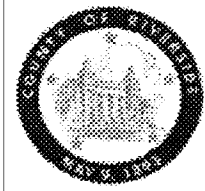


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

690



FROM: TLMA-Department of Environmental Programs

SUBMITTAL DATE:
July 19, 2010

SUBJECT: Memorandum of Understanding (MOU) Between the County of Riverside and the City of Desert Hot Springs Concerning Implementation of the Coachella Valley Multiple Species Habitat Conservation Plan Regarding the 4,000 Acre I-10 Interchange Annexation.

RECOMMENDED MOTION: That the Board approve and authorize the Chairman of the Board to sign the attached MOU between the County of Riverside and the City of Desert Hot Springs Concerning Implementation of the Coachella Valley Multiple Species Habitat Conservation Plan regarding the 4,000 Acre I-10 Interchange Annexation.

BACKGROUND: Under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), all of the local permittees are given a limited amount of take within each conservation area that can be used to take, or destroy, listed species under the Plan. The Board of Supervisors adopted Board Policy A-61 to address how the County's Allocation of Take will be distributed. Under the policy, the Board adopted the following provision concerning new annexations of land into a city:

"Because the county's Take allocation is limited, Take allocations will not automatically be granted to cities that annex new lands, but must be evaluated and potentially negotiated with the city."

CONTINUED ON PAGE 2

Carolyn Syms Luna

Carolyn Syms Luna
Director, Environmental Programs Department

FORM APPROVED COUNTY COUNSEL
BY: *Karin L. Watts-Bazan* 7/20/10
DATE: *7/20/10*
Departmental Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	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

BY: *Tina Grande*

Tina Grande

County Executive Office Signature

Dept's Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: July 27, 2010
xc: TLMA-Environmental Programs

Kecia Harper-Ihem
Clerk of the Board
By: *Karin L. Watts-Bazan*
Deputy

Board of Supervisors
July 19, 2010
Page 2

The City of Desert Hot Springs is currently going through annexation proceedings to annex 4,000 acres of land along the I-10. County staff has worked out the attached MOU with the City of Desert Hot Springs to allow for a process that is to be utilized for the County to consider transferring take from the County's allocation, to the City.

Staff recommends that the Board enter into this Memorandum of Understanding with the City of Desert Hot Springs.

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**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF RIVERSIDE AND THE CITY OF DESERT HOT SPRINGS
CONCERNING IMPLEMENTATION OF THE COACHELLA VALLEY MULTIPLE
SPECIES HABITAT CONSERVATION PLAN
REGARDING THE 4,000 ACRE I-10 INTERCHANGE ANNEXATION**

This Memorandum of Understanding (“MOU”) is made as of July 6, 2010 by and between the County of Riverside (“County”) and the City of Desert Hot Springs (“City”) to establish a process for implementation of the Coachella Valley Multiple Species Habitat Conservation Plan (the “MSHCP”) for the 4,000 Acre I-10 Interchange Annexation (“Annexation Nos. 2009-08-5 and 2009-09-5”).

RECITALS

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

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

WHEREAS, this population increase will require new development throughout the Coachella Valley, including development for commercial and residential purposes, and the development of infrastructure to support such land uses; and

WHEREAS, in 2009, the Local Agency Formation Commission (LAFCO) approved Annexation Nos. 2009-08-5 and 2009-09-5 concerning the annexation of approximately 4,000 acres of land within the unincorporated area of the County to the City; and

WHEREAS, the area included within Annexation Nos. 2009-08-5 and 2009-09-5 is set forth in Exhibit “A”, attached hereto and incorporated herein by this reference; and

WHEREAS, the County has approved the MSHCP and has received Section 10(a)(1) and NCCP permits from the U.S. Fish and Wildlife Service and California Department of Fish and Game; and

WHEREAS, the City desires that the provisions of the MSHCP apply to the area subject to Annexation Nos. 2009-08-5 and 2009-09-5 and the City intends to consider approval of the MSHCP for the remainder of the City through an Amendment to the MSHCP in the future; and

WHEREAS, the area included within Annexation Nos. 2009-08-5 and 2009-09-5 is located within portions of the “Willow Hole Conservation Area” and the “Upper Mission Creek/Big Morongo Canyon Conservation Area” as defined under the MSHCP. The “Upper Mission Creek/Big Morongo Canyon Conservation Area” in the annexation area contains portions of the Morongo Wash Special Provisions Area. The MSHCP establishes Conservation Objectives for the Willow Hole Conservation Area, Upper Mission Creek/Big Morongo Canyon Conservation Area, and the Morongo Wash Special Provisions Area and as well as Required Measures to avoid, minimize, and mitigate Take in the Area. Development within the Willow Hole Conservation Area, Upper Mission Creek/Big Morongo Canyon Conservation Area, and Morongo Wash Special Provisions Area must be consistent with the identified Conservation Objectives and Required Measures; and

1 **WHEREAS**, the City intends to manage the area included within Annexation Nos. 2009-08-5 and
2 2009-09-5 consistent with the provisions of the MSHCP, including the Conservation Objectives and
3 Required Measures of the Willow Hole Conservation Area and the “Upper Mission Creek/Big Morongo
4 Canyon Conservation Area” ; and

5 **WHEREAS**, the MSHCP requires that roughly 90% of certain habitats within each Conservation
6 Area that are not already conserved as of 1996, must be preserved through acquisition, deed restriction, or
7 conservation easement; and

8 **WHEREAS**, the roughly 10% of habitat that is available for development within each
9 Conservation Area is referred to herein as the area’s “Take Allocation”; and

10 **WHEREAS**, Section 6.6.1.1 of the MSHCP requires the Coachella Valley Conservation
11 Commission (“CVCC”) to conduct a Joint Project Review Process for all proposed projects that would
12 result in disturbance to any area within the above Conservation Areas. During the Joint Review Process,
13 the CVCC analyzes the extent to which the proposed project would impact the conservation Area
14 Conservation Objectives and Required Measures delineated for each Conservation Area, and how the
15 project would affect the maintenance of Rough Step in the affected Conservation Area. CVCC then
16 forwards its analysis and the project application to the Wildlife Agencies for their review and comment.
17 Based on its own analysis and the Wildlife Agencies’ comments, CVCC then determines whether the
18 proposed project is consistent with the Conservation Area’s Conservation Objectives and Required
19 Measures; and

20 **WHEREAS**, the County and the City desire to cooperate to establish a process for allocating Take
21 and meet the conservation and development objectives of the City for the area included within
22 Annexation Nos. 2009-08-5 and 2009-09-5 within the framework of the MSHCP.

23 **NOW, THEREFORE**, the County and the City do hereby set forth their mutual representations,
24 commitments, and understandings regarding the following:

- 25 1. The Board of Supervisors of the County has established an Allocation of Take Policy for
26 allocating take for development projects within the Conservation Areas established by the
27 MSHCP.
- 28 2. City agrees that development projects within the Conservation Areas within the area subject to
Annexation Nos. 2009-08-05 and 2009-09-5 shall be submitted to the CVCC for Joint Project
Review. In the event the development project is determined by CVCC to be in compliance
with the Goals, Objectives, Requirements, and Conditions of the MSHCP and therefore
consistent with the MSHCP, City may then apply for an allocation of take from the County.
3. City shall submit any application for an allocation of take to the Supervisor of the 5th
Supervisory District who will then place the application with his/her recommendation for
approval or denial on the Board of Supervisor’s agenda for its consideration.
4. No take shall be allocated by County if it exceeds the amount of available take pro-rated for
the area included within Annexation Nos. 2009-08-5 and 2009-09-5.

- 1 5. City shall be notified in writing of any approval or denial by the Board of Supervisors of the
2 application for an allocation of take.
- 3 6. This MOU does not allocate take for any development project within the area included within
4 Annexation Nos. 2009-08-5 and 2009-09-5 but merely establishes a process for obtaining an
5 allocation of take from the County until such time that the City becomes a permittee under the
6 MSHCP.
- 7 7. It is understood by the parties that any take authorized by the MSHCP for the Willow Hole
8 Conservation Area, Upper Mission Creek/Big Morongo Canyon Conservation Area, and the
9 Morongo Wash Special Provisions Area which may be provided by County to City shall be
10 negotiated between the parties upon the inclusion of the remainder of the City within the
11 MSHCP.
- 12 8. This MOU constitutes the entirety of the agreement between the County and the City as for the
13 matters contained herein and it supersedes any other agreement, oral, written or otherwise.
- 14 9. This MOU shall be governed by the laws of the State of California.
- 15 10. This MOU does not create any third party beneficiaries.
- 16 11. This MOU shall be binding on all parties, their heirs, successors in interest and assigns.
- 17 12. If any provision of this MOU is determined to be unenforceable in any respect by a court of
18 competent jurisdiction, such unenforceability shall not affect any other provision herein, and
19 this MOU shall be construed as if such unenforceable provision had not been contained herein.
- 20 13. This MOU may be executed in counterparts, each of which will be deemed an original, but all
21 such counterparts together shall constitute one document.
- 22 14. If any action is brought for the purpose of enforcing or interpreting any of the terms of this
23 MOU, the prevailing party shall be entitled to recover reasonable attorneys fees and costs in
24 that action, in addition to any other relief which may be granted.

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1 **IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed as of the**
2 **date first written above.**

3
4 COUNTY OF RIVERSIDE

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6 Date: JUL 27 2010

7 By: *Angela Asseley*
8 Chairman
9 Riverside County Board of Supervisors

10 CITY OF DESERT HOT SPRINGS

11 Date: 7/7/2010

12 By: *Glorne Parks*
13 Mayor
14 City of Desert Hot Springs

15 FORM APPROVED COUNTY COUNSEL
16 BY: *Karin Watts* 7/20/10
17 KARIN L. WATTS-BAZAN DATE

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ATTEST:
KECIA HARPER-IHEM, Clerk
By: *[Signature]*
DEPUTY