

Regional Conservation Authority

**APPROVAL OF POLICIES AND PROCEDURES
FOR NEGOTIATION OF HANS/JPR ACQUISITIONS
AND CLERICAL CHANGES TO THE MSHCP**

Staff Contact:

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Background:

On December 4, 2006, Staff presented draft policies and procedures for the negotiation of acquisitions proposed through the Habitat Evaluation and Acquisition Negotiation Strategy ("HANS") process ("120-Day Policy"). The Board asked Staff to revise the draft policies to address concerns raised by the Board and the public with respect to streamlining the policies. In general, Section 6.1.1(B)(2) of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") provides that the County and cities shall enter into negotiations with a Property Owner for up to 120 days when all or a portion of the property is identified for conservation.

Staff worked with the Building Industry Association and property owner representatives to draft the 120-day Policy being proposed today. Staff has determined that a Clerical Change, pursuant to Section 20.1 of the Implementing Agreement, is required in order the effect the 120-day Policy. In short, Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP that do not change the intended meaning of the MSHCP. Staff finds these proposed Clerical Changes do not change the intended meaning of the MSHCP.

CLERICAL CHANGE: The following three Clerical Changes are proposed:

(1) RCA may negotiate appraisal instructions on behalf of the County or Cities. (MSHCP at p. 6-6.) The existing text indicates that the County/City is responsible for preparing joint appraisal instructions. As indicated in the joint exercise of powers agreement, the RCA was created to assume the responsibilities of acquiring property on behalf of the County and Cities. This clerical modification simply confirms that action for purposes of this section.

(2) If Joint Appraisal Instructions cannot be reached within the first 20 days of the 120 day negotiation period, RCA shall proceed to order an appraisal. (MSHCP at p.

6-6). This clarifying instruction allows RCA to proceed to conduct its own appraisal, should RCA and the property owner, or its designee, fail to achieve agreement on joint appraisal instructions.

(3) Further, BIA/property owner representatives requested that the MSHCP be clarified to require a second appraisal be paid for by whichever party opts to request a second appraisal. (MSHCP at p. 6-10.) In most cases, a property owner will probably be the opting party who seeks to commence the Conflict Resolution Process. In a situation where the RCA opts to commence the Conflict Resolution Process, however, the intent of the MSHCP is to have RCA pay for a second appraisal. Accordingly, this revision to the plan requires the opting party, whether the property owner or the RCA, to pay for the expense of a second appraisal.

PROPOSED POLICY: The 120-day Policy clarifies that the 120-day negotiation period shall commence upon the completion and concurrence of the HANS/JPR Process. Further, the policy recognizes that the access to the property granted to the County/city through the HANS application, or equivalent process, is extended to the RCA for appraisal purposes. Finally, if negotiations have not been completed at the end of the 120-day negotiation period, the Property Owner may (1) agree to extend negotiations, (2) withdraw from negotiations, or (3) commence the Conflict Resolution Process.

Staff Recommendation:

That the RCA Board of Directors approve the proposed clerical changes and the proposed policy addressing the 120-day negotiation period that follows the HANS/JPR process.

Attachments:

- 1) Section 1.08 Policies and Procedures for Negotiation of JPR/HANS Acquisitions
- 2) Clerical Changes to the MSHCP

Section 1.08 Policies and Procedures for Negotiation of HANS Acquisitions

- A. **POLICY:** The purpose of these policies and procedures is to establish general guidelines for the negotiation of HANS acquisitions, consistent with Section 6.1.1(B)(2)(b) of the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). This Policy incorporates by reference the Clerical Changes made to page 6-6 of the MSHCP approved by the RCA Board on May 14, 2007. The following policy shall apply to properties where the County/City and the RCA have concurred with including all or a portion of the property into the MSHCP Conservation Area.
1. Initiation of the 120-Day Negotiation Period. The 120-day negotiation period provided under Section 6.1.1(B)(2) of the MSHCP shall commence:
 - i. Upon completion of the HANS/JPR process, and
 - ii. Concurrence by the RCA that all or a portion of the property is needed for inclusion within the MSHCP Conservation Area.
 2. During the 120-Day Negotiation Period.
 - i. RCA will conduct an appraisal of the property.
 - ii. RCA and Property Owner, or its designee, will negotiate a purchase and sale agreement.
 - iii. Access to the property for appraisal purposes will be extended to the RCA through the HANS application, or other equivalent application.
 - iv. During this period, appraisal instructions shall be jointly prepared and agreed upon by the RCA and the Property Owner, or its designee. If such joint appraisal instructions are not agreed to by the parties within the first 20 days of the 120-day period, RCA may proceed to have an appraisal conducted in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice” pursuant to 6.1.1 of the MSHCP.

- v. The Property Owner, or its designee, may suspend the negotiating time period, provided that they have submitted a letter to the RCA and the County/city requesting that the negotiations be suspended. In such event, the negotiating time period will only resume upon receipt of a letter to the RCA and the County/city from the Property Owner, or its designee, requesting that the negotiations resume.
3. After the 120-Day Negotiation Period. If at the end of this 120-day period, agreement between the parties is not achieved, each party shall submit in writing the party's proposed resolution of terms. Further, the Property Owner, or its designee, along with the RCA and County/city, may agree to extend negotiations for an appropriate period of time if necessary. If either the Property Owner, or its designee, or the RCA and the County/city do not agree to extend negotiations, the Property Owner, or its designee, may (a) elect to withdraw selling the property to the RCA, or (b) commence the Conflict Resolution Process as described in Section 6.1.1 of the MSHCP.
4. This policy of procedures and timelines set forth herein are for guidance only, and deviations there from by the RCA shall not provide Property Owner, or its designee, with any damage rights or remedies against the RCA.

CLERICAL CHANGES TO THE MSHCP

Pursuant to Section 20.1 of the MSHCP Implementing Agreement, RCA hereby makes the following clerical change to the first full paragraph of Page 6-6 of the MSHCP:

b. Full Inclusion of Property - In those instances where all of the property is needed for inclusion in the MSHCP Conservation Area, negotiations will focus on the acquisition of the property including establishing a purchase price and the application of other non-monetary incentives which may compensate the property owner and assist with the acquisition. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice.” In the event of any conflict between these standards, the “Uniform Appraisal Standards for Federal Land Acquisitions” will control. Fee title of property to be conveyed may not be required. The type of ownership to be conveyed will be taken into consideration when conducting the appraisal. Appraisal instructions shall be jointly prepared and agreed upon by the ***RCA, on behalf of the*** County or Cities, and the property owner, ***or if joint appraisal instructions are not agreed upon within the first 20 days of the 120 day negotiation period, RCA shall proceed to order an appraisal.*** Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

SUPPORTING DOCUMENTATION: The proposed modification clarifies two aspects of the HANS process:

The existing text indicates that the County and Cities are responsible for preparing joint appraisal instructions. As indicated in the joint exercise of powers agreement, the RCA was created to assume the responsibilities of acquiring property on behalf of the County and Cities, where as here, all of the property is

needed for inclusion in the MSHCP Conservation Area. This clerical modification simply confirms that action for purposes of this section.

RCA, Local Permittees or other stakeholder groups never intended to delay the 120-day negotiation process due to lack of agreement on joint appraisal instructions. Therefore, this clarifying instruction allows RCA to proceed to conduct its own appraisal should RCA and the property owner, or its designee, fail to achieve agreement on joint appraisal instructions.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors finds RCA finds this editing revision does not change the intended meaning of the MSHCP.

Further, RCA hereby makes the following clerical change to the first full paragraph on Page 6-10 of the MSHCP:

Should a party opt to commence the Conflict Resolution Process as a result of the parties' inability to resolve differences concerning the valuation of property, a second appraisal shall be conducted, at the expense of the ~~property owner~~ **opting party**, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee ownership of property to be conveyed may not be required. The type of ownership to be conveyed shall be taken into consideration when conducting the second appraisal.

SUPPORTING DOCUMENTATION: In most cases, a property owner will probably be the opting party who seeks to commence the Conflict Resolution Process. In a situation where the RCA opts to commence the Conflict Resolution Process, however, the intent of the MSHCP is to have the RCA pay for the second appraisal. Accordingly, this revision to the plan requires the opting party, whether the property owner or the RCA, to pay for the expense of a second appraisal.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.