

COACHELLA VALLEY MOUNTAINS CONSERVANCY
REGULAR MEETING
73-710 Fred Waring Drive, Suite 115
Palm Desert, California
May 14, 2007 - 3:00 p.m.

DRAFT M I N U T E S

MEMBERS PRESENT:

Kathy Dice, California State Parks
John Donnelly, Wildlife Conservation Board (on telephone)
Jim Ferguson, City of Palm Desert
Jim Foote, U.S. Forest Service (non-voting)
Hank Hohenstein, City of Desert Hot Springs
John Kalish, Bureau of Land Management
Patrick Kemp, California Resources Agency (on telephone)
Tom Kirk, City of La Quinta
Eddy Konno, California Department of Fish and Game
Paul Marchand, City of Cathedral City – *Chairman*
Richard Milanovich, Agua Caliente Band of Cahuilla Indians
Gordon Moller, City of Rancho Mirage
Al Muth, University of California
Larry Spicer, City of Indian Wells
Joan Taylor, Governor's Appointee
Ellen Lloyd Trover, Senate Rules Committee Appointee

MEMBERS ABSENT:

Chris Mills, City of Palm Springs – *Vice Chairman*
Curt Sauer, National Park Service
Anne Sheehan, Department of Finance
Roy Wilson, Riverside County Supervisor, District IV

OTHERS PRESENT:

Staff

Bill Havert, Executive Director
Geary Hund, Associate Director
John Saurenman, Attorney General's Office
Kerrie Marshall, Executive Secretary

Other

Jeff Gardner, Adventure Hummer Tours
Mary Justice, Private Citizen
Annette Kesson and guest, Five Star Adventures Inc.
Jerry Sybers, Adventure Hummer Tours

VACANT POSITIONS:

Assembly Appointee

1.0 Call to Order/Introduction of Guests

This meeting of the Coachella Valley Mountains Conservancy (Conservancy) was called to order by Chairman Marchand at 3:05 p.m. Joan Taylor, Jim Ferguson and Kathy Dice arrived to the meeting late and were not present to vote on the minutes for the March 2007 meeting. Patrick Kemp, from the California Resources Agency and John Donnelly from the Wildlife Conservation Board were present on the telephone.

1.1 New Governing Board Members

Bill Havert introduced Geary Hund, the new Associate Director for the Coachella Valley Mountains Conservancy.

2.0 Approval of Minutes of March 12, 2007

Chairman Marchand asked if there were any additions or changes to the minutes. There were no changes to the minutes and Chairman Marchand asked for unanimous consent on this item. A motion was made and seconded (Hohenstein/Moller) and the motion was adopted by all members saying "Aye" in a unanimous vote.

3.0 Public Comments on Items Not on the Agenda

Chairman Marchand asked Mary Justice, a member of the Public, the subject that she was requesting to speak to the Board about. She answered that she would like to speak about the MSHCP and she believed it was not an agenda item today. Chairman Marchand noted that she had 5 minutes to address the Board on this subject. She pointed out that the Coachella Valley Conservation Commission currently has no money for acquisitions, but that the Conservancy has Proposition 84 funds. She asked that in its decisions about what to acquire, the Board give consideration to the needs of small landowners whose property is proposed for conservation under the MSHCP.

4.0 Public Hearing Items

4.1 Resolution 2007-04 approving an amendment to the Grant Agreement for Grant 40 allowing the grantee to retain the proceeds for the sale of property for use in a specified acquisition project.

Bill Havert explained that the Conservancy provided a grant to the Friends of the Desert Mountains (Friends) for \$4,200,000 towards the acquisition of 731 acres. Since then the Friends acquired the property and subsequently, the Conservancy approved the sale of the approximately 161 acre parcel on the south side of I-10 to the BLM so the parcel could be included in the Santa Rosa and San Jacinto Mountains National Monument. In that resolution, the Conservancy approved the Friends retaining the \$306,200 of its own funds it had contributed to the acquisition and required the Friends to return the balance of the purchase price from BLM, less any costs of the transaction, to the Conservancy as a repayment of grant funds. Based on a BLM purchase price of approximately \$725,895, the amount repaid to the Conservancy would be approximately \$420,000. Bill explained that in previous instances where grant funds have been repaid to the Conservancy, those funds have been sent to the State by the Conservancy and subsequently disbursed as part of a new grant. In the present instance, however, the Conservancy's authority to expend the funds will run out on June 30, 2007. This will be insufficient time to process a

disbursement request for a new grant. If the funds are repaid to the Conservancy and returned to the State the funds would not longer be available to the Conservancy for expenditure until a new appropriation of those funds, which could not occur in FY 07-08. He proposed that the original grant agreement with the Friends be amended to allow them to retain the grant funds subject to conditions to ensure they are used for a specific project.

Patrick Kemp asked about the source of the funds. Bill answered that they came from a mix of Prop 12 and 40 funds. Patrick expressed concern that anytime the State discusses "banking bond money" it turns into an arbitrage issue and this may be a bigger statewide issue. The Resources Agency has a policy that makes the grantee apply for a new grant to not allow this much flexibility. He also asked Bill if there is a problem with the Conservancy's being short on money next year. Bill explained that we have \$11.5 million in Proposition 84 funds available; however, if another situation arose such as occurred with Cathton, where \$9.5 million was used on a single large acquisition project, we could expend the full \$11.5 million during the course of the year and wish we had more money.

John Saurenman stated that if the Friends spend the money expeditiously, then arbitrage would not be an issue. He also stated that he does not know of any law that prohibits the Conservancy from amending a grant in the manner proposed. Jim Ferguson added that if any interest did not exceed the LAIF (the Local Agency Investment Fund) rate, arbitrage would not be an issue. He recommended that the Attorney General look into this; however, he did not think this issue should hold up the vote on the item. Secondly, he stated that in his experience it is always more expeditious to leave the money here locally, if possible.

John Donnelly explained that the money is here locally even if the Conservancy has to go through the process to reappropriate the money year after year. He explained that the Conservancy would have a large amount of Prop 84 funds available to spend starting July 1, 2007. He is also concerned that once precedent is set, it is going to be difficult to say no the next time.

Richard Milanovich asked for clarification on the legality of keeping the money. Bill answered that if the money were returned to the Conservancy, we would have to send it back to the State and wait another year or so to re-appropriate the funds. It would not be illegal for the Conservancy to allow the Friends to keep the funds if we specify the project for which they would have to use it.

Chairman Marchand asked if the Board had any additional comments and then asked if there were any public comments on this item. There were no additional comments and a motion was made and seconded (Ferguson/Kirk) to approve Resolution 2007-04 subject to the Attorney General looking into the question of arbitrage. The motion was passed and Resolution 2007-04 was adopted with the following members voting yes: J. Ferguson, H. Hohenstein, J. Kalish, T. Kirk, G. Moller, A. Muth, L. Spicer, E. Trover, and P. Marchand. The following members voting no: J. Donnelly, P. Kemp, R. Milanovich. The following members abstained: K. Dice, E. Konno, and J. Taylor.

4.2 Policy consideration of and direction to staff regarding potential commercial tour use of the Conservancy land in the Indio Hills.

Bill Havert explained that at the last Governing Board meeting in March 2007, staff advised the Board that a tour company was seeking permission to cross Conservancy

land in the Indio Hills as part of a commercial tour operation and continue onto BLM land. This item was presented as an information only item to make the Board aware of the proposal and to explain the process for the Conservancy to consider the application. The Board indicated a desire to discuss the proposed use as a policy matter at a future meeting. Since the March meeting, two more tour companies have sought permission to use the same route. He explained the issues that are outlined in the staff report in further detail, and identified four alternatives available to the Board at this time:

1. Decide that determining whether commercial use of the property should be allowed should be deferred until after adoption of the MSHCP and preparation of the Preserve System Management Plan.
2. Direct staff that, as time permits, staff should prepare a management plan for the property, obtain specific use proposals from the interested tour operators, prepare the appropriate CEQA document based on those applications, develop potential contract terms and conditions, and come back to the Board with recommendations.
3. If there is additional information the Board desires before making a decision as to how to proceed at this time, the Board could continue this item to a date certain, identify the specific information needs, and direct staff to report back with that information at the continued hearing.
4. Make such other determination and provide direction to staff as the Board deems appropriate.

Bill noted that in addition to the Conservancy's mission of acquiring land for conservation we also provide for public access and use of the land to enhance the public's appreciation and enjoyment of the land. This does not necessarily mean in a commercial context but, it would not be inconsistent with our mission. He cautioned that the Board is not making a determination today on the specific proposal to use this piece of land. The discussion today is a more general discussion as to whether the Conservancy should consider this type of proposal given the considerations involved.

Chairman Marchand asked if these considerations are listed in the hierarchy of desired outcomes. Bill answered, no. Chairman Marchand asked in terms of item number 2, would the Conservancy be charging anything to the applicants for preparation of CEQA documents? Bill answered that he was not sure if the Conservancy has a provision to do so or not. Chairman Marchand responded that perhaps counsel could give further direction on this subject.

Gordon Moller asked about the issue of liability that was addressed at the last meeting. Bill responded that there would not be an issue of liability because if the Conservancy granted the permit to the applicant they would be required to hold the State harmless and indemnify the State in standard contract language. Chairman Marchand added that he assumed there would be insurance requirements from the State as appropriate.

Joan Taylor noted that the Coachella Valley has an enormous investment already in the CVMSHCP and thinks it would be premature to try to design uses of land before the preserve management system has been designed and implemented. Al Muth agreed that preparing a management plan for this small parcel is inappropriate at this time because if the MSHCP is adopted, there may be a need to prepare a plan in a greater context and this smaller plan might be a waste of time. Additional Board Members made similar comments that agreed with this point. Adoption of the CVMSHCP will most likely be the benchmark that all agencies in the Coachella Valley will use in determining land use options and discussion should continue after the CVMSHCP is adopted and

should be a factor for the Board to consider. Chairman Marchand asked if Joan would be willing to offer a motion to this effect at the end of the discussion. Joan answered, yes.

Chairman Marchand asked for any other discussion from the Board and then opened the item up for public comment. Annette Kesson from Five Star Adventures spoke on behalf of her company. Annette noted that her company is concerned with the 3/10ths of a mile on the Conservancy land in Section 5 that leads to the BLM land in Section 4. She asked if anyone has toured this property recently because she noted that the land is "quite trashed". She noted that her company has been cleaning it up on a regular basis. She presented letters of appreciation for their efforts from some of the private residents in the area. She also presented pictures of some of the trash and vandalism on the property. She suggested that there may be a meth lab on the property. Annette noted that her personnel are the only people cleaning up this trash and offered to take anyone on a tour of the area to see this first hand. She noted the Conservancy would benefit from a partnership because Five Star Tours are the eyes and ears of the land. She suggested a lease for use of the property in exchange for Five Star's continuing to clean up the property and notify the Conservancy of any wrong doing in the area. Chairman Marchand requested that the documents be logged with the clerk at this time.

Al Muth asked if there is a designated route of travel on the BLM parcel that abuts the property owned by the Conservancy and asked for confirmation that any activity occurring on the BLM property at this time is illegal off road activity.

John Kalish noted that from a BLM standpoint there is no prescriptive easement on a road on public land. He also stated that commercial activities are required to have a permit and for someone to be engaged in commercial activity on BLM land without a permit is unlawful and they are subject to a citation from one of the rangers and a mandatory appearance in court.

Tom Kirk commented that we have a tour operator who is trying to do the right thing by coming forward and requesting to access the Conservancy's Property. If they had not come to us and continued to trespass, the Conservancy would never know. He added that there are other tour companies that will never ask our permission and continue to access the property without our knowledge. Jim Ferguson concurred.

Gordon Moller asked what the costs compared to the income would be. Bill answered that the costs to process the applications, prepare the management plan, and CEQA Analysis would have to come out of the Conservancy's operating budget and we are not sure about the revenue.

Mr. Sybers from Adventure Hummer Tours addressed the Board on this item. He explained that his tour company was the one who initially requested access to the Conservancy's property. He noted that his company conducts eco-tours throughout the United States. He explained that his company provides a way for the people who are vested in the ownership of this public land to see the beauty of the amazing canyons and desert lands. They also take the opportunity to teach the public about the history of the Valley. His request to the Board is to have the Conservancy conduct a CEQA analysis and prepare a management plan that would allow his company to access the property to give tours for public enjoyment. He added that he is available anytime to give Board Members a tour of the prospective tour route.

John Donnelly asked if the tour company is currently driving on the road and if this is just a formality to obtain a permit to continue. He noted that he does not understand the level of work that will be required to perform a CEQA analysis. Bill answered that the tour route is not on an established road; it is a wash. The issue is whether there may be biological or other impacts associated with this use of the land. He is not sure how complicated the analysis will get because we have not started yet. The first step if the Board wants to consider use of the property would be an Initial Study to determine what the potential issues to be addressed under CEQA would be.

Chairman Marchand added that he will be requesting to agendaize a closed session for the July meeting to discuss litigation on this item and if necessary, schedule a special meeting to discuss this item further. He is also concerned that the interests of the State are not being protected and that the property is being trespassed on. All Board Members agreed that the Conservancy should put an immediate stop to people trespassing on the property. Jim Ferguson did not think a resolution was required to adopt an item already covered by existing law.

Jim Ferguson mentioned that if we are concerned about the trespassers and plan to go into closed session to discuss litigation, notice needs to be given to any trespassers in the interim to advise them that they are not permitted to access the property. Other Board Members agreed and asked counsel if we can authorize posting under this agenda item or do we need to call a special meeting to do this. John Saurenman thought this would be taking a discretionary action on managing the land and would need to be discussed as a future agenda item.

Chairman Marchand noted that the liability issues concern him and asked for a special meeting to be held sometime in June. Bill suggested that we convene on the second Monday in June. Most members were available, so the special meeting was scheduled on June 11, 2007 @ 3pm in CVAG conference room 115.

Hank Hohenstein asked if we are going into closed session to further discuss litigation of this issue, he would like to add discussion about the rights a person would have under prescriptive easements. John Saurenman answered that he could address this now and it did not need to be added as a closed session agenda item. He explained that the rule is that a private party cannot establish an easement over public land simply by use. The rule is a person cannot adversely possess against the public.

Chairman Marchand noted that that we do not want to make them permanently stop the tours but rather conform to the process so that all parties are protected as much as possible. He requested that the tour operators work with the Board on a voluntary basis pending our efforts to resolve this issue expeditiously, becoming part of the solution and not adding to the problem.

Chairman Marchand and Patrick Kemp added that this is an administrative function and could be accomplished without having to give direction to the Executive Director. Bill Havert noted that he has existing authority to contact the trespassing operator and see if he can work out a temporary halt for the interim until the Board decides on an appropriate course of action. Tom Kirk noted that there is already an agenda item in place that allows the Board to provide direction to staff; "Policy consideration of and direction to staff regarding potential commercial tour use of the Conservancy land in the Indio Hills." John Saurenman answered that given the breadth of the agenda item, the Board can. Tom Kirk moved that the Board direct staff to work with the tour operators on an appropriate interim policy to restrict access on the subject parcel. The intent is to

restrict access in the interim until we have a chance to come back and discuss the item in greater depth.

Jim Ferguson asked the tour operators what kind of burden it would place on their business if the Board were to restrict access in the interim. Adventure Hummer Tours answered, none. Five Star Adventures answered that her company is currently operating in that area and it would shut her business down completely. Additionally, she stated her tour is on BLM land for less than a mile and stated that Mona Daniels from BLM told her that she did not require a permit to access the property. Chairman Marchand is concerned that the State is taking appropriate action here and does not put Five Star Adventures out of business.

Chairman Marchand asked if the Board had any additional comments and then asked if there were any additional public comments on this item. A motion was made and seconded (Kirk/Hohenstein) to notify and work with the potential operators on the trespass issue of Conservancy land. The motion was adopted with the following members voting yes: K. Dice, J. Donnelly, J. Ferguson, J. Kalish, P. Kemp, T. Kirk, E. Konno, R. Milanovich, G. Moller, A. Muth, L. Spicer, J. Taylor, E. Trover, and P. Marchand. The following members voting no: H. Hohenstein.

4.3 Acquisition priorities

Bill explained at the last meeting the Board was presented with and approved a list of acquisition priorities for the Conservancy. It was suggested at that meeting that staff place the item on the next agenda to give the Board time to review and add any additional priorities to the list. Joan Taylor asked if a priority item is lower on the list than another, is this the order in which staff will devote time to first. Bill answered the higher the priority items will be looked at first; however, as indicated in the staff report, there are other conditions and opportunities that may arise that could change the order of priority.

Chairman Marchand asked the Board if they would like this item added on a reoccurring basis to the agenda as a discussion and information item or have staff bring the item back to the agenda when the need arises. Bill added that he believes there is enough flexibility in the priorities that this need not be an ongoing agenda item. If something arises in the future where a Board member wants to discuss this again, then we will add it to the agenda as a discussion item. Chairman Marchand asked the Board if they all were in agreement, and without exception they agreed.

5.0 Closed Session

No closed session items were scheduled.

6.0 Information Items

6.1 Update on actions by any agencies regarding Off Highway Vehicle issues. (This is an opportunity for any city, the County, or other agency to report on any recent actions or activities related to OHV issues.)

Staff distributed a summary for the Board's information on the most recent meeting of the CVAG OHV Taskforce. Chairman Marchand gave the Board the opportunity to read the item and ask any questions. Al Muth commented that for the last couple of weekends he has been out at Flattop Mountain in Cathedral City and noticed an

absence of OHV activity and wanted to commend those responsible for this action. Chairman Marchand commented that the officials in Cathedral City have been working diligently on this issue.

Chairman Marchand called for an omnibus motion to receive and file this item. A motion was made and seconded (Moller/Hohenstein) to receive and file all four of the written reports. The motion was adopted by all members saying "Aye" in a unanimous vote.

7.0 Written Reports

7.1 Fiscal and Administration [See Attachment 7.]

7.2 Acquisitions and Funding [See Attachment 7.]

7.3 Update on actions by CVAG or other entities regarding Off Highway Vehicle issues. [See Attachment 7.]

7.4 Attorney General's Report [See Attachment 7.]

Chairman Marchand called for an omnibus motion to receive and file all four of the written reports. A motion was made and seconded (Moller/Hohenstein) to receive and file all four of the written reports. The motion was adopted by all members saying "Aye" in a unanimous vote.

8.0 Adjourn to Special Meeting on June 11, 2007.

Chairman Marchand adjourned the meeting without objection at 5:00 p.m.