

Internal Audit Department

O R A N G E County in the USA

AOC SPECIAL REQUEST: REVIEW OF COUNTY'S PURCHASE OF REAL PROPERTY USING CLERK-RECORDER SPECIAL REVENUE FUND 12D

As of October 31, 2012

This report is in response to an Audit Oversight Committee (AOC) request for IAD to review the propriety of using about \$2.1 million of restricted funds in the Clerk-Recorder's Special Revenue Fund 12D for the County to acquire the real property located at 433 Civic Center Drive West, Santa Ana, in March 2008.

Based on our review and research of allowed uses as specified in Government Code 27361, it appears that using Fund 12D restricted monies to acquire the property located at 433 Civic Center Drive West **is permissible** as long as the property is used to store the appropriate records: specifically, *recorded* real property documents. If the property is used to store any other records, then Fund 12D should be reimbursed proportionately.

We identified **two (2) Critical Control Weaknesses** in the County Agenda Staff Report (ASR) process that need to be improved as the ASR prepared and submitted by the County Executive Office to the Board of Supervisors did not contain material and relevant information needed for making the decision whether to acquire the subject property, including such issues as: 1) the estimated renovation cost information of \$3.56 million was not included in the ASR and 2) the funding source restrictions, intended use of the property, and compliance with funding restrictions were not clearly explained in the ASR. We also identified **two (2) Significant Control Weaknesses** where: 1) an authoritative opinion regarding the propriety of using Fund 12D restricted funds to acquire the property was not obtained prior to the acquisition and 2) a written plan for the property has not been developed as of this date. In addition, we identified **two (2) Control Findings** where: 1) a minimal quantity of non-qualifying documents are currently being stored at the subject property and 2) a written County policy is needed that clearly defines and establishes Corporate Real Estate's responsibilities and authorities.

AUDIT NO: 1159-A

REPORT DATE: FEBRUARY 21, 2013

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2009 Association of Certified Fraud Examiners' Hubbard Award to Dr. Peter Hughes for the Most Outstanding Article of the Year – Ethics Pays



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Providing Facts and Perspectives Countywide

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Transmittal Letter



Audit No. 1159-A February 21, 2013

TO: Renee Ramirez, Assistant Clerk-Recorder
Robert J. Franz, Interim County Executive Officer

FROM: Dr. Peter Hughes, CPA, Director
Internal Audit Department

SUBJECT: AOC Special Request: Review of County's
Purchase of Real Property Using Clerk-Recorder
Special Revenue Fund 12D

We have completed a Review of the County's Purchase of Real Property Using Clerk-Recorder Special Revenue Fund 12D as of October 31, 2012. We were directed to perform this review by the Audit Oversight Committee at its March 15, 2012 meeting. Our final report is attached for your review.

Please note we have a structured and rigorous **Follow-Up Audit** process in response to recommendations and suggestions made by the Audit Oversight Committee (AOC) and the Board of Supervisors (BOS). Our **first Follow-Up Audit** will begin at six months from the official release of the report. A copy of all our Follow-Up Audit reports is provided to the BOS as well as to all those individuals indicated on our standard routing distribution list.

The AOC and BOS expect that audit recommendations will typically be implemented within six months and often sooner for significant and higher risk issues. Our **second Follow-Up Audit** will begin at six months from the release of the first Follow-Up Audit report, by which time **all** audit recommendations are expected to be addressed and implemented. At the request of the AOC, we are to bring to their attention any audit recommendations we find still not implemented after the second Follow-Up Audit. The AOC requests that such open issues appear on the agenda at their next scheduled meeting for discussion.

We have attached a **Follow-Up Audit Report Form**. Your agency should complete this template as our audit recommendations are implemented. When we perform our first Follow-Up Audit six months from the date of this report, we will need to obtain the completed document to facilitate our review.

Each month we submit an **Audit Status Report** to the BOS where we detail any critical and significant audit findings released in reports during the prior month and the implementation status of audit recommendations as disclosed by our Follow-Up Audits. Accordingly, the results of this audit will be included in a future status report to the BOS.

As always, the Internal Audit Department is available to partner with your staff so that they can successfully implement difficult audit recommendations. Please feel free to call me should you wish to discuss any aspect of our audit report or recommendations. Additionally, we will request your department complete a **Customer Survey** of Audit Services. You will receive the survey shortly after the distribution of our final report.

ATTACHMENTS

Other recipients of this report are listed on the **OC Internal Auditor's Report** on page 5.

Table of Contents



*AOC Special Request:
Review of County's Purchase of Real Property
Using Clerk-Recorder Special Revenue Fund 12D
Audit No. 1159-A*

As of October 31, 2012

Transmittal Letter	i
OC Internal Auditor's Report	
OBJECTIVES	1
RESULTS	1
BACKGROUND	4
SCOPE AND METHODOLOGY	5
SCOPE EXCLUSIONS	5
ACKNOWLEDGMENT	5
Detailed Results, Findings, Recommendations and Management Responses	
Finding No. 1 – The County ASR Process for Real Property Acquisitions Needs to be Improved as the ASR Prepared and Submitted by the County Executive Office Did Not Include Material and Relevant Refurbishment Cost Information (Critical Control Weakness)	8
Finding No. 2 – The County ASR Process for Real Property Acquisitions Needs to be Improved as the ASR Prepared and Submitted by the County Executive Office Did Not Clearly Explain the Funding Source, Intended Property Use, and Compliance with Funding Restrictions (Critical Control Weakness)	11
Finding No. 3 – Authoritative Opinion Regarding Appropriate Use of Fund 12D Not Obtained Prior to Purchase (Significant Control Weakness)	13
Finding No. 4 – Plan for Subject Property Needs to Be Prepared (Significant Control Weakness)	14
Finding No. 5 – Subject Property Currently Provides Storage for a Minimal Quantity of Non-Qualifying Documents (Control Finding)	16
Finding No. 6 – The County Needs Written Policy That Clearly Defines and Establishes Corporate Real Estate's Responsibilities and Authorities (Control Finding)	17
ATTACHMENT A: Report Item Classifications	19
ATTACHMENT B: Sample Questionnaire – Real Property Acquisition	20
ATTACHMENT C: Sample Questionnaire – Real Property Lease	21
ATTACHMENT D: County Executive Office Management Responses	22
ATTACHMENT E: Clerk-Recorder Management Responses	24
ATTACHMENT F: Internal Audit Rejoinder to Former Clerk-Recorder Response	28



Audit No. 1159-A

February 21, 2013

TO: Renee Ramirez, Assistant Clerk-Recorder
Robert J. Franz, Interim County Executive Officer

FROM: Dr. Peter Hughes, CPA, Director
Internal Audit Department

SUBJECT: AOC Special Request: Review of County's
Purchase of Real Property Using Clerk-Recorder
Special Revenue Fund 12D

Audit Highlight

Based on our review and research of the allowed uses as specified in GC 27361, it appears that using about \$2.1 million of Fund 12D monies to acquire the property located at 433 Civic Center Drive West **is permissible** as long as the property is used to store the appropriate records: specifically, *recorded* real property documents. If the property is used to store any other records, then Fund 12D should be reimbursed proportionately.

We did identify **two (2) Critical Control Weaknesses**, **two (2) Significant Control Weaknesses**, and **two (2) Control Findings** with the overarching goal of improving Countywide processes and the quality of information provided to the Board of Supervisors and CEO for their decision making.

OBJECTIVES

This report is in response to an Audit Oversight Committee (AOC) request for the Internal Audit Department (IAD) to review the propriety of using about \$2.1 million of restricted funds in the Clerk-Recorder's Special Revenue Fund 12D for the County to acquire the real property located at 433 Civic Center Drive West, Santa Ana, in March 2008.

As directed by the Audit Oversight Committee at its March 15, 2012 meeting, the objective of our review was to determine whether the acquisition of real property for about **\$2.1 million** located at 433 Civic Center Drive West in March 2008 was a permissible use of the Special Revenue Fund 12D monies pursuant to Government Code 27361.

RESULTS

Based on our review and research of the allowed uses as specified by Government Code 27361, it appears that using about \$2.1 million of Fund 12D monies for the County to acquire the property located at 433 Civic Center Drive West **is permissible** as long as the property is used to store the appropriate records: specifically, *recorded* real property documents. If the property is used to store any other records, then Fund 12D should be reimbursed proportionately.

Additionally, we identified **two (2) Critical Control Weaknesses** in the County Agenda Staff Report (ASR) process that need to be improved as the ASR prepared and submitted by the County Executive Office to the Board of Supervisors did not contain material and relevant information needed for making the decision whether to acquire the subject property, including such issues as: 1) the estimated renovation cost information of \$3.56 million was not included in the ASR and 2) the funding source restrictions, intended use of the property, and compliance with funding restrictions were not clearly explained in the ASR. We also identified **two (2) Significant Control Weaknesses** where: 1) an authoritative opinion regarding the propriety of using Fund 12D restricted funds to acquire the property was not obtained prior to the acquisition and 2) a written plan for the property has not been developed as of this date. In addition, we identified **two (2) Control Findings** where: 1) a minimal quantity of non-qualifying documents are currently being stored at the subject property and 2) a written County policy is needed that clearly defines and establishes Corporate Real Estate's responsibilities and authorities.

OC Internal Auditor's Report



The following table summarizes our findings and recommendations for this review. See further discussion in the *Detailed Results, Findings, Recommendations and Management Responses* section of this report. See *Attachment A* for a description of Report Item Classifications.

Finding No.	Finding Classification - (see Attachment A)	Finding	Recommendation	Concurrence by Management?	Page No. in Audit Report
1.	Critical Control Weakness	The County Agenda Staff Report (ASR) process for real property acquisitions needs to be improved as the ASR prepared and submitted by the County Executive Office did not include material and relevant refurbishment cost information.	CEO work with Corporate Real Estate to develop "standard questionnaires" for all real property acquisitions and leases, utilizing the samples provided, and require the completed questionnaires to be attached to all future real property Agenda Staff Reports (ASRs). The CEO should also communicate to the departments, in writing, clearly defined responsibilities for completion and submission of the questionnaire.	Yes	8
2.	Critical Control Weakness	The County Agenda Staff Report (ASR) process for real property acquisitions needs to be improved as the ASR prepared and submitted by the County Executive Office did not clearly explain the funding source, intended property use, and compliance with funding restrictions.	CEO ensure the real property acquisition and lease questionnaires developed (see Finding No. 1 above) clearly identify and explain funding sources including the funding restrictions and compliance with those restrictions.	Yes	11
3.	Significant Control Weakness	Beyond the review of Corporate Real Estate's Attorney as to the contract itself, an authoritative opinion from the Clerk-Recorder Department's appointed Attorney regarding the propriety of using Fund 12D restricted funds to acquire the property was not obtained prior to the acquisition.	Clerk-Recorder Department request County Counsel input on the propriety of future large dollar uses of Fund 12D restricted monies, including future renovations or improvements to the subject property.	Yes	13
4.	Significant Control Weakness	A written plan for the subject property needs to be prepared.	CEO work with the Clerk-Recorder Department and Corporate Real Estate to prepare a written plan for the subject property that will be included in the County's Civic Center Master Plan.	Yes	14
5.	Control Finding	The subject property currently provides storage for a minimal quantity of non-qualifying documents.	Clerk-Recorder Department remove any "non-compliant" records currently being stored at the subject property, such as fictitious business name records, or reimburse Fund 12D - Enhancement for any non-compliant records stored.	Yes	16

OC Internal Auditor's Report



Finding No.	Finding Classification - (see Attachment A)	Finding	Recommendation	Concurrence by Management?	Page No. in Audit Report
6.	Control Finding	A written County policy is needed that clearly defines and establishes Corporate Real Estate's responsibilities and authorities.	CEO work with Corporate Real Estate to develop a written policy that clearly defines and establishes Corporate Real Estate's responsibilities and authorities for all County real estate matters, including types of departmental projects they should be involved in and whether the involvement should be at the beginning of the project.	Yes	17



BACKGROUND

The Clerk-Recorder Department's core services include:

- **Clerk:** Maintains vital records such as birth, death, and marriage. Also, performs marriage ceremonies, files fictitious business names, files notary public oaths and bonds, processes passport applications and registers professional photocopiers, process servers, and unlawful detainer assistants.
- **Recorder:** Examines real property related documents for state mandated compliance, records, images, indexes and makes the records available to the public.
- **Archives:** In 1995, the Board of Supervisors authorized the transfer of the County Archives from the Public Library to the Clerk-Recorder Department. The Archives is a repository of the County's historical documents and includes historic photographs, property records (such as deeds, liens, satisfactions, releases, and tract maps), and collections of artifacts and materials on the history of Orange County. The Clerk-Recorder Department identifies, catalogs, protects, and provides public access to County records and other materials that have long term, historical value. According to the Clerk-Recorder Department, the Archives includes "recorded" real property documents for periods prior to 1953. According to the Archives Policy approved by the Board of Supervisors on July 17, 2007, the archival records are considered "inactive" records selected for permanent preservation.

Purchase of Subject Property in March 2008: Prior to 2008, the Clerk-Recorder Department determined that the Archives required additional space to provide public displays, exhibits, a larger research room, and additional stack space for the Archives. According to the Agenda Staff Report (ASR) prepared and submitted by the County Executive Office, acquisition of the office building located at 433 Civic Center Drive West, Santa Ana was sought at the request of the Clerk-Recorder Department to provide additional space to accommodate the Archives. On January 15, 2008, the Board of Supervisors approved the acquisition of the real property for \$2.1 million. The wire transfer of \$2,102,625 (includes certain escrow costs) was made on March 25, 2008. The monies were paid from the Clerk-Recorder's General Fund 059, which was then reimbursed via an operating transfer from the Clerk-Recorder's Special Revenue Fund 12D. The "sub-fund" was not designated on the journal voucher transferring the monies from Fund 12D to reimburse General Fund 059. According to the Clerk-Recorder Department, the monies to reimburse Fund 059 were paid from the Fund 12D "sub-fund" known as the Enhancement Fund, which has restricted use pursuant to Government Code 27361.

Fund 12D: The Clerk-Recorder's Fund 12D is a Special Revenue Fund containing monies that have a restricted purpose or use as specified by the applicable statute. There are three primary restricted revenue sources for Fund 12D that are recorded in three "sub-funds" as shown below:

1. **Enhancement Fund - Government Code 27361:** A fee of \$1 per each first page and \$1 per each additional page for the "*recording and indexing every instrument, paper, or notice required or permitted by law to be recorded.*" GC 27279 states that an "instrument" means "*a written page signed by a person or persons transferring the title to, or giving a lien on real property, or giving the right to a debt or duty.*" **Restricted Use:** Use of the monies is restricted to "*...solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.*" Recorded documents means documents which serve to establish the ownership of real property located within the County.



2. Micrographics Fund - Government Code 27361.4: A fee of \$1 per each recording (or first page) for real property recordings (see further definition above in item 1). Use of the monies is restricted to the costs of converting the Clerk-Recorder's recorded real property documents to micrographics.
3. Health Statistics Fund - Health and Safety Code 103625(f): A fee of \$3 per certified copy of a vital record (birth, death, marriage, and dissolution). \$1.65 or 55% of the \$3 fee is to be allocated to the Health Statistics Fund. Use of the monies is restricted to defraying the administrative costs of collecting the fees, improving and modernizing vital records systems, and improving the collection and analysis of birth and death certificate information and other related community health data.

Tom Daly was elected OC Clerk-Recorder in 2002, and re-elected in 2006 and 2010. Effective December 3, 2012, Tom Daly was sworn in to the California State Assembly and resigned from the position of OC Clerk-Recorder. Under state rules, the Board of Supervisors must appoint someone to replace Tom Daly until the next regular election for the seat. Assistant Clerk-Recorder Renee Ramirez will head the department until the Board of Supervisors fills the vacancy.

SCOPE AND METHODOLOGY

Our scope was limited to reviewing the specific purchase of real property located at 433 Civic Center Drive West in 2008 and determining whether this purchase was an authorized use of Special Revenue Fund 12D – Enhancement Fund monies which are restricted pursuant to Government Code 27361.

Our review involved discussions with the former Clerk-Recorder and key staff; review of the relevant statutes; review of relevant documentation provided by the Clerk-Recorder Department including legal opinions and analysis performed by other California County Clerk-Recorders; and pertinent documentation supporting the purchase of the subject property. Our methodology included inquiry and auditor observation of pertinent documentation.

SCOPE EXCLUSIONS

Our work performed for this report did not include a review or audit of the revenues of 12D, other uses/expenditures of Fund 12D, the accounting practices for Fund 12D, or fee allocations for Fund 12D. Our work performed also did not include a review of the Clerk-Recorder's revenue and expenditures recorded in General Fund 059.

ACKNOWLEDGMENT

We appreciate the courtesy extended to us by the Clerk-Recorder Department during our review. If we can be of further assistance, please contact me directly at 834-5475 or Alan Marcum, Senior Audit Manager at 834-4119.

ATTACHMENTS

Distribution Pursuant to Audit Oversight Committee Procedure No. 1:

- Members, Board of Supervisors
- Members, Audit Oversight Committee
- Paul Lanning, Administrative Services Manager, Clerk-Recorder
- Ignacio Ochoa, Interim Director, OC Public Works
- Gail Dennis, Manager, OCPW/OC Real Estate
- Thomas Mason, Manager, Corporate Real Estate
- Foreperson, Grand Jury
- Susan Novak, Clerk of the Board of Supervisors

Detailed Results, Findings, Recommendations and Management Responses



Audit Objective: Determine whether the acquisition of real property located at 433 Civic Center Drive West in 2008 was a permissible use of the Special Revenue Fund 12D monies pursuant to Government Code 27361.

AUDIT STEPS

To accomplish this objective, we performed the following audit steps:

- ✓ Held meetings with the former Clerk-Recorder and key staff to obtain an understanding of Government Code (GC) 27361 requirements, the revenue sources, and restricted uses of Fund 12D - Enhancement Fund monies.
- ✓ Reviewed relevant government code, legal opinions, and analysis performed by other California County Clerk-Recorders, as provided by the Clerk-Recorder Department, to gain a broader understanding of the government code requirements.
- ✓ Reviewed pertinent documentation supporting the County's 2008 purchase of real property located at 433 Civic Center Drive West, including the January 15, 2008 Agenda Staff Report (ASR) and attachments prepared and submitted by the County Executive Office to the Board of Supervisors, to determine compliance with applicable laws and regulations.

ANALYSIS

Government Code (GC) 27361, specifies that use of Fund 12D - Enhancement Fund monies is restricted to "...solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents."

One challenge in our analysis was how conservatively or broadly we should interpret the legislative intent of GC 27361. A very conservative interpretation of GC 27361 would be that the restricted use has a technological component due to the words "modernized" and "system." Other interpretations of the legislative intent would allow for a broader use as long as there is a sufficiently close nexus between the use of the funds and the legislative intent. According to Webster's New Collegiate Dictionary, the contemporary definition of "modern" is "*involving recent techniques, methods, or ideas*" and "modernize" is "*to make modern in taste, style, or usage.*" The word "system" has several meanings and uses such as "*a set or arrangement of things so related or connected as to form a unity or whole*" and "*an organization of hardware and software, often together with personnel, that function together as a unit.*"

It appears those improvements that directly result in a "better" collection of records, "better" preservation or security, or "better" availability to the public could be a defensible use of the Fund 12D - Enhancement Fund monies pursuant to GC 27361. The Agenda Staff Report (ASR) prepared and submitted by the County Executive Office for the subject property indicated the acquisition would "expand the public's access to County archive documents."

We reviewed evidence of some other California County Clerk-Recorders using Fund 12D - Enhancement Fund monies to acquire, remodel, improve, and lease real property. We also reviewed evidence of the prior Orange County Clerk-Recorder using 12D funds for a large remodeling project in 1993.



Another challenge in our analysis was evaluating the intended use of the subject property as stated in the ASR prepared and submitted by the County Executive Office versus the current use of the property. The intended use of the property as stated in the ASR was additional space for the Archives Division at the request of the Clerk-Recorder Department to provide public displays, exhibits, a larger research room, and additional stack space. The current use of the property is limited and provides storage of “non-archival” documents as the property needs refurbishments/improvements before it is archival or staff/public ready. See further details regarding the current use and reasons in Finding No. 4 below.

The proposed Archives usage and the current usage both have varying proportions of recorded real property documents (allowed usage) versus other historical records, vital records, or non-recorded real property documents. See Finding No. 2 below regarding the lack of adequate disclosure in the ASR regarding the intended use and how the intended use would comply with Government Code 27361.

CONCLUSION

Based on our review and research of allowed uses as specified by Government Code 27361, it appears using Fund 12D - Enhancement Fund monies to acquire the property located at 433 Civic Center Drive West is permissible as long as the property is used to store the appropriate records: specifically, *recorded* real property documents. If the property is used to store any other records, then Fund 12D should be reimbursed proportionately.

Additionally, we identified **two (2) Critical Control Weaknesses** in the County Agenda Staff Report (ASR) process that need to be improved as the ASR prepared and submitted by the County Executive Office to the Board of Supervisors did not contain material and relevant information needed for making the decision whether to acquire the subject property, including such issues as: 1) the estimated renovation cost information of \$3.56 million was not included in the ASR and 2) the funding source restrictions, intended use of the property, and compliance with funding restrictions were not clearly explained in the ASR. We also identified **two (2) Significant Control Weaknesses** where: 1) an authoritative opinion regarding the propriety of using Fund 12D restricted funds to acquire the property was not obtained prior to the acquisition and 2) a written plan for the property has not been developed as of this date. In addition, we identified **two (2) Control Findings** where: 1) a minimal quantity of non-qualifying documents are currently being stored at the subject property and 2) a written County policy is needed that clearly defines and establishes Corporate Real Estate’s responsibilities and authorities.

Detailed Results, Findings, Recommendations and Management Responses



Finding No. 1 – The County ASR Process for Real Property Acquisitions Needs to be Improved as the ASR Prepared and Submitted by the County Executive Office Did Not Include Material and Relevant Refurbishment Cost Information (Critical Control Weakness)

Summary

The Agenda Staff Report (ASR) prepared and submitted by the County Executive Office to the Board of Supervisors for acquisition of the subject real property for a purchase price of **\$2.1 million** **did not include** material and relevant information regarding additional refurbishment costs, estimated at the time by RDMD (now OC Public Works) in a June 29, 2007 memo to be **\$3.56 million**, needed to renovate the existing structure for its intended use as an office building accessible to the public using an archival quality standard. This information was known by County staff of the Clerk-Recorder Department and RDMD about 6½ months prior to the Board of Supervisors meeting date of January 15, 2008. This is a critical flaw in the ASR process itself.

Details

The Background Information section of ASR 07-002608, dated January 15, 2008, for the acquisition of real property located at 433 Civic Center Drive, Santa Ana, stated:

“The subject property is being purchased in an “as is” condition. RDMD staff conducted a physical inspection of the land and improvements, **which concluded the property has been reasonably maintained.** A safety inspection was performed by County Executive Office/Risk Management which indicated that a **number of minor deficiencies** must be corrected to meet County safety standards. The Clerk-Recorder’s Office will correct these deficiencies prior to occupancy and refurbish the interior to meet their current and future operational requirements after the close of escrow.”

The Financial Impact Section of the ASR only stated the “real estate acquisition cost” was budgeted. The face of the ASR identified current year costs of \$2,115,000. There was no information regarding the post acquisition costs of \$3.56 million needed to prepare the building for its intended purpose.

In response to a Board of Supervisors directive dated April 20, 2010, the CEO provided a memo to the Board of Supervisors, dated May 12, 2010, summarizing the process used by OC Public Works (OCPW, formerly RDMD) Corporate Real Estate in the purchase of the subject property. The CEO memo refers to a memo, dated June 29, 2007.

June 29, 2007 RDMD Memo: The memo states that on June 15, 2007, RDMD performed a cursory inspection of the building and prepared a preliminary scope of work and proposed estimated additional costs of:

- **Renovation cost for the existing structure of approximately \$3.56 million, or**
- **Building demolition and new construction costs of approximately \$4.44 million.**

According to the memo, the evaluation and cost estimates took into account both improvements identified by the Clerk-Recorder and RDMD/Architect & Engineering’s own inspection walk-through, using an archival quality standard.

Detailed Results, Findings, Recommendations and Management Responses



Based on the May 12, 2010 CEO memo and the June 29, 2007 RDMD memo cited on page 8, it appears that material and relevant information regarding significant renovation costs (**estimated from approximately \$3.56 million to \$4.44 million**) was known by both RDMD and the Clerk-Recorder Department (based on the distribution listed on the memos) about 6½ months prior to the BOS meeting date of January 15, 2008. **However, this information was not disclosed in the ASR submitted to the Board of Supervisors for their review and approval.** The renovation cost information is essential to the decision making and approval process and should have been included in the ASR to ensure all material and relevant information was provided equally to the Board of Supervisors.

The ASR was prepared and submitted by RDMD, and both RDMD and the Clerk-Recorder Department were listed as contacts for further questions on the face of the ASR. Per the Clerk-Recorder Department, RDMD listed the Clerk-Recorder Department as a contact on the ASR without its knowledge. Also, per the Clerk-Recorder Department, they did not play a part in preparing or submitting this agenda item, as CAMS (Comprehensive Agenda Management Solution) reports show RDMD as the filing department.

According to the former Clerk-Recorder, the former head of Corporate Real Estate and he briefed the Board of Supervisors in closed session "... on a number of issues, including renovation costs." Internal Audit is not in a position to validate or invalidate this assertion made by the former Clerk-Recorder. However, regardless of whether the renovation costs were shared in closed session, the known renovation costs should have been included in the ASR as a matter of County policy in accordance with sound business practices.

According to the May 12, 2010 CEO memo, subsequent to the building acquisition in March 2008, an external firm (Kishimoto Architects) was hired to perform a feasibility study of the building for a County Archive facility. The report, dated January 12, 2009, identified three options:

1. Interior Renovation of Existing Building: **\$2.847 million** and average cost of \$425 per square foot to accommodate the current archive collection and provide 6,700 square feet of usable floor area.
2. Renovation with East and North Additions: **\$5.656 million** and average cost of \$358 per square foot to allow for partial anticipated archive collection growth and provide 15,800 square feet of total gross floor area.
3. New Building: **\$7.567 million** and average cost of \$336 per square foot to provide 22,500 square feet of total gross floor area. This option would exceed the 50-year future archive growth potential and provide a longer building life.

According to the May 12, 2010 CEO memo, OC Public Works estimated that it would cost approximately **\$1.5 - \$1.8 million** to renovate the building for use as office space.

The above post acquisition costs are significant and in the millions of dollars (**renovation costs of \$3.56 million to \$4.44 million or approximately 170% to 211% of the purchase price of \$2.1 million**). This material information could have and should have been included in the written ASR submitted to the Board of Supervisors in support of full disclosure to the BOS and public. The omission of this material information in the ASR was a shared responsibility of the Clerk-Recorder Department, OC Public Works (formerly RDMD), and the County Executive Office.

Detailed Results, Findings, Recommendations and Management Responses



Each of these departments had varying roles and responsibilities in the collective ASR development. As OCPW staff were the technical professionals for real property acquisitions and preparing related ASRs, there was an expectation that OCPW would be the most knowledgeable about the level of information to provide in the ASR regarding renovation costs.

We were informed by OCPW that the ASR development process includes editing opportunities beyond OCPW staff's ASR draft completion responsibility, and, therefore, according to OCPW it is possible that renovation cost details provided by OCPW staff were not included in the ASR and/or briefing process.

To ensure these types of key omissions don't occur in the future, the CEO should work with Corporate Real Estate to develop a standard questionnaire to be completed and attached to all ASR for any future real property acquisitions and leases. The questionnaire should solicit key information that would be material, relevant, and supportive to the decision making process.

We developed two questionnaires (one for acquisitions and one for leases) as shown in **Attachments B and C** at the end of this report. The real property acquisition questionnaire (Attachment B) addresses: Why the property is being considered for acquisition; what analysis has been performed as to whether to purchase vs. lease the property; how the purchase price was determined; what additional post-acquisition construction, remodeling, or upgrade costs will be needed; what the post-acquisition maintenance costs will be; how the property acquisition will be paid for and whether any of the funds are restricted; and whether the proposed purchase contract complies with the County's standard language. The lease questionnaire (Attachment C) addresses similar items.

It is important that the responsibility for completion of the questionnaire (i.e., which department or function), or portions thereof if responsibilities are split, is clearly identified and communicated by the CEO when the CEO establishes the questionnaire requirement. Also, it is important to note that the information to complete the questionnaire should be compiled and evaluated throughout the project and not just prior to the ASR submission.

Recommendation No. 1: We recommend that the CEO work with Corporate Real Estate to develop "standard questionnaires" for all real property acquisitions and leases, utilizing the samples provided, and require the completed questionnaires to be attached to all future real property Agenda Staff Reports (ASRs). The CEO should also communicate to the departments, in writing, clearly defined responsibilities for completion and submission of the questionnaire.

County Executive Office Management Response: Concur. The County Executive Office will work with Corporate Real Estate to include a standard questionnaire in addition to the corrective actions implemented in 2010 to ensure that the Board of Supervisors is provided with timely copies of all relevant information associated with any future purchase acquisition recommendations.



Finding No. 2 – The County ASR Process for Real Property Acquisitions Needs to be Improved as the ASR Prepared and Submitted by the County Executive Office Did Not Clearly Explain the Funding Source, Intended Property Use, and Compliance with Funding Restrictions (**Critical Control Weakness**)

Summary

The Agenda Staff Report (ASR) prepared and submitted by the County Executive Office to the Board of Supervisors (BOS) for the County's acquisition of real property located at 433 Civic Center Drive West, Santa Ana did not clearly disclose or explain in sufficient detail the following: a) that the underlying source of monies used to acquire the real property was restricted funds, b) the intended use of the property, and c) how the intended use would comply with the funding restrictions. This is a critical flaw in the ASR process.

Details

ASR 07-002608, for the acquisition of real property located at 433 Civic Center Drive West, Santa Ana, was approved by the Board of Supervisors on January 15, 2008. The ASR listed the submitting department as RDMD and listed two contact persons for questions: one person from RDMD and one person from the Clerk-Recorder Department. RDMD listed the Clerk-Recorder Department as contacts for further questions on the face of the ASR. Per the Clerk-Recorder Department, the Clerk-Recorder Department did not play a part in preparing or submitting this agenda item, as CAMS reports show RDMD as the filing department. According to the Clerk-Recorder Department, the person RDMD listed as the Clerk-Recorder contact did not have access to CAMS and couldn't access the materials.

As the Clerk-Recorder Department is a relatively small department without its own real estate staff, the role of RDMD/Corporate Real Estate was to provide assistance and be the lead for coordinating and acquiring the subject property on behalf of the requesting department (Clerk-Recorder Department). This included ensuring the appropriate inspections and surveys were performed, obtaining the appraisal, conformance of the final agreement with standard approved language, and preparation and submittal of the ASR. However, as a matter of practicality, the descriptions of the budget, background information, funding source, intended use of the property, and compliance with funding restrictions were the primary responsibility of the requesting department (Clerk-Recorder Department).

- **Funding Source:** The first page of the ASR clearly identifies the "Funding Source" as "Agency 059 - 100%," which are **unrestricted** monies. The two-page ASR does not identify or explain that the underlying source of the purchase monies are **restricted** monies from Fund 12D - Enhancement Fund and the nature of the restricted use pursuant to GC 27361.

In Exhibit A of the ASR, there is a document titled "Acquisition Contract Summary." This two-page summary of the acquisition contract indicates for "Funding" that funds to purchase the real property were budgeted in Fund 12D for Fiscal Year 2007-2008. This attachment was among several other attachments and only briefly mentioned Fund 12D, making it unclear and difficult to discern that the monies to purchase the real property would ultimately be coming from Fund 12D.

Detailed Results, Findings, Recommendations and Management Responses



- **Intended Use:** The intended use of the subject property as stated in the ASR was “The Archives Division requires additional space to provide public displays, exhibits, a larger research room, and additional stack space for the Archives.” There was no description or detail of the types of records maintained by the Archives. This is critical information because the monies used to acquire the property (Fund 12D - Enhancement Fund) are restricted to recorded real property documents only. According to the Clerk-Recorder Department, the Archives collection includes a mixture of historical records, vital records, non-recorded real property documents, and recorded real property records prior to 1953 which account for the majority of the collection. Recorded real property records for 1953 and later are not part of the Archives and are instead stored with the Clerk-Recorder’s operational records.
- **Compliance with Restricted Use:** As the ASR prepared and submitted by the County Executive Office did not identify the purchase monies as restricted or explain that the Archives collection is mixed with both recorded real property documents and other unrecorded documents, the reader of the ASR, including the Board of Supervisors and County Counsel, would not be aware of the need to ensure the intended property use complies with the restricted uses pursuant to GC 27361.

Because a large majority of County funds have a restricted use or purpose, one may question why this information would be needed on an ASR. Would every ASR have to describe compliance with funding restrictions? **The difference with this ASR is that the County is purchasing a long term asset – real property that will have a restricted use. This restricted use must be known and addressed in the County’s Facility Master Plan as the subject property cannot be used for any other purpose.** If the County wants to utilize the subject property for another purpose, the County would have to reimburse Fund 12D – Enhancement Fund.

This is important information that should be disclosed and addressed at the time of acquisition, as well as subsequently documented in the OC Real Estate Database as a usage restriction important to future decision making. As Corporate Real Estate will not have the business knowledge of the specific funding restrictions, it is imperative for the departments and the CEO to notify Corporate Real Estate of any funding restrictions of acquired property.

To ensure that future ASRs for real property acquisitions include sufficient details and clarity regarding funding sources, intended use, and compliance with funding restrictions, the questionnaires recommended in Finding No. 1 above include questions regarding funding restrictions. The CEO should ensure the questionnaires actually implemented address compliance with funding restrictions.

Recommendation No. 2: We recommend that the CEO ensure the real property acquisition and lease questionnaires developed (see Finding No. 1 above) clearly identify and explain funding sources including the funding restrictions and compliance with those restrictions.

County Executive Office Management Response: Concur. The County Executive Office will work with Corporate Real Estate and the County Budget Office to implement the recommendations on all future real property recommendations.

Detailed Results, Findings, Recommendations and Management Responses



Finding No. 3 – Authoritative Opinion Regarding Appropriate Use of Fund 12D Not Obtained Prior to Purchase (Significant Control Weakness)

Summary

Prior to acquiring real property for the County, located at 433 Civic Center Drive West, the Clerk-Recorder Department did not seek a specific County Counsel's opinion from their designated Counsel as to whether the purchase of the building was an allowable use of Fund 12D - Enhancement Fund monies, which are restricted pursuant to Government Code 27361.

Details

Prior to the County Executive Office seeking Board of Supervisors' authorization to acquire the subject property, the Clerk-Recorder Department did not obtain a specific County Counsel's opinion from their designated Counsel to determine whether this acquisition was an allowable use of Fund 12D - Enhancement Fund monies in accordance with the restricted use pursuant to GC 27361. According to the Clerk-Recorder Department, because they didn't prepare or submit the ASR, the nature of the specific funding restrictions were not clearly discussed at the time and as such, they asserted they did not think they needed a specific County Counsel opinion from their designated Counsel. The Clerk-Recorder Department asserted they deferred to the real-estate group to coordinate the purchase details with their designated County Counsel. In addition, the Clerk-Recorder Department asserted they also felt it would have been redundant, as Corporate Real Estate had their designated Counsel review and approve the ASR.

ASR 07-002608, approved by the Board of Supervisors on January 15, 2008, for the acquisition of the building indicates *County Counsel Review* was performed and County Counsel "**Approved Agreement to Form.**" County Counsel's review and approval as noted by "Approved Agreement to Form" is designed to be a limited review of the contract. This means that pursuant to Board Rule 14 (see below), the approving County Counsel attorney has reviewed the agreement submitted with the ASR and has determined that it constitutes a valid contract and is in a form that may be approved by the BOS. Because the subject ASR was submitted by RDMD/Corporate Real Estate, the acquisition contract was "approved as to form" by the County Counsel attorney who advises Corporate Real Estate and not the attorney who advises the Clerk-Recorder Department on compliance with Fund 12D restricted uses.

According to the Board Rules of Procedures, amended October 25, 2011, Rule 14 states "*No ordinance, resolution, agreement or contract submitted with an agenda item will be considered by the Board until its legality as to form has been approved in writing and/or by electronic means by the Office of County Counsel.*" An ASR which indicates County Counsel "Approved Agreement to Form" is complying with Rule 14.

Because improper use of Fund 12D restricted monies requires a reimbursement to the Fund 12D through general fund monies, the Clerk-Recorder Department should seek County Counsel's input on future large dollar uses of 12D monies to help ensure compliance with the restricted uses.

Recommendation No. 3: We recommend that the Clerk-Recorder Department request County Counsel input on the propriety of future large dollar uses of Fund 12D restricted monies, including future renovations or improvements to the subject property.

Clerk-Recorder Department Management Response: Concur. The Clerk-Recorder department will request specific input from our department's designated County Counsel representative on the propriety of future large dollar uses of Fund 12D restricted monies, including future renovations or improvements to the subject property.

Detailed Results, Findings, Recommendations and Management Responses



Finding No. 4 – Plan for Subject Property Needs to Be Prepared (Significant Control Weakness)

Summary

A written plan has not been developed by the County for the property located at 433 Civic Center Drive West.

Details

The current use of the subject property is limited. The building has not been renovated to be staff/public ready or to meet archival quality standards, such as a new HVAC system capable of temperature and humidity control requirements. The basement and second floor are not being used. About one-half of the main floor is being used for storage of “non-archive” documents, representing an estimated 21% of the total available building space. The records being stored include both recorded real property records (allowed usage) and a minimal number of other documents such as fictitious business name records. See related Finding No. 5 below.

According to the Clerk-Recorder Department, their intended use of the property continues to be relocation of the Archives and storage of records. The Clerk-Recorder Department stated they “have implemented an interim acceptable use of the building because of the State’s economic collapse and the change in the County’s budgetary circumstances.” The Clerk-Recorder Department also stated they “have held off bringing large dollar items to the Board for approval as overall County revenues plunged and budgets shrunk.” The Clerk-Recorder Department has stated that their intended use of the subject property has not changed, but has been delayed by circumstance.

The current state of the subject property is that portions of the building have been vacant since 2008 and the building is in need of renovation. However, according to the Clerk-Recorder Department, the parking lot is being used on a daily basis with 17 of the 37 total available parking spaces currently being leased to Parking Concepts, Inc. for \$595 a month. All revenue generated is reimbursed to 12D. See current photographs of the subject property below:

Photographs of Subject Property



Building Exterior



Storage Room on Main Floor



Photographs of Subject Property



Vacant Room



Vacant Room

Subsequent to the building acquisition in March 2008, an external firm (Kishimoto Architects) was hired to perform a feasibility study of the building for a County Archive facility. However, a written plan has not been developed for the building, including renovations. As over four years have passed since the acquisition, a written plan is overdue. According to the Clerk-Recorder Department, the County has the primary responsibility for preparing the plan and it should be part of the Civic Center Master Plan, with participation and input from the Clerk-Recorder Department.

The limited utilization of the building underscores the importance of a written strategic plan that includes identification and projections of funding sources. The primary responsibility for preparing the strategic plan appears to be the Clerk-Recorder Department, with the advice and oversight of the CEO and Corporate Real Estate. However, there is currently no written policy in the County that clearly addresses the roles and authorities of Corporate Real Estate versus the departments, as discussed below in Finding No. 6 on page 17.

Questions that the Clerk-Recorder Department and County need to consider include: how should this building be utilized and renovated; should the building be used to store real property records or does the County have a better use for the building; if the use of the building changes, how will Fund 12D - Enhancement Fund be reimbursed; or should the building be sold in the future?

Recommendation No. 4: We recommend that CEO work with the Clerk-Recorder Department and Corporate Real Estate to prepare a written plan for the subject property that will be included in the County's Civic Center Master Plan.

County Executive Office Management Response: Concur. This property is part of the Civic Center Master Plan that is scheduled to be presented to the Board of Supervisors in the spring of 2013, with two Board of Supervisors study sessions planned in December 2012 (completed December 11, 2012) and February 2013.



Finding No. 5 – Subject Property Currently Provides Storage for a Minimal Quantity of Non-Qualifying Documents (Control Finding)

Summary

As the subject property contains some records that would be considered non-qualifying pursuant to the funding source restrictions of Government Code 27361, those records should either be removed from the subject property or Fund 12D - Enhancement Fund should be proportionately reimbursed.

Details

As noted above in Finding No. 4, the current use of the property is limited (approximately 21% usage) and provides some storage of non-archival documents as the property needs refurbishments/improvements before it is archival or staff/public ready. The current property usage includes both recorded real property records (allowed usage) and a minimal amount of other documents (approximately 7% per the Clerk-Recorder Department) such as fictitious business name records that would be non-qualifying documents pursuant to the property funding source restrictions (GC 27361). The Clerk-Recorder staff was forthcoming with us during our review of the facility by bringing the non-qualifying documents to our attention.

While we did not open and review all of the boxes of records currently stored at the subject property, we did open and review a small sample of boxes. Based on our review and discussions with Clerk-Recorder Department staff, the amount of non-qualifying records being stored appears to be small.

Because the funding source restrictions limit the types of records that can be stored, the non-qualifying records should either be removed from the subject property or the Fund 12D - Enhancement Fund should be proportionately reimbursed.

The Clerk-Recorder Department informed us that with the help of CEO Real Estate, it has now developed an industry acceptable procedure to reimburse Fund 12D - Enhancement Fund for any “non-compliant” records stored at the subject property. The Clerk-Recorder Department informed us they have already processed their first reimbursement. Internal Audit has not reviewed or validated the procedure, but will during a subsequent follow-up audit.

Recommendation No. 5: We recommend that the Clerk-Recorder Department remove any “non-compliant” records currently being stored at the subject property, such as fictitious business name records, or reimburse Fund 12D - Enhancement Fund for any non-compliant records stored.

Clerk-Recorder Department Management Response: Concur. The Clerk-Recorder department has already established a procedure to reimburse 12D for storage of the minimal “non-compliant” records being housed at 433 Civic Center.



Finding No. 6 – The County Needs Written Policy That Clearly Defines and Establishes Corporate Real Estate’s Responsibilities and Authorities (Control Finding)

Summary

As part of the reassignment of Corporate Real Estate to CEO as approved by the Board of Supervisors on October 23, 2012, the CEO and Corporate Real Estate should determine and develop a written policy that clearly defines and establishes Corporate Real Estate’s responsibilities and authorities for all County real estate matters.

Details

After the 1994 County bankruptcy, real estate in the County was decentralized for those departments that could support their own in-house real property staff. A core group of staff remained in a Corporate Real Estate function to provide corporate and some departmental support. Over the years, the function has transitioned between CEO and RDMD/OCPW, with the most recent reassignment of Corporate Real Estate to the CEO as approved by the Board of Supervisors on October 23, 2012.

The Agenda Staff Report (ASR) for the reassignment to CEO indicated that this reassignment will address the need for corporate leadership of County real estate activities. Additionally, the ASR indicates that a Real Estate Action Plan has been drafted “which outlines an ambitious program to update the County’s Facility Master Plan, prepare a Civic Center Master Plan, and prepare a Strategic Real Estate Plan.”

In the past, Corporate Real Estate’s role on real estate matters has varied by project and department. We were informed that in some instances, a large agency may not have involved Corporate Real Estate until after the acquisition or lease agreement was negotiated. In other instances, Corporate Real Estate was the project lead on behalf of a department or was a consultant on the project from the beginning. At a minimum, currently Corporate Real Estate reviews the final acquisition agreements or lease agreements for conformance with County approved legal language and clarity. However, no written policy exists that clearly identifies the roles and responsibilities of Corporate Real Estate within a decentralized environment.

The recent reassignment of Corporate Real Estate presents an opportunity to redefine, refine, and clarify the roles and responsibilities of Corporate Real Estate relative to the departments and the departmental real estate staff. Consideration should be given to requiring departments to notify Corporate Real Estate at the inception of real property projects and for Corporate Real Estate to be more closely involved in the more complex or larger projects. These roles and responsibilities could be addressed in the “Real Estate Action Plan” that is being prepared.

The reason this issue is relevant to our report is that we are recommending in Finding No. 1 that the CEO work with Corporate Real Estate to develop a standard questionnaire and require the questionnaire to be completed and attached to all future ASRs for real property acquisitions and leases. This questionnaire should be a working document with many of the questions being asked at the inception of the project. For those real estate projects overseen primarily by the departments, Corporate Real Estate could play a role in reviewing the questionnaires during the project to help ensure all items are adequately addressed prior to submission of the ASR and questionnaire to the Board of Supervisors.



Recommendation No. 6: We recommend that CEO work with Corporate Real Estate to develop a written policy that clearly defines and establishes Corporate Real Estate's responsibilities and authorities for all County real estate matters, including types of departmental projects they should be involved in and whether the involvement should be at the beginning of the project.

County Executive Office Management Response: Concur. The Board of Supervisors directed, on November 20, 2012, that the County Executive Office review all County departmental real estate responsibilities as part of the recently approved transfer of Corporate Real Estate to the County Executive Office. Upon completion of that review by the Board of Supervisors, the County Executive Office will present policy recommendations to the Board to address roles and responsibilities for County real estate matters.



ATTACHMENT A: Report Item Classifications

For purposes of reporting our audit observations and recommendations, we will classify audit report items into three distinct categories:

▶ **Critical Control Weaknesses:**

Audit findings or a combination of Significant Control Weaknesses that represent serious exceptions to the audit objective(s), policy and/or business goals. Management is expected to address Critical Control Weaknesses brought to their attention immediately.

▶ **Significant Control Weaknesses:**

Audit findings or a combination of Control Findings that represent a significant deficiency in the design or operation of internal controls. Significant Control Weaknesses require prompt corrective actions.

▶ **Control Findings:**

Audit findings concerning internal controls, compliance issues, or efficiency/effectiveness issues that require management's corrective action to implement or enhance processes and internal controls. Control Findings are expected to be addressed within our follow-up process of six months, but no later than twelve months.



ATTACHMENT B: Sample Questionnaire – Real Property Acquisition

1. Why is this property being considered for acquisition?
 - a) How and who identified this property as a potential acquisition?
 - b) What operational considerations were key factors for acquiring the property?
 - c) How does this property fit into the County's strategic or general plan?
 - d) What are the short and long term anticipated uses of the property?
 - e) Are there any limitations on the use of the property for its intended purposes?
 - f) Have there been any internally or externally prepared reports regarding this property acquisition? Please describe.

2. What analysis has been performed as to whether to purchase or lease the property?
 - a) Who performed the analysis?
 - b) Provide details about the analysis and cost comparison.

3. How was the purchase price determined?
 - a) Who performed the appraisal and what certifications do they possess?
 - b) How does the price compare with comparable properties?
 - c) Does the setting of the price follow industry standards and best practice?

4. What additional post-acquisition construction, remodeling, or upgrade costs will be needed for the property to meet its intended use?
 - a) Include estimates of the costs.
 - b) Will any of the upgrades be required to meet County, ADA, or other standards and requirements?
 - c) What is the funding source and which department will be responsible?

5. What will the post-acquisition maintenance costs be?
 - a) Include estimates of the annual costs.
 - b) What is the funding source and which department will be responsible?

6. How will the property acquisition be paid for?
 - a) Will any restricted funds be used and is real property acquisition an allowable usage of the funds? Has County Counsel provided input on whether the acquisition is an allowed use of restricted funds?
 - b) Is the purchase price budgeted in the department's budget?
 - c) If the property is being financed, what are the anticipated terms including anticipated interest rate and term of the bond or loan?

7. Does the proposed purchase contract comply with the County's standard language?
 - a) List any modified clauses and reasons for modification.



ATTACHMENT C: Sample Questionnaire – Real Property Lease

1. Why is this property being considered for lease?
 - a) How and who identified this property as a potential lease?
 - b) How does the leased property fit into the County's strategic or general plan?
 - c) What are the short and long term anticipated uses of the leased property?
 - d) Are there any limitations on the use of the leased property?
2. What analysis has been performed as to whether to lease, lease to own, or purchase the property?
 - a) Who performed the analysis?
 - b) Provide details of the analysis and cost comparison.
3. How was the lease price determined?
 - a) Does the pricing methodology follow industry standards and best practices?
4. What are the key terms of the lease?
 - a) Is the lease an operating lease or a lease with an option to purchase at end of term?
 - b) If option to purchase at end of term, what is the predetermined purchased price?
 - c) What is the lease period?
 - d) Can the lease price be adjusted by CPI or other index?
 - e) What are specific maintenance requirements within the lease and who is responsible?
 - f) Can the County terminate the lease?
 - i. What would be necessary to terminate the lease?
 - ii. Are there penalties to terminate the lease?
5. What additional post-acquisition remodeling or upgrade costs will be needed for the property to meet its stated use?
 - a) Include estimates of the costs.
 - b) Will any of the upgrades be required to meet County, ADA, or other standards and requirements?
 - c) Who will be responsible for the costs?
6. Who will be responsible for the property lease payments?
 - a) Will any restricted funds be used and are lease costs an allowable use of the funds?
Has County Counsel provided input on whether the lease is an allowed use of restricted funds?
 - b) Are the lease payments budgeted in the department's budget?
7. Does the proposed lease agreement comply with the County's standard language?
 - b) List any modified clauses and reasons for modification.



ATTACHMENT D: County Executive Office Management Responses



County Executive Office
Memorandum

December 5, 2012

To: Peter Hughes, Director of Internal Audit Department

From: Robert J. Franz, Interim County Executive Officer

Subject: Draft Response to Internal Audit Report on Clerk-Recorder Purchase of Real Property

The County Executive Office has completed its review of the Internal Audit Department report on the Clerk-Recorder Purchase of Real Property. Please find our responses to the findings and recommendations below:

Recommendation No. 1: We recommend that the CEO work with Corporate Real Estate to develop standard questionnaires for real property acquisitions and leases, utilizing the samples provided, and require the completed questionnaires to be attached to all future real property agenda staff reports (ASRs). The CEO should also communicate to the departments in writing, clearly defined responsibilities for completion and submission of the questionnaire.

County Executive Office Management Response: Concur. The County Executive Office will work with Corporate Real Estate to include a standard questionnaire in addition to the corrective actions implemented in 2010 to ensure that the Board of Supervisors is provided with timely copies of all relevant information associated with any future purchase acquisition recommendations.

Recommendation No. 2: We recommend that the CEO ensure the real property acquisition and lease questionnaires developed (see Finding No. 1 above) clearly identify and explain funding sources including the funding restrictions and compliance with those restrictions.

County Executive Office Management Response: Concur. The County Executive Office will work with Corporate Real Estate and the County Budget Office to implement the recommendations on all future real property recommendations.



ATTACHMENT D: County Executive Office Management Responses (continued)

Draft Response to Internal Audit Report on
Clerk-Recorder Purchase of Real Property
December 5, 2012
Page 2

Recommendation No. 4: We recommend that the CEO work with the Clerk-Recorder's Office and Corporate Real Estate to prepare a written strategic plan for the subject property.

County Executive Office Management Response: Concur. This property is part of the Civic Center Master Plan that is scheduled to be presented to the Board of Supervisors in the spring of 2013, with two Board of Supervisors study sessions planned in December 2012 (completed December 11, 2012) and February 2013.

Recommendation No. 6: We recommend that the CEO work with Corporate Real Estate to develop a written policy that clearly defines and establishes Corporate Real Estate's responsibilities and authorities for County real estate matters, including types of departmental projects they should be involved in and whether the involvement should be at the beginning of the project.

County Executive Office Management Response: Concur. The Board of Supervisors directed, on November 20, 2012 that the County Executive Office review all County departmental real estate responsibilities as part of the recently approved transfer of Corporate Real Estate to the County Executive Office. Upon completion of that review by the Board of Supervisors, the County Executive Office will present policy recommendations to the Board to address roles and responsibilities for County real estate matters.

If you should have any questions on our responses, please contact me or Frank Kim at (714) 834-3530.

cc: Frank Kim, Interim Chief Financial Officer
Rob Richardson, Assistant County Executive Officer



ATTACHMENT E: Clerk-Recorder Management Responses



CLERK-RECORDER

PROPERTY RECORDS
BIRTH AND DEATH RECORDS
MARRIAGE LICENSES/RECORDS
PASSPORTS
FICTITIOUS BUSINESS NAMES
NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES

MEMORANDUM

TO: Dr. Peter Hughes, CPA, Director, Internal Audit January 30, 2013

FROM: Tom Daly, Assemblyman, Sixty-Ninth District
Former Orange County Clerk-Recorder
Renee Ramirez, Assistant Clerk-Recorder

SUBJECT: RESPONSE- Revised 12D Draft Audit

As requested, attached is our response to the revised Fund 12D draft audit report, released on Wednesday January 16.

We concur with your recommendations.

We would like to thank each member of the audit team in helping us improve our operations.

If you have any further questions, please contact Renee at (714) 834-2248.

Thank you.

ARCHIVES, MARRIAGES, PASSPORT SERVICES
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ORANGE COUNTY
HALL OF FINANCE AND RECORDS
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SOUTH COUNTY BRANCH OFFICE
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ATTACHMENT E: Clerk-Recorder Management Responses (continued)



CLERK-RECORDER

PROPERTY RECORDS
BIRTH AND DEATH RECORDS
MARRIAGE LICENSES/RECORDS
PASSPORTS
FICTITIOUS BUSINESS NAMES
NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES

To: Peter Hughes, Director of Internal Audit Department January 24, 2013
From: Renee Ramirez, Assistant Clerk-Recorder
Subject: Response- Review of Clerk-Recorder- Fund 12D Purchase of Real Property

Below are responses to the findings and recommendations of your review of the Clerk-Recorder-Fund 12D property purchase (433 Civic Center). We concur with your recommendations.

Recommendation No. 3: We recommend that the Clerk-Recorder's Office request County Counsel input on the propriety of future large dollar uses of Fund 12D restricted monies, including future renovations or improvements to the subject property.

Clerk-Recorder Response: Concur. The Clerk-Recorder department will request specific input from our department's designated County Counsel representative on the propriety of future large dollar uses of Fund 12D restricted monies, including future renovations or improvements to the subject property.

Recommendation No. 5: We recommend that the Clerk-Recorder's Office remove any "noncompliant" records currently being stored at the subject property, such as fictitious business name records, or reimburse Fund 12D - Enhancement for any non-compliant records stored.

Clerk-Recorder Response: Concur. The Clerk-Recorder department has already established a procedure to reimburse 12D for storage of the minimal "non-complaint" records being housed at 433 Civic Center.

I would like to thank Carol Swe and Autumn McKinney of your staff for being so constructive in helping us improve our operations.

If you have any further questions, or if I can be of further assistance, please contact me at (714) 834-2248 or by email at renee.ramirez@rec.ocgov.com.

Thank you.

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ATTACHMENT E: Clerk-Recorder Management Responses (continued)

E-mailed from the desk of

TOM DALY

ASSEMBLY MEMBER

69TH DISTRICT

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To: Peter Hughes, Director of Internal Audit Department January 24, 2013

From: Tom Daly, Assemblyman, Sixty-Ninth District
Former Orange County Clerk-Recorder

Subject: Response- Review of Clerk-Recorder- Fund 12D Purchase of Real Property

I'm commenting on this matter because the 2008 purchase analyzed in your report was stimulated by me in my role as the elected Clerk-Recorder at that time. I worked closely with various county departments in preparing the recommendations leading to the purchase.

I want it clearly stated that no action in this acquisition by my department was done in violation of any existing county policy and/or procedure.

As I have stated to you in recent months, I believe the premise of your report is false. It assumes that a written agenda item with recommendations can or should anticipate every potential question on a particular subject. This is unrealistic, unfair and absurd.

The CEO reviewed and recommended this purchase of a half-acre parcel and a building, which were at the time- and still are- completely surrounded by county-owned properties. The Board of Supervisors unanimously approved the purchase, after a briefing in closed session. They had ample opportunities to ask any conceivable question, just as they do on any other matter. They chose not to, for reasons only they can describe.

Now four years after the purchase, an attempt is made to lay blame on various county staff for "critical" or "significant" flaws in the county's communication process leading to the decision to purchase. This amounts to nothing but a farcical cheap shot, and in my opinion is a sad waste of precious staff time and tax payer dollars.

Certain Board Members have since claimed that they didn't have all of the facts regarding rehabilitation costs at the time of purchase. Tony Ferrulli (RDMD) and I briefed the board on a number of issues, including renovation costs. There was a closed session of considerable length where the ins and outs of purchasing the building were discussed, with the full Board present.

The Clerk-Recorder department sent RDMD all of the information requested; it was RDMD's decision to include certain information in the ASR. No one asked me what I thought about the ASR and whether I believed other information should have been included. I trusted that RDMD would process the real-estate purchase request and the ASR as dictated by county policies.



ATTACHMENT E: Clerk-Recorder Management Responses (continued)

It has further been suggested that my department should have consulted with County Counsel prior to the purchase, specifically with regard to using 12D funds. The purchase was handled through CEO and we deferred to the real-estate group to coordinate the purchase details with County Counsel. At the time, there was no direction for the department to seek County Counsel advice on any of the department's expenditures from 12D.

This property is not separately owned by the Clerk-Recorder Department, though the department is the tenant and it was purchased with department funds. The county made the decision to add the building to its real-estate holdings using our funds. At any time in since the time of purchase, the CEO's office could have notified me they wanted a different use for the building and reimbursed the 12D fund for the purchase price.

The Clerk-Recorder department currently has installed an acceptable interim use of the building because of the state's economic collapse and the change in the county's budgetary circumstances. During my time as Clerk-Recorder, I held off bringing large-dollar items to the Board for approval as overall county revenues plunged and budgets shrunk. The intended use of the building remains as was stated in the ASR—it has just been delayed by circumstance.

I strongly disagree with the premise of the report suggesting the Clerk-Recorder department is responsible for anticipating questions and obtaining Counsel's approval regarding the building purchase. In my opinion, those questions and responsibilities were one-hundred percent the responsibility of the CEO and the Real Estate Department. The questions were so obvious and should be addressed as routine for any County's real estate transaction.



ATTACHMENT F: Internal Audit Rejoinder to Former Clerk-Recorder Response

This is an Internal Auditor Rejoinder to the memorandum from Assemblyman Tom Daly, dated January 24, 2013, included as part of the official response from the Clerk-Recorder Department (Attachment E).

1. **Memorandum:** *"As I have stated to you in recent months, I believe the premise of your report is false. It assumes that a written agenda item with recommendations can or should anticipate every potential question on a particular subject. This is unrealistic, unfair and absurd."*

Auditor Comment: Key information which is critical to the decision making and approval process should be included in the written ASR submitted to the Board of Supervisors in support of full disclosure to the BOS and public. Renovation costs of the existing structure were estimated at **\$3.56 million**, or **170%** of the **\$2.1 million** building purchase price, and known by both the Clerk-Recorder and Corporate Real Estate 6 months prior to the submission of the ASR. The subject building cannot be used for the intended purpose stated in the ASR without these significant renovation costs which were material and relevant to the decision making process and, therefore, should have been included in the written ASR.

The ASR recommendations should be made with an eye for providing clarity and full context. The ASR recommendations are critical in assisting the decision makers in understanding the full cost involved and impact to the County of purchase acquisitions.

2. **Memorandum:** *"The Board of Supervisors unanimously approved the purchase, after a briefing in closed session. They had ample opportunities to ask any conceivable question, just as they do on any other matter. They chose not to, for reasons only they can describe."*

Auditor Comment: Internal Audit is not in a position to validate or invalidate whether renovation costs were shared in closed session; however, the known renovation costs of \$3.56 million should have been included in the ASR or a cost relevant to the intended use of the building. The ASR is a document prepared not only for the Board of Supervisors but also for the public record and review.

3. **Memorandum:** *"Now four years after the purchase, an attempt is made to lay blame on various county staff for "critical" or "significant" flaws in the county's communication process leading to the decision to purchase. This amounts to nothing but a farcical cheap shot, and in my opinion is a sad waste of precious staff time and tax payer dollars."*

Auditor Comment: The burden of providing full context should not fall on the Board of Supervisors but instead on the originating departments submitting the ASR for Board approval. It is incumbent on the County Executive Office (CEO) to develop the ASR process to ensure relevant and accurate information is available to the Board of Supervisors in order to evaluate the merits of the request.



ATTACHMENT F: Internal Audit Rejoinder to Former Clerk-Recorder Response (continued)

To ensure consistent, timely, relevant information is available in making purchase acquisitions, we recommended that the County Executive Office work with Corporate Real Estate to develop standard questionnaires to be used in future purchase acquisition recommendations (see our sample questionnaires at Attachments B and C).

4. **Memorandum:** *"It has further been suggested that my department should have consulted with County Counsel prior to the purchase, specifically with regard to using 12D funds. The purchase was handled through CEO and we deferred to the real-estate group to coordinate the purchase details with County Counsel. At the time, there was no direction for the department to seek County Counsel advice on any of the department's expenditures from 12D."*

Auditor Comment: Typically, the originating department is the most knowledgeable regarding their funding and revenue sources and restrictions, if any. The recommendation was made with this notion in mind.