

*Regional Conservation Authority***MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE  
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY  
AND THE RIVERSIDE-CORONA RESOURCE CONSERVATION DISTRICT  
COORDINATING HABITAT MANAGEMENT FOR RCRCD LANDS AND  
POTENTIAL RESTORATION FOR RCA LANDS****Staff Contact:****Ken Graff, Director of  
Land Acquisition  
(951) 955-8805****Background:**

The Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") anticipated that the RCA would enter into Memorandum of Understandings with non-Parties (to the Implementing Agreement) who manage land within the MSHCP Conservation Area in order to manage lands in conformance and in compliance with the MSHCP. (See MSHCP Implementing Agreement, §18.0.) The Riverside-Corona Resource Conservation District ("RCRCD") is just such a non-Party who manages multiple conservation easements and owns fee title to lands for conservation purposes.

By entering into this Memorandum of Understanding ("MOU"), RCA will be able to ensure that RCRCD's PQP Lands will qualify as Public/Quasi-Public Lands pursuant to the MSHCP, ensure that RCRCD's ARL Lands are substantially similar to and qualify as mitigation lands under the MSHCP, allow RCRCD to conduct enhancement, restoration, or other similar activities on RCA-owned property which activities may be related to RCRCD's jurisdictional waters in-lieu fee mitigation program, and to confer "take" to RCRCD pursuant to Sections 13.1 and 17.1 of the Implementing Agreement to conduct management activities on the RCRCD-controlled property in compliance with the Implementing Agreement, the Permits and the MSHCP.

**Staff Recommendation:**

That the Executive Committee:

- 1) Recommend that the RCA Board of Directors approve the MOU between the Western Riverside County Regional Conservation Authority and the Riverside-Corona Resource Conservation District and authorize the Executive Director, pursuant to legal counsel review and approval, to execute said agreement on behalf of the Authority; and
- 2) Direct staff to agendize this matter for the June 7, 2010 meeting of the RCA Board of Directors.

**Attachment:**

Memorandum of Understanding between RCA and RCRCD

# **AGENDA ITEM NO. 8**

## **Attachment**

### **Memorandum of Understanding Between RCA and RCRC**

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND THE RIVERSIDE- CORONA RESOURCE CONSERVATION DISTRICT COORDINATING HABITAT MANAGEMENT FOR RCRC D LANDS AND POTENTIAL RESTORATION FOR RCA LANDS**

This Memorandum of Understanding (“MOU”) is entered into by and between the Western Riverside County Regional Conservation Authority (“RCA”), a public agency and joint powers authority, and the Riverside-Corona Resource Conservation District (“RCRC D”), a public agency and California resource conservation district, as of the date set forth below. RCA and RCRC D are sometimes referred to in this MOU individually as a “Party,” or collectively as the “Parties.”

**R E C I T A L S**

**WHEREAS**, RCA is a public agency and joint powers authority created pursuant to the provisions of Government Code section 6500 et seq. The RCA was formed by the County of Riverside and fourteen western cities within the County for purposes of wildlife and plant life conservation and to provide primary policy direction for implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”); and

**WHEREAS**, RCRC D is a resource conservation district formed pursuant to Public Resources Code section 9151 et seq. for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, the improvement of land capabilities, and other conservation purposes. RCRC D may and has accepted grants of money, land, and conservation easements to carry out its purposes, and engages in restoration activities on lands held in fee or as conservation easements; and

**WHEREAS**, the Parties share a common interest in sustaining the integrity of regional biological and natural systems and the human and economic values they support in Western Riverside County; and

**WHEREAS**, western Riverside County is part of a rapidly urbanizing region, and many biological and natural resource systems that were once common and extensive throughout Southern California are now rare. The challenge of mitigating the effects of urbanization is now falling on inland Southern California, including Riverside County, which has recently been subject to a dramatic increase in development pressures, yet still maintains a substantial presence of both valuable habitat and endangered, threatened and rare species.

**WHEREAS**, the MSHCP, of which RCA was a signatory, went into effect in June 2004, and was designed to meet the challenge of rapid urbanization by providing for the conservation of significant habitat and the preservation of endangered, threatened, and rare species in a coordinated and efficient manner. The MSHCP Plan Area encompasses 1.26 million acres and includes all unincorporated County land west of the crest of the San Jacinto Mountains to the

Orange County line, as well as the jurisdictional limits of the Cities in western Riverside County (“Cities”). The MSHCP serves as a Habitat Conservation Plan (“HCP”) pursuant to Section 10(a)(1)(b) of the Federal Endangered Species Act (“FESA”), as well as a Natural Community Conservation Plan (“NCCP”) under the NCCP Planning Act.

**WHEREAS**, efforts to coordinate conservation programs among local, state, and federal agencies in California are well-established. This MOU establishes a partnership between the RCA and the RCRCDD to cooperate in the implementation of the MSHCP.

**WHEREAS**, one of RCA’s primary responsibilities is to acquire or document the acquisition of property for assembly of the MSHCP Conservation Area, including lands qualifying as Additional Reserve Lands (“ARL”), defined as conserved habitat totaling approximately 153,000 acres needed to meet the goals and objectives of the MSHCP (MSHCP Implementing Agreement, section 3.3 at p. 4), and Public/Quasi-Public (“PQP”) lands, meaning that subset of MSHCP Conservation Area lands totaling approximately 347,000 acres of lands known to be in public/private ownership and expected to be managed for open space value and/or in a manner that contributes to the conservation of species covered by the MSHCP (MSHCP Implementing Agreement, section 3.90 at p. 13).

**WHEREAS**, as further identified in Exhibit “A,” RCRCDD owns certain parcels of land in fee title or under conservation easements that are located outside of the Criteria Cells and which qualify as Public/Quasi-Public Lands pursuant to MSHCP Implementing Agreement section 3.90 page 13 (“PQP Lands”) which require the long-term management of habitat; and

**WHEREAS**, in addition to PQP Lands, and as further identified in Exhibit “B,” RCRCDD owns certain parcels of land in fee title or under conservation easements that are located within the Criteria Cells (“ARL Lands”); and

**WHEREAS**, RCRCDD may acquire additional PQP Lands and ARL Lands in the future; and

**WHEREAS**, one purpose of this MOU is to ensure that RCRCDD’s PQP Lands will qualify as Public/Quasi-Public Lands pursuant to the MSHCP Implementing Agreement section 3.90, page 13; and

**WHEREAS**, a second purpose of this MOU is to ensure that RCRCDD’s ARL Lands are substantially similar to and qualify as Mitigation Lands under the MSHCP pursuant to MSHCP Implementing Agreement Section 3.68 page 10 and thus as MSHCP Additional Reserve Lands pursuant to MSHCP Section 4.5.2 pages 4-14 through 4-15; and

**WHEREAS**, a third purpose of the MOU is to allow RCRCDD to conduct enhancement, restoration, or other similar activities on RCA-owned property which activities may be related to RCRCDD’s jurisdictional waters in lieu fee program (“mitigation projects”);

**WHEREAS**, a fourth purpose of this MOU is to confer take to RCRCDD pursuant to Sections 13.1 and 17.1 of the Implementing Agreement to conduct management activities on the RCRCDD-controlled property in compliance with the Implementing Agreement, the Permits and the MSHCP (including, but not limited to, page 7-66);

**WHEREAS**, the Parties desire to enter into this MOU to work together to achieve their common purposes; and

**NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, RCA and RCRC D hereto agree as follows:**

1. Incorporation of Recitals.

The Parties hereby affirm the facts set forth in the Recitals above and agree to incorporate the Recitals as though fully set forth herein.

2. Authority.

This MOU does not modify or supersede existing statute governing any signatory to the MSHCP or the provisions of the MSHCP and is voluntarily entered into between the Parties.

3. Policies and Principles

This MOU recognizes the following set of polices and principles:

(a) RCRC D agrees to coordinate with RCA regarding lands within the MSHCP Plan Area.

(i) RCA agrees to provide any available digital files and/or hard copy maps of RCA-controlled lands to the RCRC D upon request. RCRC D likewise agrees to provide the RCA with any available digital files and hard copy maps of RCRC D-controlled lands within the MSHCP Conservation Area. RCRC D will annually update this information by December 31 of each year.

(ii) RCRC D further agrees to provide any further information they possess regarding types of vegetation and quality of vegetation on the lands they manage within the MSHCP Plan Area to RCA upon request.

(b) RCRC D agrees to work with RCA to ensure the development of a coordinated approach for managing any RCRC D-controlled PQP Lands and ARL Lands in a cooperative manner consistent with the goals and objectives of the MSHCP.

(c) Pursuant to MSHCP Section 4.5.1 page 4.14, the funding and management obligations of previously conserved properties will continue pursuant to the terms of their respective agreements.

(d) The Parties agree that RCRC D-controlled lands are intended to be held in perpetuity, whether acquired by fee title or by recording a conservation easement in favor of RCRC D. These RCRC D-controlled ARL Lands shall henceforth be considered mitigation lands contributed to the Additional Reserve Lands pursuant to MSHCP Section 4.5.2 pages 4-14 through 4-15, and RCRC D will enter into the appropriate agreements providing rights of access for monitoring and management of the lands by RCA, or its designee, and the Wildlife Agencies

and their designees consistent with achieving the biological goals of the MSHCP. RCA and RCRCDD staffs, with legal counsel review, may execute the legal agreements necessary to implement the intention expressed in the preceding sentence. RCRCDD agrees to manage the RCRCDD-controlled ARL Lands consistent with the MSHCP and its goals.

(e) RCA agrees to work with RCRCDD to provide a list of RCA-controlled ARL Lands and PQP Lands which RCRCDD may utilize for mitigation projects, and RCA will enter into the appropriate agreements providing rights of access for the type of mitigation work contemplated by RCRCDD. RCA and RCRCDD staffs, with legal counsel review, may execute the legal agreements necessary to implement the intention expressed in the preceding sentence. RCRCDD agrees to provide RCA with a written description of any specific restoration activities to be undertaken on land owned by the RCA and which has been previously designated in writing by the RCA as RCA-controlled lands which may be used by RCRCDD for mitigation projects.

(f) If requested, RCA agrees to advise RCRCDD on MSHCP consistency. RCA further agrees that RCRCDD's existing management of RCRCDD-controlled lands does not conflict with the MSHCP. In addition, RCA agrees that it will not prevent RCRCDD from also managing and monitoring RCRCDD-controlled PQP Lands and ARL Lands pursuant to any regulatory or other requirements imposed on RCRCDD.

(g) If any land management prescriptions of RCRCDD are found to be inconsistent with MSHCP objectives and requirements, the Parties will work collaboratively to resolve the inconsistencies.

(i) The Parties will make every effort to expeditiously resolve any disagreements. If resolution cannot be accomplished promptly during regularly scheduled meetings and conference calls, a further attempt to reach resolution will be promptly attempted in meeting or conference call dedicated to the purpose of resolving the disagreement.

(ii) If the Parties cannot reach agreement on any issue, including but not limited to any issue related to management of PQP and ARL Lands within the MSHCP Plan Area, after completing a meeting or conference call, the Parties agree to elevate the decision to successively higher levels within each organization until consensus is reached.

(h) Legal title to RCRCDD real property and conservation easements will continue to be held by RCRCDD.

#### 4. Term and Termination.

(a) The term of this MOU shall continue during the lifetime of the Incidental Take Permit ("ITP") issued by the U.S. Fish and Wildlife Service for the MSHCP ("Expiration Date"). The ITP was issued on June 22, 2004 for 75 years. Accordingly, the Expiration Date is June 22, 2079, unless otherwise extended.

(b) Notwithstanding any other provision of this MOU either Party may terminate this MOU upon ninety (90) days written notice. Notice shall be deemed served when mailed to the appropriate parties as set out in Section 6 of this MOU.

(c) This MOU may also be terminated by mutual consent of both Parties.

(d) Any termination pursuant to this Section 4 shall not violate or preclude any continuing obligation or duty assumed by either Party under this MOU.

5. No Third Parties.

Except for contractors or consultants hired by RCRC, RCRC specifically agrees that it will not allow any third party to perform any restoration and/or conservation on the ARL Lands.

6. Notices.

The persons and their addresses having authority to give and receive notices under this MOU are:

RCRC:  
Riverside-Corona Resource  
Conservation District  
Attention: District Manager  
4500 Glenwood Drive, Bldg. A  
Riverside, CA 92501  
Phone: (951) 683-7691  
Facsimile: (951) 683-3814

RCA:  
Western Riverside County Regional  
Conservation Authority  
Attention: Executive Director  
3403 Tenth Street, Suite 320  
Riverside, CA 92501  
Phone: (951) 955-9700  
Facsimile: (951) 955-8873

Any notices from either party to the other shall be given in writing to the attention of the persons listed above, or to other such addresses or addressees as may hereafter be designated in writing for notices by either Party to the other. Notice shall be served personally, sent by facsimile or by first class mail, postage prepaid.

7. Indemnification.

RCA shall indemnify and hold RCRC, its officers, agents and employees free and harmless from liability to any person or entity not a Party to this MOU from any damage, loss or injury to person and/or property which relates to or arises from the negligence or willful misconduct of the RCA, its officers, agents or employees in the execution or implementation of this MOU; RCRC shall indemnify and hold RCA, its officers, agents, or employees free and harmless from liability to any person or entity not a Party to this MOU from any damage, loss or injury to person and/or property which relates to or arises from the negligence or willful misconduct of RCRC, its officers, agents or employee in the execution or implementation of this MOU.

8. Miscellaneous.

(a) The Parties shall each bear their own costs and expenses associated with carrying out this MOU, unless otherwise agreed to in writing by the Parties.

(b) Either Party may request to meet and confer with the other Party at any time regarding any issue that arises under this MOU.

(c) Neither Party may assign its rights or obligations under this MOU without the express written consent of the other Party.

(d) The rights and obligations set forth herein are intended exclusively for the benefit of the Parties hereto and shall not be construed to convey any rights or remedies to any third party.

(e) This MOU contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This MOU cannot be amended except in writing signed by both Parties.

(f) The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this MOU.

(g) Each and all of the understandings and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

(h) If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

(i) No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

(j) This MOU and all documents executed and delivered in connection herewith shall be governed by the laws of the State of California. The Parties agree to the jurisdiction and venue of the appropriate court(s) in the County of Riverside, State of California.

(k) If any legal action or other proceeding is brought for the enforcement of this MOU, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses, and other costs incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

**IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the last date set forth below.**

RIVERSIDE-CORONA RESOURCE  
CONSERVATION DISTRICT, a public  
agency and California resource conservation  
district

WESTERN RIVERSIDE COUNTY  
REGIONAL CONSERVATION  
AUTHORITY, a public agency and joint  
powers authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Alfred B. Bonnett  
President

Name: \_\_\_\_\_

Charles V. Landry  
Executive Director