

**COACHELLA VALLEY MOUNTAINS CONSERVANCY  
REGULAR MEETING  
73-710 Fred Waring Drive, Suite 115  
Palm Desert, California  
September 08, 2008 - 3:00 p.m.**

**M I N U T E S**

**MEMBERS PRESENT:**

Karl Baker, City of Desert Hot Springs  
Buford Crites, State Assembly Appointee  
Kathy Dice, California State Parks  
John Donnelly, Wildlife Conservation Board  
Jim Ferguson, City of Palm Desert  
John Kalish, Bureau of Land Management  
Patrick Kemp, Resources Agency  
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  
Chris Mills, City of Palm Springs *Vice-Chairman*  
Gordon Moller, City of Rancho Mirage  
Al Muth, University of California  
Curt Sauer, National Park Service  
Patrick Mullany, City of Indian Wells  
Joan Taylor, Governor's Appointee  
Ellen Lloyd Trover, Senate Rules Committee Appointee  
Roy Wilson, Riverside County Supervisor, District IV

**MEMBERS ABSENT:**

Anne Sheehan, Department of Finance  
Jim Foote, U.S. Forest Service

**STAFF PRESENT:**

Bill Havert, Executive Director  
Geary Hund, Associate Director  
Kerrie Marshall, Staff Services Analyst

**OTHERS PRESENT:**

Karin Messaros, Joshua Tree National Park

**VACANT POSITIONS:**

None

**1.0 Call to Order & Introductions**

This meeting of the Coachella Valley Mountains Conservancy (Conservancy) was called to order by Chairman Marchand at 3:00 p.m. and a quorum was present. Richard Milanovich arrived at 3:15 and was not present to approve the Minutes or vote on Item 7.1. Karl Baker left the meeting at 4:00 p.m. so he was not present to vote on Item 7.10. Bill introduced Dustin Heindl as the Conservancy's new temporary office clerk.

**2.0 Approval of Minutes of May 12, 2008 meeting**

The July 14, 2008 meeting was cancelled so the May 2008 Minutes were on the Agenda for approval. Chairman Marchand asked if there were any additions or changes to the May 12,

2008 Minutes. A motion was made and seconded (Baker/Mills) to approve the Minutes. The motion passed by unanimous vote.

**3.0 Public Comments on Items Not on the Agenda**

No public comments were made.

**4.0 Election of Chairperson and Vice-Chairperson**

Chairman Marchand explained that the term of the Chairperson and Vice-Chairperson is one year, pursuant to Public Resources Code Section 33506. The election is normally held at the July meeting; however, the July meeting was cancelled this year. The Board Members eligible to serve as Chairperson and Vice-Chairperson are the city and county representatives, the Chairperson of the Tribal Council of the Agua Caliente Band of Cahuilla Indians, and the appointees of the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. The representatives of the various state and federal agencies are not eligible.

Chairman Marchand opened the floor for nominations for Vice-Chairman. Karl Baker nominated Chris Mills and Roy Wilson seconded the nomination. The Chair asked Chris Mills if he would accept the nomination and he accepted. The Chairman asked for additional nominations and there were none so nominations were closed. Chairman Marchand maintained a motion to elect Chris Mills by acclamation. The motion was made and seconded (Trover/Muth). Chris Mills was elected for a one year term as Vice Chairman by unanimous vote.

Chairman Marchand opened the floor for nominations for Chairman. Gordon Moller nominated Paul Marchand and Ellen Trover seconded the nomination. Paul Marchand accepted the nomination and asked if there were any additional nominations. Al Muth nominated Jim Ferguson and Karl Baker seconded. Jim Ferguson accepted the nomination. Chairman Marchand asked for any additional nominations. There were none and nominations were closed with motion and a second (Baker/Donnelly) and a unanimous voice vote. The Chair asked for a roll call voice vote for the election of the Chairman. The voice vote was tallied and Mr. Ferguson was elected as the Chairman for a 1 year term by a margin of 10 votes to 9 votes. **(NOTE: The initial vote was tallied incorrectly and elected Paul Marchand. The error was brought to the clerk's attention and after a recount of the votes, the correct tally resulted in a tie. A new voice vote was conducted after Richard Milanovich arrived. The extra vote broke the tie and elected Jim Ferguson. Mr. Ferguson requested that Mr. Marchand continue to Chair the September meeting to alleviate any further confusion).**

**5.0 Information Item regarding discontinuance of most Attorney General Services**

Bill directed the board to the attachments in the agenda packet and noted that he has informed DOJ that the Conservancy is unable to pay for AG services from its support budget and it will be necessary to discontinue having an AG's representative attend Conservancy meetings. He asked if there were any questions and there were none. Paul Marchand noted that the Board has had very good service from the DOJ's office and we are sad to lose these services. He also noted that perhaps the Conservancy can request pro bono services from some of the law firms in the valley.

**6.0 Closed Session – No matter is scheduled**

None

**7.0 Action/Public Hearing Items**

**7.1 Resolution 2008-10 approving an amendment to Grant 15 to the American Land Conservancy extending the term of the grant.**

Bill explained that staff has re-evaluated the appropriate term for Grant Agreements. Currently all the Conservancy's agreements have termination dates. Staff now believes that the Grant Agreement should remain in effect permanently unless the Grantee subsequently disposes of the property with approval from the Conservancy. At that time, the Grant Agreement would be moot. Thus, staff believes that in the future Grant Agreements should state "This agreement shall remain in effect as long as the Grantee owns the property acquired with the grant funds. It shall terminate upon grantee's satisfaction of its repayment obligation as provided in this agreement."

Al Muth mentioned that this item should be a staff executive policy decision and Bill agreed that for future agreements each of them will come before the Board as an inclusion in a Resolution. He further explained that the item on the table today is to amend the wording in existing Grant 015.

John Donnelly asked what would happen if the American Land Conservancy conveys only a portion of the property in a transaction. Bill answered that the Conservancy would approve the conveyance of the property upon whatever terms are applicable. Once the conveyance is approved and if the Conservancy does not receive all of the funding back, then at that point the agreement will be terminated because without the property there would be no chance to recoup the remaining funds.

Chairman Marchand opened the item for public comment. No public comments were made. He asked if there was any discussion on the item and there was none. He asked for a motion to approve Resolution 2008-10. A motion was made and seconded (Wilson/Baker) to adopt Resolution 2008-10. The motion passed with the following members voting yes: K. Baker, B. Crites, K. Dice, J. Donnelly, J. Ferguson, J. Kalish, P. Kemp, T. Kirk, E. Konno, C. Mills, G. Moller, A. Muth, P. Mullany, C.Sauer, J. Taylor, E. Trover, R. Wilson and P. Marchand.

**NOTE:** Since there were so many acquisition items on the agenda, Bill provided a brief overview of the acquisition items. He displayed a map of the Coachella Valley depicting the areas that the Conservancy has been actively involved in acquisitions. He noted that the Conservancy has been very active in acquisitions throughout the valley such as in the Santa Rosa and San Jacinto National Monument, wildlife corridors, Thermal Canyon, Joshua Hills, and in the Edom Hill and Willow Hole areas aiding in the protection of the sand source and transport area feeding the Willow Hole portion of the Edom Hill-Willow Hole Preserve/Area of Critical Environmental Concern, which is part of the proposed Edom Hill Conservation Area in the Coachella Valley Multiple Species Habitat Conservation Plan.

Bill then asked the Board how they would like to proceed. Given all the items on the agenda, Bill explained that he could provide a staff report on each item or alternatively, he could simply respond to questions on specific items for the Board and not give a staff report or he could provide a combination of both. Paul Marchand suggested that the Board treat this issue as an omnibus report and move forward with questions on specific action items. Karl Baker motioned that the Board treat the matter as a consent calendar and pull out any items that the Board would like to discuss. Jim Ferguson seconded the motion. Joan Taylor recommended that Staff provide dollar amounts remaining in the Bond fund after each item is approved. Patrick Kemp requested to pull item 7.4. and Bill Havert requested to pull item 7.6. Bill also provided the budget information that Joan requested.

Chairman Marchand opened items 7.2, 7.3, 7.5, 7.7, 7.8 and 7.9 for public comment. No public comments were made. He asked for an omnibus motion to approve Resolutions 2008-11, 2008-12, 2008-14, 2008-16, 2008-17 and 2008-18. A motion was made and seconded (Kirk/Moller) to adopt the Resolutions. The motions were passed by unanimous vote.

**7.4 Resolution 2008-13 approving a grant to the Friends of the Desert Mountains to assist with the acquisition of approximately 40 acres in Highway 74 area of the Santa Rosa and San Jacinto Mountains National Monument.**

Patrick Kemp had a concern about the debris that exists on the property. He asked for some more detail about how the clean-up process is going to proceed. Bill answered that the Conservancy completed the inspection on the property and identified the areas that would be addressed before close of escrow. Although the Conservancy did not actually do a phase one inspection, Staff had several contractors bid on the property clean-up project and the seller chose one of these contractors to complete the task. The Friends will complete an inspection and accept the property only after the clean up has been accomplished. It is the seller's responsibility to ensure the cleanup has been accomplished. Patrick asked if the cost is included as a part of escrow and Bill answered that it will be done through escrow and the title will not be vested until after the clean-up is accomplished to the satisfaction of the Friends. Patrick noted that the Agency is a little wary about taking possession of land when they are not sure whether or not it contains toxic materials. Paul Marchand asked if there was a requirement for any kind of conditions concerning hazardous materials. Bill answered that he could add a statement to the grant conditions. Chairman Marchand asked the Board if they wanted to add a requirement that the seller must provide appropriate documentation that the property is free of hazardous materials. Bill noted that the Board could require a phase one inspection and make approval of the grant contingent on this. Tom Kirk asked what would occur if the results of the phase one inspection are not favorable. Bill answered that the agreement will be worded that the approval of the phase one inspection will be the Conservancy's role. Chris Mills asked who would financially handle the cost of the inspection. Bill answered that the Friends would pay for the inspection unless the Board wanted to amend the amount of the grant to cover the additional cost. Tom Kirk asked if the bond funds could be used to fund this type of inspection and Bill answered, yes. Karl Baker asked how much the inspections cost. Bill answered anywhere from \$1500 to \$3000. Tom Kirk noted that he would be supportive if the maker of the motion would increase the grant amount to include the cost of the phase one inspection.

Chairman Marchand opened item 7.4 for public comment. No public comments were made. He asked for an omnibus motion to approve Resolution 2008-13 contingent on obtaining a phase one inspection and increasing the grant amount by \$3000. A motion was made and seconded (Crites/Muth) to adopt the Resolution. The motion was passed by unanimous vote.

**7.6 Resolution 2008-15 approving a grant to the Friends of the Desert Mountains to assist with the acquisition of approximately 260 acres in Whitewater Canyon.**

Bill directed the Board to the revised resolution, staff report and a summary of changes. He explained that the reason for the revision is that the project has changed slightly over the last week or so due to negotiations by the Friends with the Mackenzie family. The family decided not to sell two of the parcels in the Bonnie Bell area of the canyon, thus changing the original price of the property. Corrections in the Resolution reflect these changes. Bill also noted that the completion date has been changed.

Tom Kirk asked how much of the appraised value is associated with the 4 structures on the property. Bill answered \$690K. Tom asked if the Friends were to convey a portion of this property how the Conservancy would be reimbursed for this portion. Bill answered that it would depend on the determination as to which funding is allocated to which parcels. Bill has discussed this subject with Bill Gallup (WCB) and explained that there is the possibility of assigning the federal funds, the WCB funds and some of the Conservancy funds to the vacant parcels. If it is done this way the funds for the purchase of the structures would come

from the Conservancy and, if the structures were sold, the funds would come back to the Conservancy.

Chairman Marchand opened item 7.6 for public comment. No public comments were made. He asked for a motion to approve Resolution 2008-15. A motion was made and seconded (Taylor/Sauer) to adopt the Resolution. The motion was passed by unanimous vote.

**7.10 Resolution 2008-19 approving a policy regarding local assistance grants as it pertains to fair market value of the property.**

Bill explained that at its March 2008 meeting, the Governing Board discussed the question of whether there were circumstances under which it might be appropriate to make a local assistance grant to an entity to assist with an acquisition the price of which exceeded fair market value (FMV) as determined by an appraisal, as long as the Conservancy's grant did not exceed the market value. The Board expressed a desire to consider a policy regarding this. A draft policy was placed on the May agenda for consideration, but the item was continued to accommodate interested Board Members who were unable to be at the May meeting. Because there was no July meeting, the item is on this agenda. He asked for discussion on the proposed Resolution.

Patrick Kemp noted that this is a policy issue about whether bond funds should be used to acquire property in excess of appraised value. He noted that there has been a great deal of scrutiny by the legislature about this subject because they have to explain this to the tax payers. The Board should be extremely careful that we only pay appraised value for property and he explained that this is the policy of the Resources Agency.

John Donnelly noted that WCB will only pay appraised value for acquisitions and if the acquisition price is higher than FMV they will back out of the deal. He noted that if the Conservancy moves forward with this policy, WCB will not be a partner in acquisition transactions that are more than FMV.

Paul Marchand concurred with Mr. Kemp and Mr. Donnelly and noted that this raises the issue of the State giving a gift of public funds for which there is a state prohibition. He thinks the Board needs to be very careful about putting the Conservancy in harm's way because the sense that he gets is that if the Conservancy adopts a policy that puts us in a position of paying more tax payer dollars than the property is appraised for we may find that the legislature will take some of our autonomy away from us. He does not think it will be good for the Conservancy and he does not think it is wise to antagonize the legislature.

Buford Crites noted that comment about the property being purchased using more tax payer dollars than the appraised value was incorrect. The State did not use any dollars above appraised value towards the acquisition. He asked Bill Havert if he received the Attorney General's advice on this matter. Bill answered yes, and on this particular acquisition the AG noted that it was not a violation of State law to provide a grant not exceeding appraised value notwithstanding that another entity contributes the additional funds to meet a price above appraised value. Buford further noted that he sincerely respects WCB and their policies; however, this Board has the right to set policy within State law and this policy does not violate a gift of state funds and allows the Conservancy under very limited circumstances to get on with public business which is what the public expects this Board to do.

Chairman Marchand said he would agree to disagree with Buford Crites on this subject but his concern is that this Board does not antagonize the legislature.

John Donnelly noted that he is concerned about actually inflating values above the actual appraised value and make it harder for organizations to participate in the local market to complete transactions. He thought in this particular situation, it would not have hurt to take the value back to the appraiser and have them consider the conditions for the inflated value.

Tom Kirk noted that he is confused about the comment that this Board would be antagonizing the legislature. He has heard a legitimate concern on behalf of state government agencies and a contrary opinion from another state government agency and he concurs with Mr. Crites that this Board was established and given a fair amount of autonomy and it does not seem that the proposed policy would antagonize the legislature and this does give the Board a little more flexibility and if that means that WCB funds are withdrawn from a particular acquisition, then so be it. He is in support of the Resolution, as is.

Ellen Trover noted that she supported the motion to make the acquisition in question but, she did it on the basis that the Board had an offer. She noted that she would have been more comfortable if Staff had gone back to the appraiser with the information and had them review the appraisal. She explained that she has done some research about the way appraisals are conducted in California and she noted that she is somewhat concerned about the way we are acting on this without having a better knowledge about the appraisal process. She personally thinks that the purchase price was the FMV of the property.

Bill explained that there is a line of reasoning that says if a willing buyer and willing seller agree on a price then that's by definition the FMV of the property. The issue then becomes can you at that point go back to the appraiser and ask them to redo the appraisal. You'll get different opinions on whether this is appropriate. The intent here is for the Conservancy to use the policy sparingly and only in pressing circumstances and the Board still reserves the right to disapprove. If the Board would like the report by the legislative analyst or any additional information before approving this policy, Staff would be happy to provide it.

Ellen Trover noted that she has every faith in Staff and the Board is not questioning who you hire or how you handle appraisals. She noted that there is an issue that is being raised by the legislative analyst and she wants to make sure the Board is squeaky clean and she does not want to lose WCB's support. She thinks we need to do a little more research before the Board agrees on these policy exceptions.

Chairman Marchand asked if Ms. Trover would like to see the additional information be provided to the Board. Ellen answered that she would be more comfortable if everyone had the opportunity to review the legislative analyst's opinion on this subject.

Patrick Kemp provided information about the question on the subject of legislative interests. He noted that the issue came up several times in budget hearings and there is a concern about how acquisition appraisals are done. He noted that it may not be on the radar yet but, it sure could be quite easily and we don't want to set a precedent that puts the Conservancy on the radar. There is great concern about how the State uses bond money and this is a policy issue.

Jim Ferguson noted that he has two general observations. First, the Board is putting way too much stock in appraisers. Secondly, he does not think there is any harm in generally following an appraisal and in the process Staff can take the three policy conditions into consideration. Note that there may be more value to the conservation community on a property than in the free market and tying our hands artificially is a little limiting. He does not make decisions based on what the legislature might do. He agrees with Mr. Crites that this Board has been given the authority and should exercise it and not limit our decisions to an appraisal process that tends to be arbitrary at times and somewhat limiting.

Chris Mills noted that sometimes two appraisals on a property could be quite different. So when it says **the** appraisal...what does that mean?

Joan Taylor asked why the Board needs this policy guidance. Bill Havert answered that it was requested by the Board and absent this policy to provide guidance, decisions would be made on a case by case basis by the Board just as it was on the acquisition in question. There is no policy now that forbids acquisitions in these circumstances. This would provide policy guidance when these situations arise.

Patrick Kemp noted that it is never wise to slap the legislature in the face and reminded the Board not to forget we are regulated by a State budget and financing and have to go through the State budget process every year. He understands that the appraisal process is sometimes archaic, but it is what we have for now. The State is actually reviewing the appraisal process.

Al Muth noted that he concurs with Mr. Crites and Mr. Ferguson. This Board has a responsibility to conserve significant biological and scenic resources. If we are trying to buy an important linkage this issue may become very significant, and the Board could use this policy guidance, as long as it is legal.

Richard Milanovich agrees with Mr. Muth. If there is an opportunity to acquire a property with significant biological resources, it would be wrong for this Board not to adopt this policy guidance and have the ability to acquire the property at that time. This is a learned group of individuals who are not here for pomp and circumstance; we are very committed to the conservation cause. He thinks the policy should be adopted.

Tom Kirk had a suggestion for the Board. He appreciates that others would like to review the legislative analyst's opinion before moving forward and he also understands the concern about thumbing our noses at the legislature. He recommends moving forward with the Resolution by adding a "now therefore" to the policy giving the Board some guidance up until the legislature may change such policy. And with that he is prepared to move forward to make a motion to adopt this Resolution and the motion was seconded by Jim Ferguson. He added that he does not think there is anyone on this Board that wants to overpay for property, or would make a gift of public funds or that does not value critical habitat. He thinks that sometimes there are once in a lifetime opportunities that present themselves and the Board should be free to take advantage of these situations. He does not see this as thumbing our noses at the legislature of the State of California; he sees it as doing what the Board is charged with.

Chairman Marchand made an observation that the discussion before the Board is not about right and wrong. It is about the clash of rights and about a clash between equally important but not always reconcilable policies. Dr. Muth expressed policies that we consider important. On the one hand there are the very strict accountabilities that exist with respect to public funds. If we allow valuable environmentally sensitive lands to go where they shouldn't because we can't move timely then there is a price that we pay. There is no easy solution and these are policies that this Board is being asked to adopt. Once this is done everyone needs to walk out of here knowing that we voted our conscience and it's not about personalities; it's about our own sense of making the right decision.

Chairman Marchand opened item 7.10 for public comment. No public comments were made. He asked for a roll call vote to approve Resolution 2008-19 with additional policy guidance language. The motion passed with the following members voting yes: B. Crites, J. Ferguson, J. Kalish, T. Kirk, R. Milanovich, C. Mills, G. Moller, A. Muth, P. Mullany, C. Sauer, J. Taylor,

E. Trover, and R. Wilson. The following members voted no: K. Dice, J. Donnelly, P. Kemp, E. Konno, and P. Marchand. There were no abstentions.

**8.0 Reports**

**8.1 Written reports from staff.**

Reports were attached to the agenda.

**8.2 Board Member comments and reports from Conservancy member agencies.**

No comments were made.

**9.0 Adjourn to the November 3, 2008 meeting.** *(Note this is the first Monday of November instead of the usual 2<sup>nd</sup> Monday due to the Veteran's Day holiday.)* A motion was made and seconded (Muth/Moller) to adjourn. The meeting was adjourned without objection at 4:13 p.m.