

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



**FROM:** Supervisor Jeff Stone

**SUBMITTAL DATE:** January 15, 2008

**SUBJECT:** Memorandum of Understanding (MOU) between the County of Riverside, Western Riverside County Regional Conservation Authority (RCA) and Anheuser-Busch Inc. regarding conveyances affecting Assessor Parcels 384-270-001, 392-340-028, 392-350-021, 392-350-022; and 388-270-008, 388-270-009, 388-270-010, 388-270-015, 472-050-001, 472-050-004, 472-050-005, 480-010-001, 480-010-002

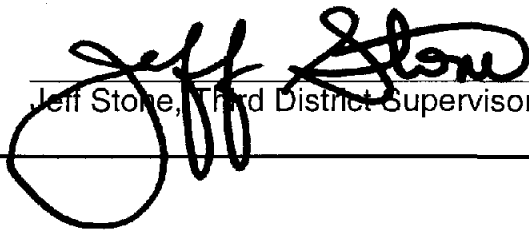
**BACKGROUND:**

At the urging of Dan Silver, Director of the Endangered Habitats League, I am requesting that the Board authorize the Chairman to sign the attached Memorandum. The MOU articulates a framework to negotiate a mutually acceptable agreement to carry out an important property exchange that will result in the protection of habitat, essential to the Multi-Species Habitat Conservation Plan (MSHCP), and the construction of Clinton Keith Road.

On January 8<sup>th</sup>, the Board authorized the RCA to obtain clearances from Federal and State agencies, and undertake a criteria refinement on behalf of the County for certain County-owned properties. The MOU, of which the RCA is a signatory, lays out a road map for those efforts as well.

**RECOMMENDED MOTION:**

That the Board authorize the Chairman to sign the attached Memorandum of Understanding.

  
\_\_\_\_\_  
Jeff Stone, Third District Supervisor

FORM APPROVED COUNTY COUNSEL

BY: 

DATE: 1/14/07

PAMELA J. WALLS

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (the "MOU") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2008 ("Effective Date") by and between the Western Riverside County Regional Conservation Authority (the "RCA"), the County of Riverside ("County"), and Anheuser-Busch, Incorporated ("AB") (each of the RCA, the County and AB is sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties"), with respect to the following:

### **RECITALS**

- A. The County is a political subdivision of the State of California; and
- B. The RCA is a public agency of the State of California formed by a Joint Exercise of Powers Agreement; and
- C. Land procurement is one of the most important activities of the RCA to reach the reserve goals of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"); and
- D. AB is the owner of approximately 960 acres of real property (the "AB Property") located in the County of Riverside (the "County") and identified by Assessors Parcel Nos. 384-270-001, 392-340-028, 392-350-021, and 392-350-022; and
- E. It is the intention of the Parties to subsequently execute a mutually acceptable binding agreement ("Agreement") concerning the subject matter of the MOU.
- F. It is the intention of the Parties and acknowledged by the Parties that execution of the MOU does not authorize any change in the physical environment, and before any such change in the physical environment may occur, both the County and RCA will have to comply with CEQA.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The Recitals are incorporated herein by this reference and the Parties agree that the facts recited above are true and correct.

2. Conditions Precedent. The Parties' performance of their respective obligations under this MOU is expressly conditioned upon the satisfaction or waiver of the following conditions:

(a) Approval and Execution of the MOU. The RCA, the County and AB shall have entered into this MOU, and the RCA's and the County's approval and execution of the MOU shall have become final and shall not be the subject of any third party appeal or litigation of any kind or description.

(b) Approval and Execution of the Agreement. The RCA, County and AB shall have entered into the Agreement concerning the subject matter of the MOU.

3. Transaction 1:

(a) AB shall initially convey approximately 320 acres of the AB Property to the County and RCA for construction of Clinton Keith Road and for MSHCP conservation purposes, as depicted in Exhibit 1 (AB Conveyance Property).

(b) The County shall convey to AB an approximately 265 acre portion of the 368 acre McElhinney and Stimmel properties (McElhinney Property) as depicted in Exhibit 1, which portion will be the development footprint described in the following section (c).

(c) The County and RCA shall successfully complete final Criteria Refinement, if determined necessary by the County and the RCA, together with HANS and JPR consistency findings, which results in final development footprints of approximately 305 acres on the AB Property (AB Development Property) and an approximately 265 acre portion of the McElhinney Property, depicted in Exhibit 1.

(d) The County shall complete all necessary processes and secure all necessary public and private clearances for the County to legally convey the 265 acres of the McElhinney Property to AB, and which will allow AB to develop the McElhinney Property, upon issuance of entitlements by the County, as set out in Transaction 2 below.

(e) Subject to the provisions of Sections 6 and 17 of the MOU, after completion of steps (a)-(d), these initial properties will be exchanged.

(f) Transaction 1 shall be completed within 180 days of execution of this MOU. If it is not, no conveyances shall occur, and AB shall be allowed to contest condemnation of its Clinton Keith Property.

(g) Upon timely completion of Transaction 1, AB agrees to assign to an escrow for the benefit of the County or RCA the proceeds of fair market value of the Clinton Keith Right-of-Way Property, based upon the County appraisal of the fair market value, which would have otherwise been paid by the County, to be used for MSHCP or related conservation purposes.

4. Transaction 2:

(a) The County shall take final action on land use entitlements (including General Plan Land Use GPA, a Circulation Element GPA to add back Keller Road as a Secondary Highway, Specific Plan, Change of Zone, DA, CEQA clearances, all MSHCP clearances and consistency determinations and any other entitlements deemed necessary by the County) for a planned development of 3.5 to 5.5 dwelling units per acre, and also using MSHCP incentives of density bonuses and clustering with reasonable amenities commensurate with the level of development approved. This density is based on 3.5 to 5.5 dwelling units per acre and the commensurate entitlements will apply to the development envelopes of the AB and McElhinney Property. The density of 3.5 to 5.5 dwelling units per acre shall apply to both the AB Development Property and the McElhinney Property. The entitlements shall authorize development on the MSHCP-cleared development envelopes of the McElhinney, (approximately 265 acres) and AB properties.

(b) Transaction 2, shall be completed 18 months after the completion of Transaction 1. Subject to the Other Provisions, subpoint (c), below, 100 days after final approval of all of the entitlements by the County Board of Supervisors as referenced in Transaction 2, paragraph (a), the cross-hatched area delineated on Exhibit 1 (the remaining approximately 338 acres of the AB Property) shall be conveyed to the RCA and the escrow funds referred to in Paragraph 3(g) shall be released to the County and/or the RCA.

(c) If the County and/or the RCA are unable to fulfill their obligations, the RCA agrees to purchase the 338 acres cross hatched in Exhibit 1 at a pre negotiated price as provided in the Agreement. The County/RCA shall also release the escrow funds referred to in Paragraph 3(g) to AB in recognition of the previous conveyance of the Clinton Keith Right of Way Property to the County.

5. Other Provisions:

(a) The Parties agree that they will work together with environmental groups, such as the Conservation Fund, the Nature Conservancy, Endangered Habitats League, etc., to assist in the facilitation and implementation of this MOU and the Agreement, and will work with the University of California, Riverside biologists and the Endangered Habitats League to attempt to secure their commitment to support the implementation of this Agreement.

(b) The Agreement implementing the terms and conditions set out in this memo shall be executed by the Board of Supervisors of the County and the Executive Board of the RCA and AB, no later than forty-three (43) days after the filing and posting of the Notices of Exemption ("NOE").

6. Discretionary Decisions: AB acknowledges and agrees that execution of the MOU, and possible subsequent execution of the Agreement, as referenced in Recital E of the MOU, does not divest the County or RCA of either agency's authority to exercise their discretion in connection with the actions specified in the MOU, and the County cannot approve AB's discretionary land use entitlements referred to in this MOU without complying with certain legal procedures, regulations, and public hearings accompanied by discretionary decisions required by, among other things, state law, including CEQA, and County ordinances. Nothing in this MOU shall constitute, or shall be construed to constitute, a commitment by or a requirement of the County, the Planning Commission of the County of Riverside and/or the Board of Supervisors of the County of Riverside to approve any of AB's discretionary land use entitlements for the properties referred to in this MOU.

7. Execution of Agreement The Agreement implementing the terms and conditions set forth in the MOU shall be executed by the Board of Supervisors of the County and the Executive Board of the RCA no later than forty-three (43) days after the filing and posting of the NOE.

8. Notices. Notices, demands and communications between the RCA, the County and AB shall be deemed sufficiently given if (i) delivered personally, (ii) dispatched by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally-recognized reputable overnight delivery service to the principal offices of the RCA, the County and AB as set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses or to such other address as any Party may from time to time designate by mail as provided in this Section, and shall be deemed received upon delivery or refusal of delivery, if delivered personally, within three (3) business days after deposit of same in the United States mail, if mailed, or one (1) business day after deposit of same with a nationally recognized reputable overnight delivery service if sent by such a delivery service.

To AB: Anheuser-Busch, Incorporated  
One Busch Place  
St Louis, Missouri 63118  
Attention: G. Anthony Taylor

Required copies to: Buchanan Ingersoll & Rooney LLP  
41607 Margarita Road, Suite 103  
Temecula, California 92591-2984  
Attn: Samuel C. Alhadeff, Esq.

To the RCA: Western Riverside County Regional  
Conservation Authority  
4080 Lemon St., 12th Floor  
Riverside, California 92501  
Attention: Executive Director

Required copy to: Best Best & Krieger LLP  
3750 University Avenue  
Riverside, California 92502  
Attn: Michelle Ouellette, Esq.

To the County: Riverside County  
4080 Lemon St., 12th Floor  
Riverside, California 92501  
Attention: Executive Director

Required copy to: Riverside County Counsel  
3535 10th Street, Ste 300  
Riverside, California 92501  
Attn: Joe Rank, Esq., County Counsel

9. Entire Agreement. This MOU contains the entire agreement of the parties hereto with reference to the subject matter hereof, and supersedes all negotiations or previous agreements between the parties with respect to all or any portion of the subject matter hereof.

10. Validity and Severability. If any one or more of the terms, provisions, promises, covenants or conditions contained in this MOU shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a final decision of a court of competent jurisdiction, then each of the remaining terms, provisions, promises, covenants and conditions contained herein shall remain unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

11. Headings. Any headings contained in this MOU are solely for the purposes of convenience of reference and shall not constitute a part hereof nor shall they be utilized to interpret any term or condition contained in this MOU and the actions to be preformed herein.

12. Governing Law. This MOU shall be governed by the laws of the State of California.

13. Time of the Essence. Time is of the essence with respect to this MOU.

14. Amendments. This MOU may be amended at any time, and from time to time provided, however, that no amendment of this MOU shall be effective unless such amendment is in writing and signed by all parties hereto.

15. Further Assurances. Each party shall execute, deliver and acknowledge all such further instruments of transfer and conveyance or otherwise and to perform all such other acts as any other party may reasonably request to more effectively carry out the terms and conditions of this MOU and the transaction contemplated herein.

16. Successors. This MOU shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

17. No Waiver of Police Powers. The parties hereto agree that nothing contained herein shall be interpreted or deemed to be a waiver or assignment by the County or the RCA of their police powers under the laws of the State of California. Nothing contained herein shall be interpreted as granting to AB approval of plans, entitlements, specifications or permits of any kind. AB agrees that it will process all entitlements, building plans and the like through the appropriate County departments, and nothing contained in this MOU shall be deemed to be a pre-approval of any applications so submitted by AB.

18. Counterparts. This MOU may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall be deemed a single original.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Memorandum of Understanding as of the day and year first above written.

"County"

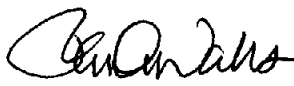
COUNTY OF RIVERSIDE, a California public agency

By: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
CONTENT:

By: \_\_\_\_\_  
County Clerk

By:  \_\_\_\_\_  
County Counsel, Pamela J. Walls Assistant

"RCA"

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION  
AUTHORITY, A CALIFORNIA PUBLIC AGENCY

By: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM AND  
CONTENT:

By: \_\_\_\_\_

By: \_\_\_\_\_  
County Counsel

"AB"

ANHEUSER-BUSCH, INCORPORATED

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its: \_\_\_\_\_

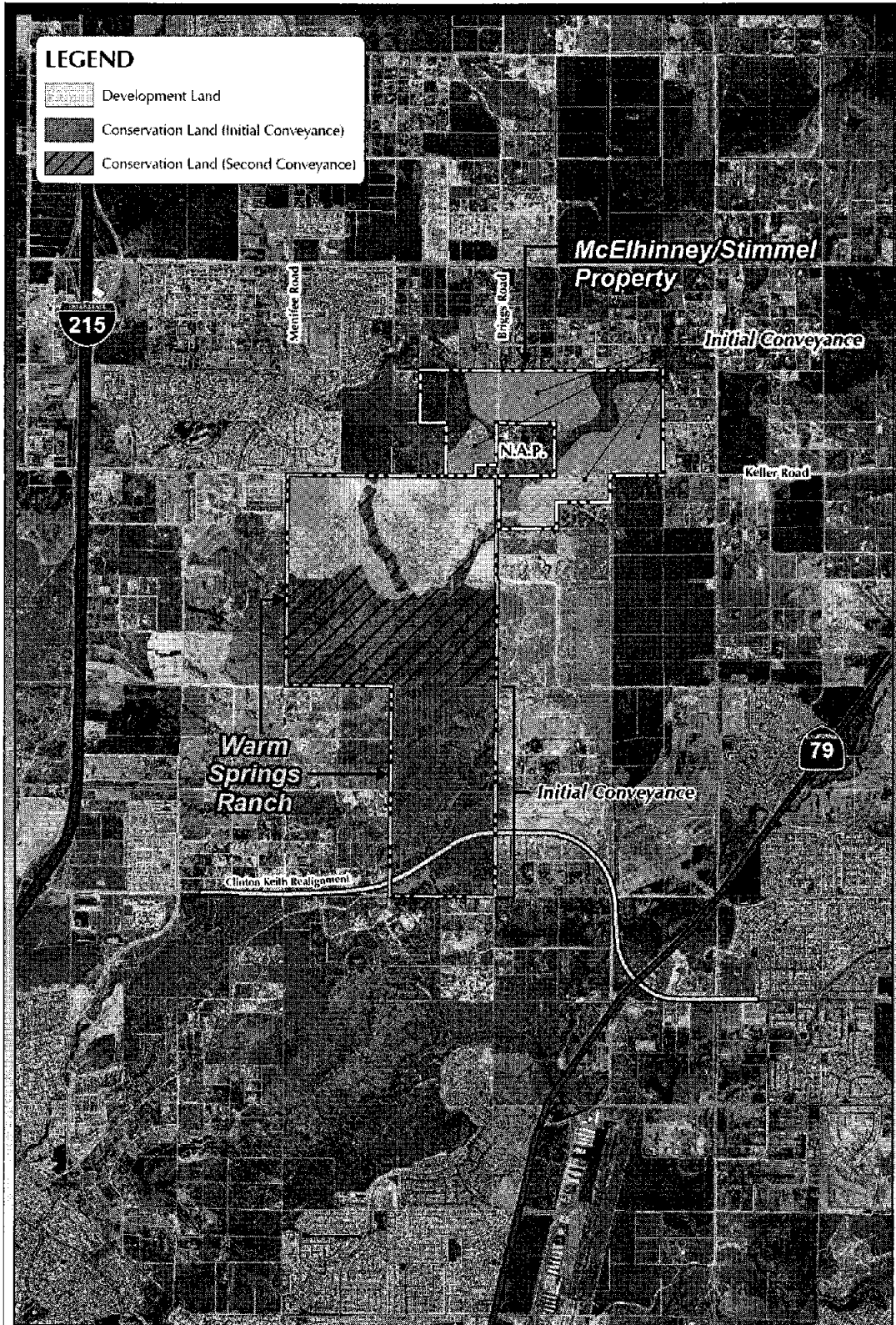


EXHIBIT ONE

WARM SPRINGS RANCH/McELHINNEY AREA DEVELOPMENT/CONSERVATION CONCEPT