

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

823



FROM: Transportation and Land Management Agency

SUBMITTAL DATE:
March 24, 2004

SUBJECT: Approval of Memorandum of Understanding with the City of Calimesa concerning the Implementation of the Western Riverside County Multiple Species Habitat Conservation Plan

RECOMMENDED MOTION: That the Board approve the attached Memorandum of Understanding (MOU) with the three clarifications noted in the staff report and authorize the Chairman to sign the MOU and to notify the City of Calimesa (City) of these clarifications.

BACKGROUND: The City of Calimesa and the County have worked cooperatively for the past several months to resolve concerns the City has had with approving the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and agreeing to participate. The City's concerns include: Their vision of the critical areas for conservation within the City differs from what is called out in the MSHCP; concern about losing control of the mitigation fees they collect; and assurances that their acquisition projects will be considered for priority funding.

The attached MOU attempts to address these issues. The County is agreeing to provide staff support to help the City propose "Criteria Refinements" that will better conform the MSHCP to the City's conservation goals. The County would also agree to coordinate with the City on acquisitions in the unincorporated areas (Continued)

Attachment

Richard Lashbrook

Richard Lashbrook
Transportation and Land Management Agency Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**

County Executive Office Signature

John R. Payne

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: | **District:** All | **Agenda Number:**

15.1

Departmental Concurrence

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BACKGROUND: (Continued)

around the City. The City and County jointly agree to a series of clarifying points on how the MSHCP is to be implemented and agree to jointly advocate for certain administrative policies to be adopted by the Western Riverside Regional Conservation Authority (RCA). Among these policies is a return to source policy that would help assure the City will receive an equitable portion of the fees collected in their jurisdiction for local priorities until acquisitions are completed for their jurisdiction.

The City in return agrees to adopt the MSHCP, Implementing Agreement (IA) and other necessary documents, but makes its participation contingent on the resolution of their concerns as outlined in the MOU.

In the final MOU approved by the City, staff noted three City changes that need clarification:

1. Section C item 6 states: "Agree that through the use of the fee credits, the City will retain control of the fees generated within the City.....". This is a change from the language proposed by the County that stated, "through the use of fee credits, the City may retain control of most of the fees generated within the City....". The Implementing Agreement is clear that the Cities and the County must forward the fees they collect to the RCA. Allowing a fee credit would generally result in the fees not being collected and therefore not being available to be transferred to the RCA. However, fees that are collected would need to be transferred to the RCA. The City's change in language does not override the IA and, therefore, staff believes that it should be noted to the City that if they collect fees, the fees will need to be forwarded to the RCA.
2. Section D Item g: The City added this item which states, "The RCA will agree as to how the MSHCP is to be implemented pursuant to Section C, on this MOU." The County and City can advocate for the RCA to concur in the interpretations of the MSHCP contained in Section C of the MOU, but the MOU does not bind the RCA as they are not signatories, and as noted above, the MOU does not override the MSHCP and IA.
3. The City also added language that the City's approval of the MSHCP is "subject to the approval of this MOU by the County of Riverside and subsequent RCA adoption of the administrative operation rules as jointly recommended herein (Section C of this MOU document)." The proposed administrative rules are in Section D of the MOU.

With these clarifications, County staff recommends the adoption of the MOU with the City of Calimesa and encourage continued communication with the City to resolve issues that arise as we proceed with implementation of the MSHCP.

ATTACHMENT "A"

Memorandum of Understanding Between the County of Riverside and the City of Calimesa Concerning Implementation of the Western Riverside County Multiple Species Habitat Conservation Plan

WHEREAS, Riverside County has a diverse ecosystem supporting a wide range of plant and animal species.

WHEREAS, there are currently 32 listed species in Western Riverside County and additional listings can be anticipated in the future.

WHEREAS, Riverside County faces a doubling of its population over the next 20 to 25 years.

WHEREAS, this population increase will require major new infrastructure development including new roads and freeways to maintain mobility with the region.

WHEREAS, the County of Riverside in cooperation with the 14 Cities in Western Riverside County have developed a MSHCP to address the conservation of up to 146 Species.

WHEREAS, the USF&WS and the CDF&G have been partners in the development of this Plan and are anticipated to issue take authorization to the Permittees under the MSHCP.

WHEREAS, the City of Calimesa has reviewed the MSHCP and supports the goals of the MSHCP.

WHEREAS, the City of Calimesa has evaluated the important conservation and open space lands in their jurisdiction.

WHEREAS, the City of Calimesa envisions a much broader conservation objective that provides habitat for a wider range of plant and animal species than the MSHCP addresses.

WHEREAS, the City of Calimesa believes that City conservation efforts in addition to or in place of conservation proposed by the MSHCP would better address the long-term needs for habitat connectivity between Riverside and San Bernardino County.

WHEREAS, both the City of Calimesa and the County of Riverside desire to cooperate in making the best use of public funds for habitat conservation.

Therefore the City and County hereby define their intent to work cooperatively to meet the conservation and development objectives of the City within the framework of the MSHCP.

SECTION A

The City of Calimesa agrees to:

1. Define their habitat and open space and conservation goals and their relation to the MSHCP within the City's current General Plan update process.
2. Identify locations in addition to the areas called out for conservation under the MSHCP that the City believes have long-term conservation value and meet their vision of a more comprehensive conservation objective which provides habitat for a wider range of plant and animal species.
3. Adopt the MSHCP utilizing the Model City Ordinance or Model City Resolution contained in the MSHCP Implementing Agreement (IA) and execute the MSHCP IA subject to the approval of this MOU by the County of Riverside and subsequent RCA adoption of the administrative operation rules as jointly recommended herein (Section C of this MOU document).
4. Adopt the MSHCP Local Development Mitigation fee.
5. Advocate along with the County funding for high priority acquisitions within the City of Calimesa and adjoining unincorporated areas.
6. Propose a Permittee initiated criteria refinement to add additional conservation lands consistent with the City's long-term habitat and open space conservation goals.
7. Coordinate with the RCA to negotiate conservation agreements within the City on a project-by-project basis.
8. Work cooperatively with the RCA and the County to implement the MSHCP.

SECTION B

The County agrees to:

1. Support the City's requests for funding for priority acquisitions within the City.
2. Support the City in negotiating conservation agreements utilizing dedication, incentives, fee credits and outright purchase as appropriate.
3. Use its best efforts to support the City's proposed criteria refinement to conform the MSHCP reserve system within the City to the City's habitat and open space conservation goals.
4. Provide biological, legal and technical expertise to the City to develop the proposed criteria refinement and supporting findings.

5. Work cooperatively with the City in addressing the sub-regional infrastructure needs of City by obtaining their fair share of regional infrastructure and habitat acquisition funding.
6. Work cooperatively with the City to the implement the MSHCP consistent with the City's habitat and broader ecosystem and conservation goals.
7. In the event that the City wishes to purchase property outside of the MSHCP area that will contribute to the overall conservation, connectivity and biological values of the MSHCP, the County will assist the City in negotiations with the Wildlife Agencies and other agencies to direct funding for such acquisitions.

SECTION C

The City and County concur in their understanding of how the MSHCP will be implemented as follows:

1. Agree that the City has the right to withdraw from the MSHCP consistent with the terms of the IA.
2. Agree that if the City withdraws from the MSHCP at a future date, the Regional Conservation Authority would continue to have the obligation to defend and indemnify the City for any litigation that had been filed concerning the MSHCP prior to the date of withdrawal.
3. Agree that the City has sole authority, including veto power, over the HANS/Joint Project Review process as it applies to land use actions and acquisitions for property within the City's jurisdiction.
4. Agree to jointly consult on all County projects within the City's sphere of influence prior to finalizing the County's HANS process for those projects.
5. Agree that the City has full control over MSHCP fee credits pursuant to the terms of its local development fee ordinance for fees collected within the City.
6. Agree that through the use of fee credits, the City will retain control of the fees generated within the City while still calling on other funding sources available to the RCA for acquisition of conservation lands.
7. Agree to support the use of the pool of funds available through the RCA to allow earlier acquisitions than the City can achieve, relying on fees (or fee credits) collected only in the City, over many years.
8. Agree the City can define and locate wildlife corridors and define its own habitat, conservation and preservation goals that supplement the MSHCP through the City's General Plan update.
9. Agree that the City is responsible for implementing the MSHCP within the City and to set aside lands to compliment and implement the goals of the MSHCP, pursuant to the provisions of the Plan and related Implementing Agreement.

10. Agree that the City may retain ownership and control over all lands within the City and the City's sphere of influence set aside for conservation pursuant to the MSHCP, provided the property is managed consistent with MSHCP and Implementing Agreement requirements.
11. Agree that the City would have final determination as to the application of MSHCP fees and credits for dedication of all conservation land within the City, including for wetlands for habitat preservation and conservation, provided such preservation and conservation is consistent with the MSHCP.
12. Agree that the City will have the sole responsibility to negotiate and approve developer incentives for dedication of land for habitat preservation for projects within the City.

SECTION D

The City and County jointly agree to introduce and advocate for the adoption of the following administrative rules for the operation of the RCA:

- a. The RCA will report on a quarterly basis monies collected that quarter and contributed toward Plan implementation as well as acquisitions that have occurred that quarter and to date for each City and the County.
- b. Establish by policy that the RCA would look at "return to source" as a priority where conservation lands remain to be acquired within a City or the County.
- c. Establish a policy that if a RCA Member Agency is not receiving a proportionate "return to source" over a period of four quarters, then at its request, that Member Agency could move up acquisition(s) in priority to be funded over the following six months, based on availability of funds, and the Member Agency or RCA having an acquisition agreement with fully negotiated terms.
- d. A City could, at its discretion, accept an acquisition outside its boundaries as meeting the "return to source" requirement.
- e. Clarify that the RCA will defend, indemnify and hold harmless its member agencies for actions taken pursuant to Section 23 of the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority even if that member agency has subsequently withdrawn from the RCA after taking such action.
- f. Establish a policy whereby the 60-day notice provision as set forth in Section 6.5 of the MSHCP may be waived for the Criteria Refinement process upon written concurrence of the proposing City or County, all adjacent and/or affected Local Permittees, the affected property owner(s), the RCA, and the Wildlife Agencies.

g. The RCA will agree as to how the MSHCP is to be implemented pursuant to Section C, on this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized as of the date first above written.

Dated: _____

COUNTY OF RIVERSIDE

Attest:

By: _____
Chairman, Board of Supervisors

Dated: 3-24-04

CITY OF CALIMESA

Attest:
Renee Paez
City Clerk (Reputy)

By: [Signature]
Mayor

Dated: March 29, 04

Approved as to form.

Karin Watts-Bazai
Deputy County Counsel