

Regional Conservation Authority

**Administrative Committee
Standing Committee No. 3**

August 2, 2004

AGENDA ITEM NO. 5

Legislative Platform / No Surprises Strategy

Regional Conservation Authority**LEGISLATIVE PLATFORM / NO SURPRISES STRATEGY****Staff Contact:****Bill Hodge
(951) 955-8311**

Background: The Western Riverside County Regional Conservation Authority (RCA) should initiate the process of developing a state and federal legislative program for the coming new sessions of the State Legislature and the Congress. The attached report (Attachment 1) details a process of reaching out to member agencies, stakeholders and other interested parties to identify legislative priorities that they recommend the RCA pursue. Staff will review these ideas and develop a draft legislative platform for the Board's consideration in October. The draft will then be passed through the same group for comments, with Board adoption scheduled for December. A draft letter (Attachment 2) is attached for the Committee's review and approval.

One item that could become a legislative issue in the future is the No Surprises Rule that is currently the subject of rule making through the Federal Department of the Interior. Also attached is a recommended policy statement for Committee consideration on the No Surprises Rule. The recommended statement makes it clear that while the process for adopting a rule should continue, the RCA is willing to pursue a legislative remedy should the rule-making process falter or the courts intervene.

Staff Recommendation:

That the Administrative Committee take the following actions and forward to the Board as appropriate:

1. Approve the proposed process and schedule for developing an RCA Legislative Program for 2005-06.
2. Approve draft letter regarding RCA Legislative Program Development
3. Approve draft policy statement on No Surprises Rule

Attachments: 1. Legislative Program Development Process
2. Draft Letter – RCA Legislative Program Development
3. Policy Statement on No Surprises Rule

Legislative Statement – No Surprise Rule

It is vitally important that the Federal Department of the Interior continue moving forward with rule-making on the so-called “No Surprises” rule. The rule is an essential component of the cooperative agreement between local jurisdictions and the resource agencies embodied in the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). “No Surprises” assures local jurisdictions who are implementing the Plan through the Western Riverside County Regional Conservation Authority that efforts to protect covered species and habitat in the MSHCP will not be impeded by additional requirements developed after the program has been adopted. Basically, “No Surprises” is an example of keeping our promises to the public, the building industry, environmental groups and other stakeholders.

The rule-making schedule calls for action on the rule in December after a public comment period and workshops designed to solicit feedback from the public. As the rule-making process moves forward, the issue is also under watch by the Federal court in Washington, D.C. It is important that the Federal government vigorously pursue resolution of the litigation in favor of the validity of the outreach process and the “No Surprises” rule. An airtight process should buttress the quest for judicial validation of the “No Surprises” rule if litigants choose to pursue the issue through the courts. A validated and implemented rule would bring the Western Riverside County MSHCP and the Take Permit issued by the resource agencies into sync with the program as developed over the past several years. It would be a promise kept to the stakeholders who have work so diligently to develop a viable habitat conservation and protection program that covers over 500,000 acres and 146 species in Western Riverside County.

If the rule-making process falters or the courts continue to force delays in implementing “No Surprises,” the Western Riverside County Regional Conservation Authority will begin to examine legislative remedies that would allow implementation of the rule to protect the integrity of the MSHCP and the process designed to protect species and habitat.

RCA Legislative Program Development Process

Introduction

The Western Riverside County Regional Conservation Authority will be developing a Legislative Program for next year's new sessions of the State Legislature and the Federal Congress. The Legislative Program will involve monitoring bills that get introduced on issues of interest to the RCA, advocating for or against those bills, seeking authors for bills the RCA wishes to sponsor, and, potentially, developing legislative strategies to re-instate the No Surprises Rule, if necessary. The Legislative Program will be designed to partner with RCA member agencies to insure a consistent legislative agenda across all the partners in the Western Riverside County Multiple Species Habitat Conservation Plan implementation effort.

Monitoring

Currently there are 25 bills pending in the State Legislature and 49 bills pending in the Federal Congress that deal in some way with habitat conservation. There may be many more bills that could impact MSHCP implementation in a variety of ways. The Legislative Program will be designed to track as many of these bills as possible and to take positions for or against the most critical to implementation of the MSHCP.

Sponsoring

The Legislative Program may also develop some proposals for legislation the RCA may wish to sponsor. The MSHCP documents contain items that could be candidates for legislation. For example, the document addresses the potential for tax credits that could be used as an incentive to acquire land for the MSHCP conservation areas or wildlife corridors. Since the Western Riverside Plan is ground breaking in its size and scope, there may be other issues and ideas that surface as the RCA moves into the implementation phase that could benefit by or be bolstered from a legislative proposal. The process for securing sponsorship involves working with a variety of legislators to secure an author for the bill. RCA staff would also seek to build partnerships with interested jurisdictions or organizations around the state to build support for RCA legislative initiatives.

No Surprises Rule

Ideas are currently under development for legislative contingencies should the rule-making process fail to produce a legally defensible No Surprises Rule. There are a variety of possibilities for addressing a legislative remedy without re-opening the Federal Endangered Species Act. Staff is researching and exploring a range of options and those will be presented once it appears a legislative remedy will have to be pursued. However, the No Surprises Rule will remain a major component of the RCA's legislative agenda and we will pursue efforts to advocate on its behalf before the Department of the Interior in its rule-making process and, potentially, before the Federal courts should they continue to hear challenges of the rule. Attached for Board consideration is a draft policy statement on the No Surprises Rule that

favors the rule-making process and supporting the rule in the District of Columbia Federal Court before seeking a legislative remedy to reinstate the rule. The rule is considered critical to the successful implementation of the adopted MSHCP since local government spent millions of dollars developing the Plan on the understanding that the rules would not change in the future on species and habitats covered in the Plan.

Process

The RCA Legislative Program will be developed through a collaborative process with member jurisdictions, stakeholders and interested parties from around Western Riverside County. Every member of this group will be asked to provide ideas for the RCA's legislative platform, including any potential sponsor bills. Staff will evaluate all the ideas and develop a draft Legislative Platform and Program for the Board's consideration as a draft document. Once the Board has reviewed the draft, it will be mailed to the same group of interests for final comment before being presented to the RCA Board for adoption. Board adoption of the final proposed Program will be scheduled for the December Board meeting.

DRAFT LETTER

August 2, 2004

Honorable Ron Loveridge
Mayor, City of Riverside
(City Hall Address)
(City, State, Zip Code)

SUBJECT: RCA Legislative Program Development

Dear Mayor Loveridge:

On August 2, 2004 the Western Riverside County Regional Conservation Authority Board of Directors voted to seek ideas from you, your colleagues, and the City staff for the 2005-06 RCA Legislative Program. **We need to have your response by September 10, 2004 in order to incorporate it into the draft Program.**

The outcome of this effort will be the adoption of the first ever Legislative Program for the RCA and the implementation of the Western Riverside County Multiple Species Habitat Conservation Plan. We need to hear your ideas so that we can build a legislative program that reflects broad consensus among our partners in this groundbreaking effort. The adopted Legislative Program will become the basis of our advocacy efforts during the next sessions of the State Legislature and the Federal Congress. We value your perspective and look forward to receiving ideas you have on the implementation of the MSHCP.

Your comments and suggestions will be used to craft a draft Legislative Program. The RCA Board will review the draft in early October and send a copy back out to you and your colleagues for further review and comment. The RCA Board plans to adopt the final Legislative Program on December 6, 2004.

Thank you for your interest in MSHCP implementation. We look forward to hearing your ideas on the Legislative Program. The RCA staff contact on the Program is Bill Hodge, (909) 955-8311.

Sincerely,

Robin Reeser Lowe
Chair, Regional Conservation Authority

Legislative Statement – No Surprise Rule

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