants, Federal Cooperative Endangered Species Conservation (Section 6) grants, and development fees. A portion of these funds is set aside to purchase land and easements within Yolo County. After many difficulties, the YHC produced a first draft of the plan in 2013, which covered 32 species and required an investment of almost \$500 million. This proposal was rejected due to its overreaching nature.

In 2012, it was discovered by the YHC Board that the YHC had not followed proper financial and accounting procedures, had not reported annual required audits, improperly borrowed funds, and was operating at a loss. A 2010-2011 audit found:

- The YHC needed \$670,101 in additional revenue to cover expenses through 2012. Faulty accounting showed the YHC to be in good shape, but \$303,310 for unpaid invoices helped put the YHC into a deficit.
- The \$2 million limit on expenditures from the Mitigation Trust Account endorsed by the California Department of Fish and Game for plan development was exceeded by approximately \$1.53 million. While the YHC Board approved the \$1.53 million, the board was unaware it exceeded the \$2 million limit on expenditures from the Mitigation Trust Account, which was spent without the knowledge or approval of the YHC Board.
- Grants were not adequately managed. This resulted in the YHC being ineligible for some grants, and in one instance, having to return \$236,366 of grant money.
- Standard accounting practices were not followed.

As a result, the YHC underwent a restructuring. Strict guidelines for procuring grants and spending grant money, submitting and paying consultant fees, and management of the YHC finances were established, leading to greater accountability and transparency. The post 2012 YHC was able to utilize some of the previous research, but had to contract with a number of consultants to be able to submit for approval a "one stop" type final plan.

While the current YHC initialized several transparency and accountability measures, the Grand Jury identified several areas of continued concern. The YHC estimates a cost in excess of \$10 million to complete the project to draft. Documents received from several sources support estimates of prior expenditures in excess of \$6.5million, which had been spent before the 2012 reorganization. While some of the prior studies and reports could be used, the post 2012 YHC found it necessary to continue to gather information and contracted with several engineering firms and consultants. Additionally, the Grand Jury found that since its inception in the early 1990s, the HCP/NCCP which later became the YHC has only produced two draft proposals, with an anticipated third draft due in late 2016.

The Grand Jury learned that a decision maker of the YHC is the owner of one of the consulting firms used by the YHC. Even though the YHC Board is aware of this arrangement, the Grand

Jury feels that the YHC Board should take steps to avoid any appearance of impropriety regarding the approval of YHC consultants' invoices.

Currently vendors are asked to submit invoices to the YHC for payment by the 7th of the following month. These invoices are reviewed by the executive director, signed off, and forwarded to Yolo County for payment. Procedures and policies put in place in 2012 to monitor payment activity included prompt submission of invoices by the contractors. During interviews the Grand Jury found that the YHC has had difficulty getting some contractors to adhere to the invoice submission date. Invoices are frequently submitted in an untimely manner, leaving monthly projected budgets in limbo.

The current executive director was contracted to provide services on a part time basis after resigning from a full time job with the county. Both the executive director and a member of the Yolo County Board of Supervisors indicate that there is a need to hire a full time, permanent executive director; however, they disagree when a new executive director will take over. The executive director feels the YHC will not transition to new management until a plan is approved and in place.

The Grand Jury found the YHC's responses to be open and forthcoming in providing agency and financial information. However, there are no clear special audit procedures in place to ensure the YHC follows its own performance objectives and operating guidelines. A special audit is an assessment based on a report by an auditor that requests further analysis of a business practice.

FINDINGS

- F1. The Grand Jury found the YHC to be cooperative in providing information as requested.
- F2. Since its inception, the YHC has yet to produce an approved HCP/NCCP plan.
- F3. The YHC performance over the last 20 years does not justify the time and money spent.

RECOMMENDATIONS

- R1. By April 30, 2017 the YHC shall submit the HCP/NCCP final plan for approval.
- R2. By September 1, 2016, the YHC shall obtain annual performance audits to measure progress.

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the grand jury requests responses as follows:

- Yolo County Board of Supervisors – F2, F3; R1 and R2
- City Council, City of Davis – F2, F3; R1 and R2
- City Council, City of West Sacramento – F2, F3; R1 and R2
- City Council, City of Winters – F2, F3; R1 and R2
- City Council, City of Woodland – F2, F3; R1 and R2

INVITED RESPONSES

- YHC Executive Director – F2 and F3; R1 and R2

- YHC Board of Directors – F2 and F3; R1 and R2
- Yolo County Chief Financial Officer – R2

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

DISCLAIMER

This report is issued by the 2015-16 Yolo County Grand Jury with the exception of one juror, who was recused. This grand juror did not participate in any part of the investigation, which includes interviews, deliberations, and the making and acceptance of this report.

¹ *Sacramento Bee* Article, “The Public Eye: Audit faults agency for misuse of Swainson’s Hawk funds”, by Edward Ortiz, dated July 21, 2013