

820
**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: County Counsel

SUBMITTAL DATE:
 November 24, 2010

SUBJECT: Agreement for Funding the Acquisition of Property for Inclusion in the Conservation Area Between Western Riverside County Regional Conservation Authority and the County of Riverside (Wilhelm Property)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement for Funding the Acquisition of Property for Inclusion in the Conservation Area and the County of Riverside (Wilhelm Property); and
2. Authorize the Chairman of the Board to Execute said agreement.

BACKGROUND: On October 19, 2010, the Board of Supervisors approved Resolution 2010-295, Notice of Intention to Purchase Real Property in the Unincorporated Area of Hemet, California. On today's agenda, the Board will also be considering approval of a Purchase and Sale Agreement between the County and the Wilhelm Family Trust, LP.

Continued on Page 2

Karin Watts-Bazan
 Karin Watts-Bazan, Principal Deputy County Counsel
 for Pamela J. Walls, 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:	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

BY: *Jennifer Sargent*
 Jennifer Sargent

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
 Nays: None
 Absent: None
 Date: December 7, 2010
 xc: Co.Co., EDA

Kecia Harper-Ihem
 Clerk of the Board
 By: *Kecia Harper-Ihem*
 Deputy

Prev. Agn. Ref.: 3.17 on 10/19/10 | District: 3 | Agenda Number:

3.15 b

2011-1-104931

Departmental Concurrence

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

**RE: Agreement for Funding the Acquisition of Property for Inclusion in the
Conservation Area Between Western Riverside County Regional
Conservation Authority and the County of Riverside (Wilhelm Property)**

Date: December 7, 2010

Page 2

Pursuant to the attached Funding Agreement with the Western Riverside County Regional Conservation Authority (RCA), the RCA has agreed to contribute \$700,000.00 in additional funding towards the overall purchase price for Wilhelm Property. It is therefore, recommended that the Board approve this Agreement and Authorize the Chairman to execute said Agreement.

WHEN DOCUMENT IS FULLY EXECUTED RETURN

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

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**AGREEMENT FOR FUNDING THE ACQUISITION OF
PROPERTY FOR INCLUSION IN THE CONSERVATION
AREA BETWEEN WESTERN RIVERSIDE COUNTY REGIONAL
CONSERVATION AUTHORITY AND THE COUNTY OF RIVERSIDE
(WILHELM PROPERTY)**

1 **THIS AGREEMENT** is made and entered into by and between the Western Riverside County Regional Conservation
2 Authority, a public agency and joint powers authority (“**RCA**”) and the County of Riverside, a political subdivision of the
3 State of California (“**County**”) and shall be dated as of December ²⁹, 2010. In consideration of the mutual covenants and
4 obligations set forth herein, the parties agree as follows:

5 **1. Recitals.** This Agreement is made with respect to the following facts and purposes, which each
6 party finds and determines to be true and correct:

7 **A.** RCA is a joint powers authority, of which the County is a member agency, that was formed to
8 implement the Western Riverside County Multiple Species Habitat Conservation Plan
9 (“**MSHCP**”), a multi-jurisdictional habitat conservation plan focusing on the conservation of
10 both sensitive species and associated habitats to address biological and ecological diversity
11 conservation needs in western Riverside County, and setting aside significant areas of
12 disturbed and undisturbed land for the conservation of sensitive habitat while preserving open
13 space and recreational opportunities.

14 **B.** County will be entering into that certain agreement entitled “Agreement for Purchase and Sale
15 and Joint Escrow Instructions By and Between Wilhelm Ranch Family Limited Partnership as
16 Seller and The County of Riverside as Buyer Relating to Assessor’s Parcel Numbers: 465-020-
17 010 and 465-020-011” (“**Purchase Agreement**”) for the purchase of approximately 70.86
18 acres of land near the City of Hemet on the south side of Florida Avenue in unincorporated
19 Riverside County (the “**Property**”) as identified on Exhibit A, Legal Description, attached
20 hereto and incorporated herein as though set forth in full.

21 **C.** To the extent allowed by the subgrant agreement between the County and the Wildlife
22 Conservation Board, RCA will designate the Property as Additional Reserve Lands pursuant to
23 the MSHCP. (MSHCP Sections 3.2.1 and 3.2.2; and Implementing Agreement Sections 3.3
24 and 3.72 on page 4).

25 **D.** The Property is located within the unincorporated area of Riverside County, is described for
26 Conservation by the MSHCP and contains valuable vernal pool habitat for several vernal pool
27 species covered by the MSHCP.

28 **E.** In order to obtain matching Section 6 funding from the State of California Wildlife
Conservation Board (“**WCB**”) for the purchase of the Property, the County has requested the
assistance of RCA in providing the local match of funding necessary to meet WCB’s
requirements.

F. Assistance from RCA in providing the local match of funding is necessary in order for the
acquisition of the Property to occur as County is unable to provide the full amount necessary
for the local match to obtain Section 6 funding.

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2. **RCA Contribution of Funds for Acquisition of Property.**

- A. This Agreement shall be expressly contingent upon formal acceptance and approval by RCA's Board of Directors. Further, the contribution of funds pursuant to this Agreement shall be expressly contingent upon RCA and its legal counsel's review and approval of the "release of liability and dismissal of lawsuit" language in the Purchase Agreement or execution of a settlement agreement in the matter of Wilhelm Ranch Family Limited Partnership v. Western Riverside County Regional Conservation Authority, Riverside Superior Court Case No. RIC 10015716.
- B. RCA shall pay to County the sum of SEVEN HUNDRED THOUSAND DOLLARS AND NO CENTS (\$700,000.00) towards the purchase price of the Property.
- C. RCA shall pay such sum into the escrow for the purchase of the Property pursuant to the Purchase Agreement ("**Escrow**") within ten (10) business days of written notice to the RCA by County that the Escrow is ready to close. County's notice to the RCA shall provide directions for the transfer of RCA funds into Escrow.
- D. Within ten (10) business days of the close of Escrow, County shall provide RCA with a copy of the Grant Deed and a closing statement.

3. **County Intent to Transfer Property to RCA upon Completion of Acquisition.**

- A. It is the intent of the County to transfer ownership in fee of the Property to the RCA for its inclusion in the MSHCP Conservation Area and for the purpose of management and monitoring pursuant to the provisions of the MSHCP as soon as possible in compliance with all requirements of state law and the County's rules and regulations for transferring property, and subject to Section 6(f) of the subgrant agreement between the County and the Wildlife Conservation Board.
- B. In light of the RCA's contribution of funds towards the acquisition of the Property, County agrees that it shall transfer any remaining funds held in the Multi-Species Project Trust Fund No. 5852 and the reserved Ordinance No. 810.1 Open Space Mitigation Fee Fund to the RCA. Said transfer shall occur after all costs associated with the acquisition of the Property incurred by the County have been withdrawn and in no event shall transfer occur any later than one hundred and twenty (120) days after the close of Escrow.

4. **Potential Future Condemnation of the Property.**

- A. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation and ownership of the Property has been transferred to the RCA, County shall work with RCA and WCB jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting there from. RCA acknowledges that WCB shall be entitled to the

1 share of the Award pursuant to Section 12 of the subgrant agreement between the County and
2 the Wildlife Conservation Board.

3 **5. Termination.**

4 A. If the Purchase Agreement fails to close escrow or is terminated for any reason, this
5 Agreement shall likewise automatically terminate and shall no longer be valid. If this Agreement
6 terminates pursuant to this section, the Parties agree that any Funding contributed by RCA into
7 Escrow shall be promptly refunded to RCA.

8 **6. General.**

9 A. Any notices which either Party may desire to give to the other Party under this Agreement
10 must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable
11 document delivery service, such as but not limited to, Federal Express, that provides a receipt
12 showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail,
13 postage prepaid, return receipt requested, addressed to the address of the Party as set forth
14 below or at any other address as that Party may later designate by written notice to the other
15 Party:

14 County: County of Riverside
15 Economic Development Agency
16 P.O. Box 1180
17 Riverside, CA 92502
18 Attn: Craig Olsen

17 With a copy to: Riverside County Counsel
18 3960 Orange Street, Fifth Floor
19 Riverside, CA 92501
20 Attn: Karin Watts-Bazan

20 RCA: Western Riverside County Regional
21 Conservation Authority
22 3403 Tenth Street, Suite 320
23 P.O. Box 1667
24 Riverside, CA 92502-1667
25 Attn: Executive Director

24 With a copy to: Best, Best & Krieger LLP
25 3750 University Avenue, Suite 400
26 P.O. Box 1028
27 Riverside, CA 92502-1028
28 Attn: Michelle Ouellette

B. This Agreement is the result of negotiations between the Parties and is intended by the Parties
to be a final expression of their understanding with respect to the matters herein contained.

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147

This Agreement supersedes any and all other prior agreements and understandings, oral or written, in connection therewith.

- C. Amendments hereto must be in writing executed by the appropriate authorities of the County and RCA.
- D. The Parties agree that each party has reviewed and revised this Agreement and have had the opportunity to have their counsel and real estate advisors review and revise this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.
- E. Each person signing below personally warrants and represents to the parties that the party he or she represents has approved this Agreement, intends to be bound by its terms and that they are duly authorized to execute this Agreement on behalf of the Party they represent.
- F. The Parties acknowledge that time is of the essence in this Agreement.
- G. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
- H. A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for the performance of any other obligation or act.
- I. Each Party acknowledges and agrees that this Agreement is valid, binding and enforceable against the Party.
- J. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

COUNTY OF RIVERSIDE

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY

By: Marion Ashley
Chairman MARION ASHLEY

By: Paul Wandy
Executive Director

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ATTEST:

By: *Kecia Harper-Ihem*
Clerk of the Board
KECIA HARPER-IHEM

ATTEST:

By: *Honey Bernes*
Clerk of the RCA Board

APPROVED AS TO FORM:

By: *Karin Watts Baz*
Principal Deputy County Counsel

APPROVED AS TO FORM:

By: *Jared Zimmerman*
Best, Best & Krieger, LLP
General Counsel

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