

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

561



FROM: Executive Office

SUBMITTAL DATE:
May 10, 2004

SUBJECT: Reimbursement Agreement between the County of Riverside and the Western Riverside County Regional Conservation Authority (RCA)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Reimbursement Agreement between the County and the Western Riverside Regional Conservation Authority (RCA) and authorize the Chairman to execute the same.
2. Direct the Executive Office to prepare Agreement(s) regarding the use of Tipping Fee Revenues and Density Bonus Fees and the transfer of Ordinance. No. 810 obligations to the RCA for Board approval.
3. Direct the Executive Office to work with the RCA in the development of Agreement(s) for County services, such as land acquisition and habitat management for Board approval.

Departmental Concurrence

BACKGROUND: The Joint Exercise of Powers Agreement (Agreement) establishing the Western Riverside County Regional Conservation Authority (RCA) requires the RCA to reimburse the County for the cost of providing staff and consultants necessary to implement the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The attached Reimbursement Agreement, approved by the RCA Board on April 5, 2004, provides for repayment of County costs incurred on behalf of the RCA within two years of the issuance of the Western Riverside County MSHCP 10A permit.

Katherine Gifford

Katherine Gifford
Principal Management Analyst

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

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 *Barbara Hummer*

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

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

There are a number of concerns related to the Agreement:

1. Although County staff had recommended that the RCA be provided one year to reimburse the County for these costs, the RCA Board approved a two-year reimbursement period.
2. While the Joint Powers Agreement specified that the repayment would be for costs incurred "prior to entering into the contract contemplated in Section 10 of this Agreement", this Reimbursement Agreement expands the costs to include those incurred through the Management Services Contract, i.e., through March 5, 2007.
3. Historically, MSHCP-related costs, such as land acquisition activities by EDA and habitat management by Parks, have been funded through Ordinance 810 fees, DA funds, and the General Fund. In FY 04-05, the County Economic Development Agency (EDA) has budgeted \$400,000 for staffing and land entitlement costs related to land acquisitions in support of the MSHCP. The County Regional Parks and Open Space District budgeted \$140,000 in FY 03-04 to manage acquired MSHCP lands. Management costs are expected to increase significantly to comply with permit requirements and with the acquisition of more habitat lands.

With the signing of the permit, Ordinance No. 810.2 fees will be forwarded to the RCA, severely limiting the County's ability to support MSHCP activities. Further, the Board is aware of the severe limitations to the DA and General Fund in FY 04-05. Being aware of funding limitations, meetings have been initiated between RCA, Parks, and EDA to discuss their roles in real property acquisition and management of MSHCP conservation area lands and related funding issues.

Given the number of outstanding funding questions related to County staff support of the RCA, it is recommended that the Board direct the Executive Office to work with the RCA in developing Agreement(s) that will ensure that there is sufficient funding for County staffing of RCA-related programs and current obligations prior to the transfer of any Landfill Tipping Fees and Density Bonus Fees. Under the terms of the Joint Powers Agreement, Landfill Tipping Fees and Density Bonus Fees collected by the County may be contributed to the RCA on an annual basis subject to the discretion of the Board of Supervisors.

The Executive Office will work with the EDA and RCA staffs to ensure that any outstanding Ordinance No. 810 obligations, including grant and contract obligations, are met. The Executive Office will report to the Board with any recommendations regarding the transfer of grants or other obligations, and will bring funding-related Agreements to the Board for their consideration.

REIMBURSEMENT AGREEMENT

1. Parties and Date. This Agreement (“**Agreement**”) is entered into this ___ day of March, 2004, by and between the County of Riverside (“**County**”) and the Western Riverside County Regional Conservation Authority (“**RCA**”), a joint powers authority located in the County of Riverside, State of California:

2. Recitals.

2.1 The County is a subdivision of the State of California.

2.2 The RCA is a joint powers authority created by the County and the Cities of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto and Temecula.

2.3 The RCA was created to efficiently serve the interests of the County and Cities by allowing the County and the Cities to jointly exercise their separate authority and power to prepare and implement habitat conservation plans for the protection of rare, threatened and endangered species, and to acquire, own, maintain and operate habitat reserves for such species in connection with said habitat conservation plans through the implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (“**MSHCP**”).

2.4 The County will be due compensation from the RCA on the terms set forth in that certain Management Services Contract, as approved by the County and the RCA, of which an unexecuted draft is attached to this Agreement as Exhibit A.

3. Terms.

3.1 County Cost Reporting. The County shall, on a monthly basis, submit to RCA an itemized report of funds for which repayment will be requested by the County from RCA as a result of RCA’s activities and which have not previously been reported (“**County Costs**”). The report shall set forth the total amount which will be due from the RCA for the reporting period and the outstanding balance. Copies of all supporting documentation for County Costs shall accompany each report.

3.2 Management Services Contract. As an amendment to the Management Services Contract, executed herein by all the parties thereto, as provided in section 6 thereof, until the RCA has repaid all County Costs required by Section 3.3, compensation due under the Management Services Contract shall be considered a County Cost to be paid on the terms set forth in this Reimbursement Agreement and the repayment terms set forth in the final paragraph of Exhibit A of the Management Services Contract shall be suspended until such time.

3.3 RCA Repayment. RCA shall repay all County Costs reasonably incurred on behalf of the RCA under this agreement. Reimbursement shall be without interest and shall be made once adequate funding is available to the RCA, but in no event more than two years from the issuance of the Western Riverside County MSHCP 10A Permit.

3.4 Pledge of Security. For so long as any obligation of the RCA under this Agreement remains outstanding, the RCA hereby pledges, as security for repayment of the County Costs, to the extent allowed by law, all development mitigation fees on all new development to support the acquisition of additional reserve lands pursuant to the MSHCP, and any contributions of money or property from the members of the RCA or other individuals or entities, including but not limited to contributions from MSHCP Permittees and Special Participating Entities under the MSHCP who obtain take authorization under the MSHCP for public utility, schools, transportation, flood control and other public infrastructure projects (“**Pledged Revenues**”).

3.5 Further Assurances. The parties shall at all times hereafter execute, acknowledge, deliver, and perform all documents, acts and further assurances as are reasonably necessary to fulfill their obligations hereunder and to effect the transactions contemplated herein.

3.6 Miscellaneous.

A. No Waiver. No waiver of any default by the RCA or the County hereunder shall be implied from any omission by the other to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and the waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the County or RCA to or of any act by the other requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

B. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the County and the RCA and no third person, other than a permitted assignee or successor hereunder, shall have any right of action under this Agreement.

C. Notices. All notices or other communication required or permitted to be given hereunder shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by express courier delivery or personal delivery to the addressee. Notice mailed by U.S. mail shall be effective two (2) business days following its deposit. Notice given in any other manner shall be effective only if and when received at the addressee’s address. For purposes of notice, the addresses of the parties shall be as follows:

The County:

COUNTY OF RIVERSIDE
County Administrative Center 4th
4080 Lemon Street – 14th Floor
Riverside, California 92501
Attn: County Executive Officer

RCA:

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION AUTHORITY
County Administrative Center
4080 Lemon Street- 3rd Floor, MS 1032
Riverside, California 92501
Attn: Executive Director

Each party shall have the right to change its address for notice hereunder to any other location by the giving of notice to the other party in the manner set forth above.

D. Applicable Law. This Agreement and all documents provided for herein shall be governed by and construed in accordance with the internal laws of California.

E. Time. Time is of the essence in this Agreement, and each and every provision hereof in which time is an element.

F. Amendment and Waiver. This Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

G. Attorney's Fees. The prevailing party in any action arising out of this Agreement shall be entitled to its actual attorney's fees and other related expenses actually incurred.

H. Severability. The invalidity and unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

I. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. Headings. The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

K. Further Assurances. At any time or from time to time upon the request of the County or the RCA, the County or the RCA will execute and deliver such further documents and do other acts and things as the County or the RCA may reasonably request in order to effect fully the purposes of this Agreement and to provide for the repayment of any and all County Costs in accordance with the terms of this Agreement.

COUNTY OF RIVERSIDE

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION AUTHORITY

By: _____
_____, Chairperson

By: *Robin Louie*

FORM APPROVED
COUNTY COUNSEL

APR 22 2004
BY *Karin Watts Bay*