

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

789



FROM: County Counsel

SUBMITTAL DATE:
June 17, 2008

SUBJECT: Affirmation that Memorandum of Understanding is Void

RECOMMENDED MOTION: That the Board of Supervisors adopt Resolution No. 2008-319 Affirming the Memorandum of Understanding Between the County of Riverside, Western Riverside County Regional Conservation Authority and Anheuser-Busch, Incorporated is Void and of No Force or Effect.

BACKGROUND: On January 16, 2008, the County, the Regional Conservation Authority and Anheuser-Busch entered into a Memorandum of Understanding ("MOU") to provide a framework for the negotiation of a mutually acceptable agreement to carry out an important property exchange for protection of habitat, essential to the Multi-Species Habitat Conservation Plan (MSHCP), and the construction of Clinton Keith Road.

Conditions were set forth in the MOU that had to be satisfied or waived in order for the MOU to have any force or effect. Two of these conditions were that there be no third party litigation and that an Agreement implementing the terms and conditions of the MOU be executed by the Board of Supervisors and the RCA Executive Board no later than 43 days after the filing and posting of the Notice of Determination. Both conditions have not been satisfied, nor have they been waived. Accordingly, the MOU is void and has no force or effect. Resolution No. 2008-319 would further affirm the Board's position in this regard.

Joe S. Rank

Joe S. Rank, County Counsel

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

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

Prev. Agn. Ref.:

District:

Agenda Number:

3.22

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3 RESOLUTION NO. 2008-319

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5 RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
6 COUNTY OF RIVERSIDE AFFIRMING THE MEMORANDUM OF
7 UNDERSTANDING BETWEEN THE COUNTY OF RIVERSIDE,
8 WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND
9 ANHEUSER-BUSCH, INCORPORATED IS VOID AND HAS NO FORCE OR EFFECT
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11 WHEREAS, on or about January 16, 2008, the County of Riverside ("County") entered into a
12 Memorandum of Understanding ("MOU") with the Western Riverside County Regional Conservation
13 Authority ("RCA") and Anheuser-Busch, Inc. ("AB");

14 WHEREAS, the MOU contains conditions precedent which must be satisfied or waived for the
15 MOU to have force and effect;

16 WHEREAS, Section 2(a) of the MOU requires as a condition precedent that the MOU shall have
17 become final and not be the subject of any third party appeal or litigation of any kind or description;

18 WHEREAS, Andrew D. McElhinney and James and Marcelet Stimmel filed Verified Petitions
19 for Writ of Mandate and Complaints for Declaratory Relief against the RCA, County and Anheuser-
20 Busch relating to the MOU on February 19, 2008 and February 20, 2008 (*Andrew D. McElhinney, et al. v.*
21 *County of Riverside, et al.*, Case No. RIC 493233; and *James Stimmel, et al. v. County of Riverside, et al.*,
22 Case No. RIC 493433);

23 WHEREAS, in a letter dated April 23, 2008 to the County and RCA, John Condas, Counsel for
24 AB stated that AB will not waive Condition 2(a) of the MOU and, therefore, the MOU is void and has no
25 force or effect;

26 WHEREAS, in a letter dated April 24, 2008 to RCA and AB, Pamela J. Walls, Assistant County
27 Counsel stated that the County will not waive Condition 2(a) of the MOU and agreed with AB's
28 assessment that the MOU is void and has no force or effect;

1 WHEREAS, a letter dated April 29, 2008, from Geralyn L. Skapik, Counsel for RCA, was sent to
2 Counsel for the McElhinneys and Stimmels forwarding the April 23, 2008, Anheuser-Busch letter and the
3 April 24, 2008, County letter. The letter from Ms. Skapik notified counsel for the Stimmels and
4 McElhinneys that the County, AB and RCA will not waive Condition 2(a) of the MOU and that the MOU
5 is void and has no force or effect;

6 WHEREAS, Section 7 of the MOU mandates that an Agreement implementing the terms and
7 conditions set forth in the MOU be executed by the Board of Supervisors of the County of Riverside and
8 the Executive Board of RCA, no later than 43 days after the filing and posting of Notice of Determination
9 (“NOD”);

10 WHEREAS, the time to comply with Section 7 has expired;

11 WHEREAS, on June 9 2008, the RCA Board of Directors adopted a resolution finding as a result
12 of the unsatisfied conditions precedent referenced above, the MOU is void on its face and has no force or
13 effect;

14 WHEREAS, the County also has not waived these conditions precedent and therefore, it is the
15 County’s, AB’s and RCA’s position that the MOU is void on its face and has no force or effect; now
16 therefore,

17 BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in
18 regular session assembled on June 24, 2008, that the conditions precedent contained in the MOU have not
19 been satisfied, nor have they been waived. The MOU is therefore void and has no force or effect.

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24 FORM APPROVED COUNTY COUNSEL
25 BY: *Pamela J. Walls* 6/18/08
PAMELA J. WALLS DATE

26 PJW:ay
27 06/17/08
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