

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

244



FROM: County Counsel

SUBMITTAL DATE:
December 13, 2011

SUBJECT: Approval of Authorization to Provide Funds to the Western Riverside County Regional Conservation Authority (RCA) for the Acquisition of Property Benefiting the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP); Approval in Concept of Related Agreements between the County and the RCA; and Approval of a Budget Adjustment.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve in concept the attached funding agreement between the County and the RCA to assist in funding the acquisition of certain real property and authorize the County Executive Officer, or his designee, to execute said final agreement, subject to approval by County Counsel;
2. Approve in concept the attached fee credit agreement to provide fee credits for Transportation projects between County and RCA and authorize the County Executive Officer, or his designee, to execute said final agreement subject to approval by County Counsel; and
3. Approve and direct the Auditor-Controller to make the budget adjustment in Attachment "A."

BACKGROUND: The RCA has been negotiating the purchase of certain real property that is a critical piece for inclusion in the Reserve established by the MSHCP. Additionally, as part of this acquisition, the Transportation Department will receive right of way necessary for the extension of Clinton Keith Road. The RCA has recently approached the County to assist in providing funding for this acquisition.

Continued 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:	\$ 9,000,000	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	YES
	Annual Net County Cost:	\$ 0	For Fiscal Year:	11/12

SOURCE OF FUNDS: Contingency 56% (to be reimbursed), Road and Bridge Benefit Districts (Southwest and Menifee), Gas Tax, and various transportation capital funds (44%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

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 with 50% of the funds to be used for infrastructure.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: December 13, 2011
xc: Co.Co., EO, Auditor, RCA

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

Prev. Agn. Ref.: N/A | District: All | Agenda Number:

16.2

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: *Samuel Wong*
 SAMUEL WONG
 Departmental Concurrence
 Dept Recomm
 Per Exec. Ofc.:

RE: Authorization to Provide Funds to RCA

Date: December 13, 2011

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BACKGROUND continued:

Attached for your review are two draft agreements. The first agreement is a funding agreement whereby the County will provide to the RCA, a loan in the amount of \$5 million. This agreement provides for full repayment within 10 years with interest. Payments will commence in January of 2017. Funding for this loan of \$5 million will come from contingency; however, it is anticipated that the general fund will receive a loan of Waste Enterprise Funds to off-set this amount. Staff will prepare the appropriate documents for Board consideration to replenish the general fund in a future Board meeting prior to the end of the fiscal year.

Additionally, this agreement provides \$1.4 million for the acquisition of the Clinton Keith right of way and a \$2.6 million advance of MSHCP infrastructure contributions for future Transportation facilities. These funds will come from the Transportation Department. The total amount of funds to be provided through this agreement is \$9 million.

The second agreement provides a \$2.9 million credit towards future Transportation facilities for the aforementioned advance payment of MSHCP infrastructure contributions. This amount is in recognition of the fact that the credit may not be utilized in the near term for some of these facilities and therefore has a greater future value. It also establishes an accounting procedure for monitoring the application of this credit towards such facilities.

We have been advised by the RCA that escrow for the first phase of this acquisition must close by December 29, 2011. We are requesting approval in concept of these agreements given this time constraint and the fact that final agreements have not been negotiated with the RCA.

The budget adjustment in Attachment "A" will need to be made in order to provide the funding discussed above. All funding will be deposited and then remitted to RCA through the Litigation and Administrative Services Fund in the Executive Office.

Attachment A

Increase Appropriations: 20000-3130100000-537140	Interfund Exp-Right of Way	\$ 400,000
Use of Restricted Fund Balance: 20000-3130100000-321101	Restricted Program Money	\$ 400,000
Increase Appropriations: 31600-3130500000-537280	Interfund Exp-Misc Project Exp	\$ 500,000
Use of Assigned Fund Balance: 31600-3130500000-350200	AFB For Const/Capital Projects	\$ 500,000
Increase Appropriations: 20000-3130500000-537280	Interfund Exp-Misc Project Exp	\$2,600,000
Use of Assigned Fund Balance: 20000-3130500000-350200	AFB for Const/Capital Projects	\$2,600,000
Increase Appropriations: 31610-3130500000-537280	Interfund Exp-Misc Project Exp	\$ 500,000
Use of Assigned Fund Balance: 31610-3130500000-350200	AFB for Const/Capital Projects	\$ 500,000
Increase Estimated Revenue: 10000-110290000-778260	Interfund -Property & Assmt	\$ 400,000
10000-110290000-778330	Interfund -Salary Reimbursement	\$3,600,000
Decrease Appropriations: 10000-1109000000-581000	Appropriation for contingency	\$5,000,000
Increase Appropriations: 10000-110290000-536200	Contribution to non-county funds	\$9,000,000

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2. County's Remittance of Funds:

At least two (2) days prior to the "Phase 1 Property Close of Escrow," as that term is defined in the purchase and sale agreement for the Property, the County will transfer to RCA the following amounts:

- A. One Million One Hundred Thousand Dollars (\$1,100,000) which will be the cost of the County Property.
- B. Two Million Nine Hundred Thousand Dollars (\$2,900,000) as a credit to the County for future Transportation Infrastructure Contributions. The Parties' agreement with regard to this advance payment for Transportation Infrastructure Contributions, as that term is defined in the Fee Credit Agreement, is set forth in a Fee Credit Agreement executed simultaneously with this Funding Agreement.
- C. County Loan:
 - a. PRINCIPAL REPAYMENT: Five Million Dollars (\$5,000,000) which will be a loan to the RCA (the "**County Loan**"). The RCA will repay the County Loan, which will consist of both interest and principal payments, as described in the table below. The RCA plans to repay the County Loan using income it receives from tipping fees pursuant to Section 8 of the MSHCP, or other available funds.

Payment to be made on or before:	PRINCIPAL REPAYMENT
Thursday, December 28, 2017	\$1,000,000
Thursday, December 27, 2018	\$1,000,000
Monday, December 30, 2019	\$1,000,000
Wednesday, December 30, 2020	\$1,000,000
Thursday, December 30, 2021	\$1,000,000

- b. INTEREST: RCA will pay interest that will be calculated using the annual average Riverside County Treasury Investment Pool rate. RCA will pay interest in each year on or before the last business day of January in the following year. *For example, RCA will pay the interest on \$5,000,000 for the 2012 calendar year, calculated using the annual average Riverside County Treasury Investment Pool rate for the 2012 calendar year, on or before the last business day of January 2013.*

3. Termination.

- a. If the purchase and sale agreement for the Property fails to close escrow on the Phase 1 Property, as that term is defined in the purchase and sale agreement for the Property, this Funding Agreement shall likewise automatically terminate and shall no longer be valid. If this Funding Agreement terminates pursuant to the prior sentence, then RCA will return all the funds described in this Funding Agreement to the County within ten (10) business days after the termination of this Funding Agreement.
- b. If this Funding Agreement does not terminate pursuant to Section 3(a) above, the Funding Agreement shall automatically terminate upon the final repayment to the County of the County Loan.

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2 **4. General.**

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

10 County: County of Riverside
11 Economic Development Agency
12 P.O. Box 1180
13 Riverside, CA 92502
14 Attn: Vincent Yzagguiri

15 With a copy to: Riverside County Counsel
16 3960 Orange Street, Fifth Floor
17 Riverside, CA 92501
18 Attn: Karin Watts-Bazan

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

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

29 B. This Funding Agreement is the result of negotiations between the Parties and is intended by
30 the Parties to be a final expression of their understanding with respect to the matters herein
31 contained. This Funding Agreement supersedes any and all other prior agreements and
32 understandings, oral or written, in connection therewith.

33 C. Amendments hereto must be in writing executed by the appropriate authorities of the County
34 and RCA.

35 D. The Parties agree that each party has reviewed and revised this Funding Agreement and have
36 had the opportunity to have their counsel and real estate advisors review and revise this
37 Funding Agreement and that any rule of construction to the effect that ambiguities are to be
38 resolved against the drafting party shall not apply in the interpretation of this Funding
Agreement or any amendments or exhibits thereto.

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- E. Each person signing below personally warrants and represents to the parties that the party he or she represents has approved this Funding Agreement, intends to be bound by its terms and that they are duly authorized to execute this Funding Agreement on behalf of the Party they represent.
 - F. The Parties acknowledge that time is of the essence in this Funding Agreement.
 - G. If any term or provision of this Funding Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Funding Agreement shall not be affected.
 - H. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
 - I. A waiver or breach of covenant or provision in this Funding Agreement shall not be deemed a waiver of any other covenant or provision in this Funding 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.
 - J. Each Party acknowledges and agrees that this Funding Agreement is valid, binding and enforceable against the Party.
 - K. This Funding 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.

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

18 **COUNTY OF RIVERSIDE**

19
20 By: 
21 County Executive Officer

**WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY**

22
23 By: 
24 Board Chairman

25 APPROVED AS TO FORM:

26 By: 
27 Principal Deputy County Counsel

APPROVED AS TO FORM:

28 By: 
Best Best & Krieger LLP
General Counsel

FEE CREDIT AGREEMENT

This Fee Credit Agreement (“Agreement”) is entered into on this 20th day of December, 2011, between the County of Riverside (“County”) and the Western Riverside County Regional Conservation Authority (“RCA”). The County and RCA are sometimes referred to in this Agreement, individually, as a “Party” or collectively as the “Parties.” The Parties enter into this Agreement with reference to the following facts (each, a “Recital”):

RECITALS

WHEREAS, the County of Riverside (“County”) is a governmental agency, created pursuant to the provisions of the California Government Code, Chapter 3, Article 1, section 23300; and

WHEREAS, the Western Riverside County Regional Conservation Authority (“RCA”) is a governmental agency, created pursuant to the provisions of the California Government Code section 6500, and

WHEREAS, the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”) is a multi-jurisdictional habitat conservation plan that addresses biological and ecological diversity conservation needs in western Riverside County, setting aside significant areas for the conservation of sensitive habitats while preserving open space and recreational opportunities; and

WHEREAS, the MSHCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and mitigates for the potential loss of certain species due to direct and indirect impacts of future development of both private and public lands within the MSHCP Plan Area; and

WHEREAS, the County is a signatory to the MSHCP Implementing Agreement (“Implementing Agreement”), which implements the terms of MSHCP and thus, has the responsibility to comply with all requirements of the MSHCP; and

WHEREAS, the County has adopted Resolution No. 2003-299 that approved the MSHCP and establishes procedures and requirements for the implementation of its terms and conditions; and

WHEREAS, simultaneously to the execution of this Agreement, County is agreeing to pay RCA Two Million Nine Hundred Thousand Dollars (\$2,900,000), among other payments, to assist the RCA in the purchase of real property to be included in the MSHCP Conservation Area. Two Million Nine Hundred Thousand Dollars (\$2,900,000) (the “Advance”) will be credited to the County for contributions related to local transportation infrastructure as described in the MSHCP (“Transportation Infrastructure Contributions”); and

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COUNTY BOARD OF SUPERVISORS
RECEIVED RIVERSIDE COUNTY

WHEREAS, the purpose of this Agreement is to document the County's agreement to pay the Advance to RCA in order to waive the same amount of future Transportation Infrastructure Contributions that would normally be remitted to the RCA.

TERMS

NOW, THEREFORE, in furtherance of the Recitals set forth above, the County and the RCA agree that:

SECTION I. CONSIDERATION.

A. The County will pay the Advance to the RCA as documented in that certain Funding Agreement between the County of Riverside and the RCA executed simultaneously to this Fee Credit Agreement.

B. RCA will credit the Advance towards future Transportation Infrastructure Contribution payments by the County to the RCA.

C. The County will track all usage of the Advance by the County for Transportation Infrastructure Contributions and will, on a monthly basis, send a copy of the accounting to the RCA Director of Administrative Services for review. If there is a discrepancy in the accounting for the Advance between the County and the RCA records, the two staffs will meet in order to reconcile the discrepancy.

SECTION II. COOPERATION. The Parties agree to cooperate with each other in furthering the purposes of this Agreement. The Parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require the County to take any legislative act or exercise its discretion in any particular manner.

SECTION III. ENTIRE AGREEMENT, INTEGRATION, AMENDMENTS. This Agreement constitutes a single, integrated contract expressing the entire agreement between the Parties relative to the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth in this Agreement. All prior discussions, negotiations and understandings have been and are merged and integrated into, and are superseded by, this Agreement. No changes, modifications, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all the Parties.

SECTION IV. ATTORNEYS' FEES. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party shall bear its own attorneys' fees and costs.

SECTION V. JURISDICTION AND VENUE. This Agreement is to be construed under the laws of the State of California. The Parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside, State of California.

SECTION VI. RULES OF CONSTRUCTION. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either the County or RCA. Section headings in this Agreement are for convenience only and are not to be considered as part of this Agreement or in any way limiting or amplifying the provisions hereof. All provisions and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification of the person or persons, firm or firms, corporation or corporations may require. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document including, but not limited to, California Civil Code section 1654, shall have no application to the interpretation or enforcement of this Agreement.

SECTION VII. BINDING ON SUCCESSORS. The County and RCA, its successors in interest and assigns shall be bound by all of the provisions contained in this Agreement, and all of the Parties shall be liable hereunder.

SECTION VIII. NOTICES. All notices, demands or other communications (collectively, "Notices") required or allowed by this Agreement shall be in writing and shall be considered given: (i) when delivered in person to the recipient named below, or (ii) three (3) business days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the date of delivery by facsimile transmission to the recipient named below. All Notices shall be addressed as follows:

County: County of Riverside
Economic Development Agency
P.O. Box 1180
Riverside, CA 92502
Attn: Vincent Yzaguirri

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

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

With a copy to:

Best, Best & Krieger LLP
3750 University Avenue, Suite 400
P.O. Box 1028
Riverside, CA 92502-1028
Attn: Michelle Ouellette

SECTION IX. SEVERABILITY. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein.

SECTION X. EXECUTION/COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire Agreement of the Parties hereto.


SECTION XI. DEFINED TERMS. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the MSHCP.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized officers on the date and year set forth below.

DATE: Dec 20, 2011

COUNTY OF RIVERSIDE

By: _____


County Executive Officer

APPROVED AS TO FORM:

By: _____


Principal Deputy County Counsel

DATE: Dec. 16, 2011

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY

By: _____


Jeff Stone, Chairman
RCA Board of Directors

APPROVED AS TO FORM:

RCA General Counsel

By: _____


Best Best & Krieger LLP

**Riverside County Board of Supervisors
Request to Speak**

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form:

SPEAKER'S NAME: _____

Rebecca Lewis

Address: _____

(only if follow-up mail response requested)

City: _____

Zip: _____

Phone #: _____

Last Tuesday's B.O.S.

Date: _____

Agenda # _____

16.2

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____ **Support** _____ **Oppose** _____ **Neutral**

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

_____ **Support** _____ **Oppose** _____ **Neutral**

I give my 3 minutes to: _____