

MCRPD LOST ALMOST THREE MILLION DOLLARS IN GRANT FUNDS FROM THE STATE OF CALIFORNIA

June 28, 2021

SUMMARY

The State of California Off Highway Vehicle Parks Department (CAOHVPD) suspended almost three million dollars in grant funds and suggested the resignation of Mendocino Coast Recreation and Park District Board of Directors (BOD) involved with the grants based on inconsistencies identified in the audit conducted by the agency.

Responding to a citizen's complaint, the 2020-2021 Mendocino County Civil Grand Jury (GJ) investigated the Mendocino Coast Recreation and Park District (MCRPD) and its loss of two million, nine hundred and ninety-five thousand, two hundred forty-nine dollars (\$2,995,249) in grant funds.

MCRPD was awarded Planning and Restoration Grants from the CAOHVPD to upgrade its property along Highway 20 at Summers Lane (hereinafter referred to as the "Highway 20 property") owned by MCRPD for use as an Off Highway Vehicle Park. CAOHVPD notified MCRPD both grants were placed on hold because of issues raised during a routine preliminary internal grant audit.

The issues identified during the review of both grants focused on the required matching funds and direct billing costs in the planning grant and the award of contract for perimeter fencing spelled out in the Restoration Grant.

As a result of the concerns raised during the oversight and audit of the grants, CAOHVPD pulled the grant's funding and suggested that any BOD that were directly involved with the grant application and administration resign.

BACKGROUND

Based upon a citizen's complaint, the 2020-2021 GJ investigated the MCRPD loss of two grants funded through the CAOHVPD. At issue is what caused the CAOHVPD to rescind these two grants.

The initial planned development of the Highway 20 property was for an 18-hole public golf course serving the North Coast of Mendocino County. This project was initiated in 1993 by a group of local businesspeople. MCRPD paid \$3,000 for a study of a "Muni Golf project" related to this proposal.

In December 2005, an Environmental Impact Report (EIR) was prepared for MCRPD and paid with financial contributions from local businesspeople. The focus of the EIR was to determine

the viability of the Highway 20 property for development as a golf course. The report identified significant mitigation issues that would need to be addressed to develop the property as a six-hole golf course. This was due to the impact on protected plants, endangered animal species and a deficient water supply available to the property. A traditional golf course consists of nine to eighteen holes.

In 2008, MCRPD obtained title to the Highway 20 property from a local nonprofit group to develop a public golf course and entered into a financial obligation for the purchase with a local savings bank. Despite the limitations identified in the 2005 EIR, MCRPD proceeded to acquire the property to be developed as a public golf course.

Since the property was unusable for its intended purpose and was encumbered by a loan, MCRPD later sought to identify alternative uses. One such option considered was an off-road vehicle (OHV) park with funds to be sought from California State Park grants.

MCRPD applied for two grants with the CAOHPD:

- The first was a Planning Grant (G16-07-11-P01) for \$255,421 awarded October 20, 2017. The scope of this project included, but was not limited to, a draft EIR, a final EIR, an Economic Feasibility study, forming a stakeholder’s group and holding a series of public meetings. MCRPD was required to provide matching funds.
- The second was a Restoration Grant (G16-07-11-R01) for \$2,739,828 awarded April 2, 2018. The scope of this project included, but was not limited to, a site survey, fence installation, restoration of trails, invasive species removal and investigation of trespass issues. MCRPD was required to provide matching funds.

	Date Awarded	Awarded Amount
Planning Grant	October 20, 2017	\$255,421
Restoration Grant	April 2, 2018	\$2,739,828

Both grants required MCRPD to provide matching funds or work credits amounting to a minimum (26%) of the amount awarded.

MCRPD was notified by CAOHPD in a letter dated July 11, 2018 that both grants were temporarily placed on hold pending completion of a routine interim audit. The audit dated December 10, 2018 of the Planning Grant identified and disallowed direct funding costs (reimbursement) and matching costs. The disallowed matching costs pertained to inconsistencies in certain labor, equipment uses and direct costs. As a result of the disallowance, the approved matching funds fell below the required minimum (26%) of the grant award.

On June 15, 2020, two members of the (BOD) and the MCRPD bankruptcy attorney attended a conference call with representatives from CAOHPD. The BOD was notified by CAOHPD representatives that both grants were suspended due to *“inappropriate conduct between {name*

redacted of non-profit and MCRPD....” The MCRPD bankruptcy attorney confirmed this statement in a letter summarizing the meeting dated June 15, 2020.

It was also communicated by a CAOHVDP Representative that because of this alleged misconduct, the Parks Department will not proceed with the grants as long as any BOD member that approved the arrangement with the *{name redacted}* of non-profit remains on the BOD. The CAOHVDP Representative was careful to state that since the BOD is an elected body, the CAOHVDP cannot mandate any changes. The CAOHVDP Representative also stated, in view of the history of alleged self-dealing, the Parks Department could not authorize any additional funds under the grants.

Grant Disallowance Timeline

July 11, 2018	Grants Placed on hold by State pending completion of audit
December 10, 2018	Interim audit by State identified disallowed costs
February 20, 2019	MCRPD District Administrator was notified grants were placed on hold
June 15, 2020	Grants suspended due to inappropriate conduct with <i>{the redacted name of the non-profit}</i>

METHODOLOGY

The GJ conducted interviews of CAOHVDP officials, City of Fort Bragg staff and MCRPD representatives. The GJ reviewed a significant number of documents provided by these sources related to the grants and researched the history and purchase of the Highway 20 property. The GJ further collected information on grant related projects through on-line and publicly available sources. The GJ also referenced related minutes, financial statements and attended several MCRPD BOD meetings during the course of the investigation.

GLOSSARY

{Company A} = Represents the redacted name of the firm that was among the sixteen vendors invited by MCRPD to participate in the Fence Project Request for Proposal (RFP).

{Company B} = Represents the redacted name of the firm that was not among the sixteen vendors originally invited by MCRPD to submit Fence Project RFP bids. This firm subsequently submitted a bid.

{User X} = a local non-profit organization that provides education and training in use of off-road vehicles.

DISCUSSION

Planning Grant Issues

Interim Audits are routinely conducted by CAOHVDP as part of the administration of grants. The audit conducted by CAOHVDP on December 10, 2018 focused on the Planning Grant. The audit identified and disallowed direct funding costs (reimbursement) and matching costs that MCRPD submitted. The communication from CAOHVDP referred to a match disallowance in the referenced labor, equipment usage and indirect costs. As a result of these disallowances, the approved matching funds fell below the required (26%).

The GJ reviewed the Interim Audit Report referencing the items of concern. The following summarizes that report's key findings:

Staff/Volunteer Labor Timesheets for Matching Funds

- Signed up to six months after dates of service,
- Neither signed nor dated,
- Double billing for hours,
- Miscalculated.

For the submitted timesheets

- Three BOD members submitted time sheets for a total of 35 direct hours and 55.5 indirect hours,
- Two local contractors submitted time sheets for a total of 27 direct hours and five indirect hours in 2017/2018. The local contractors submitting time sheets were listed as owners of the company that was awarded the fence contract in October 2017,
- An MCRPD grantee reported 128.25 direct hours and 0.25 indirect hours,
- MCRPD's grant writer submitted 82 direct hours and 38.75 indirect hours,
- One contractor submitted timesheets that were disallowed based on a conflict with the State Public Contract Code (PCC). The code states in part that any employee of the State shall not contract on their own behalf with any State agency to provide goods or services¹.

Time Sheets submitted as incomplete:

- Three (3) time sheets were not dated and submitted by the fence contractor after the fence contract had been awarded to the company,
- Two (2) time sheets were submitted six months later than the time of service rendered,
- Three (3) time sheets were not dated or signed submitted by the fence contractor after the fence contract had been awarded to the company².

¹ Per CAOHVDP Interim Audit Report dated 12/10/2018

² Ibid

Equipment and Mileage

- Equipment invoices submitted for matching funds credit were found to be billed to the wrong project,
- Mileage was claimed by volunteers but did not include appropriate signatures,
- Mileage claims were submitted by two (2) consulting firms that did not meet the State criteria for reimbursement³.

Restoration Grant Issues

MCRPD submitted to the CAOHPD a Grant Application for Restoration of 586 acres owned by the District and on April 18, 2018, MCRPD was awarded the Restoration Grant not to exceed \$2,739,828. MCRPD was required to provide matching funds in the amount of \$808,305.

As part of the approved Restoration Grant, MCRPD was required to install fencing around the Highway20 property. A cost estimate was prepared by *{a local contractor - Company B}* based on \$92.87 per linear foot totaling \$2,600,000.

Bid Process

The project specifications and projected costs for the fence project for use in the Grant application and bid packet were prepared by a local contractor. The amount identified in the grant application was \$2,600,000. MCRPD prepared an RFP bid packet for the Regional Park Access Control Project, Project #2017-01 OHV RG⁴.

The GJ reviewed the vendor list of sixteen local and regional contractors invited to submit a fence project bid. The GJ could not verify newspaper circulation advertising the RFP ten days before the bid opening as per the PCC requirements for bid solicitation.

Two bids were received by MCRPD. *{Company A}* submitted a bid of \$2,375,000 and *{Company B}* submitted a bid of \$2,591,234. The GJ noted that *{Company B}* was not on the original vendor list. It was noted at the Regional Park Committee meeting on 10/18/2017 that a principal owner in *{Company B}* prepared the cost estimates and specifications for the Grant proposal⁵. At this meeting two BOD and one member of the public reviewed both proposals that were submitted for consideration. The committee interviewed representatives from both contractors, rated each proposal then voted unanimously to approve and forward the proposal submitted by *{Company B}* to the BOD for review and action. According to the minutes of the Regional Park Committee⁶, only one of the assigned MCRPD BOD members on that committee was in attendance. An MCRPD BOD member not assigned to the Park Committee participated in the review, rating and recommendation of the fence contract.

At the MCRPD Regular BOD meeting on October 18, 2017 under Discussion/Action item #6.1 Regional Park Access Control Project, the BOD voted unanimously with no recusals to accept

³ Ibid

⁴ Note: Confirmed in the State Grant application and October 18, 2017 Regional Park Committee meeting minutes.

⁵ Ref. Minutes of Regional Park Committee Meeting 10/18/2017

⁶ ibid

the Committee recommendation to award the fence contract to {Company B} in the amount of \$2,591,234. According to the minutes of this meeting, only three of the five BOD members were in attendance to vote on the award of contract to {Company B}.

Requirements of the Bid Process

PCC section 20682 (c) states: “The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least one week before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the materials and supplies to be purchased.”

PCC section 20682.5 (b) states: “All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.”

The approved MCRPD Bylaws Article IX – District Finances Section 5 is in compliance with this code with the proviso that the BOD may reject all bids and re-advertise or by a four-fifths vote, may elect to purchase the materials or supplies in the open market, or to construct the building, structure, or improvements by force account.

PCC section 20682.5 (e) states: “If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.”

Concerns Regarding Fence Bid and Award Processes

The contractor {Company B} that was awarded the fence project was:

- Not the lowest responsible bid,
- Not among the list of the sixteen vendors notified of the bid,
- The firm that prepared the contract specifications and cost estimate for the Grant application.

The award of contract process:

- Awarded the project to the bidder with a higher cost proposal in violation of PCC *section 20682.5 (b)*,
- Only one assigned Committee Board member was in attendance at the Regional Park Committee meeting⁷. Another member of the BOD not assigned to the committee attended the meeting, participated in the rating process and voted for approval of the fence contract.

⁷ Ibid

Issues with the MCRPD Property Use Agreement (PUA)

The park grant program was designed to support an off-highway vehicle use for training and educational purposes. On October 17, 2018, MCRPD entered into a PUA with a local nonprofit group *{User X}* that specialized in off-highway training and educational programs. The term of the agreement concluded on June 30, 2021. The BOD minutes under Item 5.2 reflect approval of the PUA by unanimous vote with no absences or recusals.

Under Section 3 of the PUA, subsection Fees, MCRPD is to charge user fees according to the BOD approved Fee Schedule. At the time of this report, the GJ could not find an approved Fee Schedule for the use of the Highway 20 property. As a result of the lack of Fee Schedule, the approved local nonprofit group *{User X}* utilized the Highway 20 property for training and educational purposes without paying any user fees.

Under Section 5 of the PUA, subsection 5.1 Billing; MCRPD will invoice user groups monthly for their usage in the prior month. In review of the documents requested, the GJ could not obtain verification of invoices or proof of payment for the rental fees during the time of the Highway 20 PUA. This is due in part because the current Bylaws of MCRPD have not addressed or established user fees for any property other than the Mendocino Coast Botanical Gardens Annual Lease and the CV Starr Community Center Use. The MCRPD Bylaws also do not outline the procedures for approving fee waivers. In review of past MCRPD minutes, the GJ could not find any BOD action that provided an approval process or special waiver of fees.

Under Section 10 of the PUA, subsection 10.1, Insurance; the applicant agrees to provide a Certificate of Insurance, including endorsements, evidencing commercial liability coverage for the liabilities arising out of the use of the facility.

The required Certificate of Insurance for *{User X}* provided to MCRPD identified the insured as a Southern California specialty vehicle business. The Certificate of Insurance provided no verification of insurance coverage for *{User X}*. The GJ could not locate the required Endorsement to verify Insurance coverage as required by the MCRPD PUA.

Through the GJ review of the PUA issued to *{User X}*, it was determined that the applicant did not pay any fees for use of the property or receive a waiver of fees by BOD action. The absence of a certificate of insurance with attached endorsement for the applicant placed MCRPD in significant liability exposure.

Other Issues

The GJ found possible conflicts of interest with the contractual association with MCRPD and *{User X}*. The filing of Form 700 is required by law to be submitted annually by elected or appointed Boards, Commissions and Executive staff and is intended to disclose potential financial conflicts of interest. Based on the review of the forms filed by BOD members and staff, a financial interest was reported between *{User X}*, the Southern California specialty vehicle business, and MCRPD.

The Bylaws of MCRPD were last updated November 15, 2017 (per MCRPD's website as of the GJ review on March 31, 2021). Annual review of the Bylaws by the MCRPD Counsel and approval by the BOD would limit the risk of exposure to litigation and conformity with Special District legal requirements.

The Bylaws of MCRPD do not require BOD members and Executive staff to receive initial and annual training in Brown Act, Ethics and Harassment in compliance with AB1234⁸. The GJ could not identify any penalties for noncompliance with Brown Act or other mandated training. Such training could reduce the potential for liabilities arising from conflicts of interest or harassment.

MCRPD's website does not publish for public review its monthly or other periodic financial statements reporting sources and uses of funds. Nor does it publish its check register to provide details as to the use of funds. The public is essentially uninformed as to MCRPD's finances.

FINDINGS

- F1. MCRPD lost the opportunity to receive more than \$2.5 million in grant funds because it operated in violation of State Codes and guidelines pertaining to the administration of the CAOHVPD Grants and award of the fence contract per *PCC section 20682.5 (b)*.
- F2. MCRPD incurred debt which it has been unable to repay and led to bankruptcy because of purchasing the Highway 20 property prior to the completion of the feasibility study for the intended purpose of a golf course and the possible mismanagement of public funds.
- F3. MCRPD BOD does not have an effective mechanism to ensure training and compliance with conflict-of-interest rules.
- F4. MCRPD risks civil litigation or statutory violations as MCRPD BOD and Executive staff do not receive initial and annual training in Brown Act, Ethics and Harassment in compliance with AB1234.
- F5. MCRPD risks potential conflicts of interest and potential litigation as Bylaws do not require attendance of Counsel at its BOD meetings.
- F6. MCRPD fails to provide financial transparency to the public as monthly financial statements are not routinely published for public viewing. Monthly financial statements would identify revenue sources such as rental fees, expenditures and capital commitments.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. MCRPD's BOD should amend its Bylaws within 60 days following release of this GJ report to require independent professional legal guidance for any project to assure that all

⁸ Assembly Bill No. 1234, Chapter 700 "Local agencies: compensation and ethics." Approved by Governor October 07, 2005. Filed with Secretary of State October 07, 2005.

Grant(s) and the award of contracts comply with State codes and guidelines to guard against the loss of grant funding due to conflicts of interest and outdated bylaws. (F1)

- R2. MCRPD's BOD should engage a professional consultant to develop a feasibility study and strategic plan prior to the initiation of any capital improvement project (CIP). MCRPD should document and publish the report for public review and comment at least 60 days prior to the award of contract for any CIP. Complete disclosure and public notice in the letting of all Special District contract may avoid the loss of grant funding due to conflicts of interest and outdated bylaws. (F2)
- R3. MCRPD's BOD should engage an independent Outside Counsel to review its Bylaws within 90 days of this report; MCRPD's Bylaws should be updated annually with outside Counsel at the beginning of each new term and post them on MCRPD's website to make them available to the public. (F3)
- R4. MCRPD's BOD within 60 days of the start of their term and annually should receive training for Brown Act, Ethics and Harassment laws and regulations as required. All staff at the start of employment and annually thereafter should receive training for Brown Act, Ethics and Harassment laws and regulations as required. Records should be maintained to track participation. (F4)
- R5. MCRPD's BOD shall retain legal counsel with required attendance at every BOD meeting to avoid actions that may violate Federal, State, County, Local, Penal Code, Ethics or Brown Act violations. (F5)
- R6. MCRPD shall prepare and publish on its website a monthly financial report as approved by the BOD to provide transparency to the public. This report should include a review of the monthly accounting of checks issued and revenue received. (F6)

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

From the following elected county officials within 90 days:

- MCRPD BOD (All Findings and Recommendations)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code § 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.
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