

# **2004-2005 GRAND JURY REPORT**

## **The Office of Riverside County Counsel**

### **Background**

“The Office of County Counsel renders legal services to the county. This includes representing and advising the officers and employees of the county in matters of civil concern. The County Counsel does not provide legal advice to private citizens of the county. The Office of County Counsel also represents other public agencies when not in conflict with its primary duty to represent the county and its Board of Supervisors. Other public agencies include, but are not limited to, the courts, the judges, certain special districts and school districts located within the County of Riverside.”\*

The Office of County Counsel participates in the judicial enforcement of County Ordinances and Code Violations. Its attorneys are governed by the California Rules of Professional Conduct.

The Office of County Counsel is currently budgeted for fifty-three (53) positions consisting of the County Counsel, Assistant County Counsel, Principal Deputy County Counsel, one (1) Paralegal, and thirty (30) Deputy County Counsels. The remaining positions are filled by legal transcribers and administrative personnel.

The fiscal year 2004/2005 budget for the Office of County Counsel for salaries and benefits is \$6,899,755. Partially offsetting this expense are intra-fund transfers and revenues of \$2,200,897. After taking into account all revenues and transfers, the final budgeted figure is a net cost of \$4,698,858 to the County General Fund in fiscal year 2004/2005.

Electronic communication (e-mail) is routinely used between the Office of County Counsel and the county departments and employees they represent. The communication is governed by Board of Supervisors Policy Number A-50 that specifically states “...no expectation of privacy for use of county systems.” Communication between the Office of County Counsel and county agencies and employees only becomes privileged when litigation is involved. Absent litigation, this communication is available to the public.

The County of Riverside is designated the “Lead Agency” for the administration and enforcement of California’s Surface Mining and Reclamation Act of 1975

*\*The mission statement of the Office of County Counsel.*

(SMARA) in all areas of Riverside County. SMARA sets forth and regulates surface mining and reclamation of surface mining within the state. Generally, under SMARA surface mining applies to the extraction of minerals for commercial purposes and removal of overburden\*\* in amounts more than 1,000 cubic yards in one location of one acre or more.

There are two types of surface mining in Riverside County. One requires a Surface Mining Permit and the other is known as a Vested Mine, i.e., one established prior to 1975. In either case, before surface mining can commence, the operator must submit an application to the Planning Department and, upon approval, submit a mining plan, reclamation plan, financial assurances, and agree to a mine inspection.

## **Findings**

1. Our investigation revealed that “unpermitted” surface mining has been conducted intermittently on a particular property as early as 1984. Aerial photographs provided by Riverside County Flood Control taken in 1984, 1990, 1995 and 2000 confirm that mining continued during the entire period.
  - a. The first citations on this property were issued April 6, 1994, including one for illegal surface mining.
  - b. On August 17, 1995, the Office of County Counsel signed an agreement with the property owner that a surface mining permit would be required in order to continue operations.
  - c. On March 18, 1996, an application was filed with the Riverside County Planning Department by the property owner. A permit was never issued because the applicant did not satisfy the requirements outlined in SMARA.
  - d. From 1994 to present, multiple citations have been issued to the owner for lack of permits for motocross test tracks, buildings, grading, a landfill, model airplane paved runway and carports.
  - e. On May 14, 2002 a meeting was held in a County Board of Supervisor’s Office with the property owner, a Deputy County Counsel, a Legislative Assistant to a Riverside County Board of Supervisor, and representatives from Planning and Code Enforcement. The purpose of the meeting was to update and clarify the requirements for the owner to legally continue operations. On September 25, 2002, a Planning Department employee representative hand-delivered detailed requirements to the property owner, which when implemented would bring the property into compliance.

*\*\*Material overlying a useful mineral deposit.*

- f. From 2002 to June 2, 2005 the property owner has continued to operate without proper permits. Investigation by the Grand Jury revealed the Office of County Counsel has not enforced compliance as stated in the requirements given to the owner on September 25, 2002.
  - g. A grading expert in surface mining estimated that over 30,000 cubic yards of overburden\*\* have been removed from the site.
  - h. During a Grand Jury interview a Code Enforcement Officer was directed by a Supervisor in Code Enforcement in 2002 to “Lay off the case.”
2. County Counsel does not have an electronic link to cases currently open in Code Enforcement and the Planning Department.
  3. Properties, which have been improved, but remain unpermitted, continue to be assessed at a lower tax rate, thus depriving the County of Riverside of increased tax revenue.
  4. A review was conducted of random case files of properties that had been abated without the benefit of a lawful Seizure Warrant. A correspondence was discovered in which a Deputy County Counsel was advising a Code Enforcement Officer how to prevent the property owner from learning what happened and how to carry out further damage control options.

## **Recommendations**

### **Riverside County Board of Supervisors**

### **Riverside Office of County Counsel**

### **Riverside County Transportation and Land Management Agency**

1. The Office of County Counsel must expedite cases in Code Enforcement and Planning as established by Board of Supervisors’ Policy A-57 (Attachment 1).
 

When the Office of County Counsel negotiates an agreement with the property owner, staff must follow through to ensure that the terms of the agreement are strictly enforced.
2. The Office of County Counsel implement an electronic link from Code Enforcement and Planning Department to its office to provide oversight for legal enforcement on cases that have continued for an extended period of time.

3. The Office of County Counsel must identify and bring into compliance improved properties that remain unpermitted and have not been reassessed. Assessment at a higher value will generate more tax revenue to the County of Riverside.
4. The primary duty of the Office of County Counsel is to provide legal advice to the County and its agencies. They must also exercise their responsibility to third parties as set forth in the California Rules of Professional Conduct.

*Report Delivered: 06/27/05*  
*Report Public: 06/29/05*  
*Report Response Due: 09/26/05*

**COUNTY OF RIVERSIDE, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

<b>Subject:</b>	<b><u>Policy Number</u></b>	<b><u>Page</u></b>
<b>REVIEW OF UNAUTHORIZED BUSINESSES</b>	<b>A-57</b>	<b>1 of 1</b>

**OBJECTIVE:**

To provide policy guidelines for development departments to ensure the timely review of application materials for commercial and industrial uses which have been identified by the Code Enforcement Division of the Department of Building & Safety as operating without the required County approvals.

**POLICY:**

With the exception of commercial or industrial uses which qualify for Fast Track Processing pursuant to Board Policy A-32, all unauthorized uses which apply for County approval will be reviewed by the Unauthorized Business Review Team, which will consist of a representative from the Planning Department, Department of Building & Safety, and, when the unauthorized use is located in a Redevelopment Area, the Economic Development Agency. With the exception of the time line mentioned later in this policy and the “Team” identified for the case processing, these applications will follow the standard County procedure for case processing.

All unauthorized businesses will be required to file an application for the appropriate County permit and pay all applicable fees. Any application for approval of an unauthorized business which is not accompanied by the applicable fee (or supplemental deposit) will be taken forward to the appropriate review body for immediate denial, after which the use will be subject to enforcement action pursuant to Board Policy F-5.

**TIMELINES:**

All applications filed pursuant to this policy will be brought forward for hearing to the appropriate hearing body within six months of the initial application (except for those cases which are delinquent in paying the required fee) whether or not the applicant has supplied all of the necessary information or studies. The submittal of complete information and all necessary studies is the responsibility of the applicant, and a lack of necessary data will not prevent any case processed by the Unauthorized Business Review Team from being processed in accordance with these policy guidelines.

**Reference:**

Minute Order 3.23 dated 4/23/02

**ATTACHMENT 1**