

**COACHELLA VALLEY MOUNTAINS CONSERVANCY
SPECIAL MEETING
73-710 Fred Waring Drive, Suite 115
Palm Desert, California
June 11, 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
Tom Kirk, City of La Quinta
Eddy Konno, California Department of Fish and Game
Paul Marchand, City of Cathedral City – *Chairman*
Al Muth, University of California
Anne Sheehan, Department of Finance (on telephone)
Larry Spicer, 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:

Patrick Kemp, California Resources Agency
Richard Milanovich, Agua Caliente Band of Cahuilla Indians
Chris Mills, City of Palm Springs – *Vice Chairman*
Gordon Moller, City of Rancho Mirage
Curt Sauer, National Park Service

OTHERS PRESENT:

Staff

Bill Havert, Executive Director
Geary Hund, Associate Director
Kerrie Marshall, Staff Services Analyst
Laurie Pearlman, Attorney General’s Office
John Saurenman, Attorney General’s Office

Other

Mike Bennett, Bureau of Land Management
Mitchell Casia, Desert Adventures
Jeff Gardner, Legendary Tours
Annette Kesson, Five Star Adventures, Inc.
Ryan Salmans, Five Star Adventures, Inc.
Jerry Sybers, Legendary 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 3:03 p.m. Joan Taylor and Eddy Konno arrived to the meeting late and were not present to vote on the minutes for the May 2007 meeting. Anne Sheehan, from the Department of Finance and John Donnelly from the Wildlife Conservation Board were present on the telephone.

1.1 New Governing Board Members

Bill Havert noted that Geary Hund, the new Associate Director officially started working for the Coachella Valley Mountains Conservancy on May 21, 2007.

2.0 Approval of Minutes of May 14, 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/Ferguson) and the motion was adopted by all members saying "Aye" in a unanimous vote.

3.0 Public Comments on Items Not on the Agenda

No public comments were made.

4.0 Closed Session – One Matter is Scheduled

A motion was made and seconded (Hohenstein/Sheehan) to adjourn to closed session and approved by unanimous vote at 3:13 PM to discuss one item scheduled for this meeting pertaining to potential litigation in regards to jeep tours in the Indio Hills. No action was taken in the closed session.

A motion was made and seconded (Hohenstein/Kirk) and approved by unanimous vote to re-open the public session at 3:30 PM.

5.0 Public Hearing Items

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

Paul Marchand referred all Board members to the copy of the attachment in the agenda which contained the following policy options for consideration by the Board:

1. Determine that considering commercial jeep tours on the CVMC property in the Indio Hills is potentially consistent with the Conservancy's mission and direct staff to process applications and return to the Board at a future meeting with recommendations on whether or not to approve specific applications. In processing the applications, staff would:
 - Assess potential impacts (adverse and positive) on the resources on CVMC and BLM land.
 - Coordinate with BLM and DFG (if DFG land would be crossed) regarding the potential effects on and permitting processes for their land.
 - Clarify the optimum route to access the CVMC property.

- Determine whether to pursue cost recovery from the applicants based on the amount of staff time required to process the applications and any additional costs that could be incurred.
 - Consider what the appropriate fee to charge tour operators should be for any tours that might be permitted.
 - Confer with the CVCC and the wildlife agencies regarding their concerns about approving uses prior to preparation of an MSHCP Preserve Management Plan.
 - Consider what the appropriate term for a permit would be. (Regarding the concern that uses should not be considered until after preparation of an MSHCP Preserve Management Plan, one option could be to permit the use for only a short period of time (12 – 24 months) so that the use could be reconsidered upon completion of the MSHCP Preserve Management Plan. Monitoring of the use during this interim period could also provide information that could be useful in the preparation of the Management Plan.
2. Determine that applications should not be considered at this time because CVMC is a Permittee under the proposed MSHCP and should not approve uses on land in the Conservation Areas until after preparation of the MSHCP Preserve Management Plan.

Bill gave a PowerPoint presentation with maps and photos of the proposed tour area in the Indio Hills. He pointed out the land ownership on the proposed route. He noted that they he, Geary Hund, and Ellen Trover carefully documented locations using a GPS during a site visit when they came across obvious areas of trespass or impacts, including graffiti and an abandoned car. He showed slides of existing jeep tracks which showed the obvious use of the routes. He noted that it is a lovely area and as the tour goes through the canyon it narrows and it would be necessary for people to get out and walk to experience the drama of the fault. He then presented three slides of an area where someone appears to have taken up residence. The trespass area was determined to be on the property line straddling both Conservancy and Department of Fish and Game (DFG)/Wildlife Conservation Board lands. Bill reported the trespass to the DFG warden since they have law enforcement ability and the Conservancy does not. Bill asked Eddy Konno from DFG if the warden had a chance to go out there yet. Eddy said the warden requested to be taken to the site and they anticipated getting out there in the next couple of weeks to take care of the situation.

Bill presented information on tour access routes explaining that he spoke to County transportation about the status of the proposed tour route roads and thought that there may be some issues with gaining access to the Conservancy's land because there does not appear to be a public road to the Conservancy land. The route proposed by at least one operator crosses DFG land before reaching the Conservancy property and DFG said they will not give tour operators permission to cross their property. Bill said Vista Chino is also problematic because the County said the dirt portion is not a public road. Hank Hohenstein asked if Vista Chino is on a section line or not. Bill answered that it is, but according to the county, it is not a dedicated, accepted and maintained road. Hank answered that he thought the Act of 1902 dedicated all section lines for public access. Bill answered that he was not sure if the public right-of-way provision applies in this situation. Bill stated that if the Board decides to move forward with the application, this is something that the operators will have to address. Ellen Trover added that the routes may be a public right of way but not a publicly dedicated road and jurisdiction may be a question in this case.

Bill explained that he could not see any immediately obvious potential impacts on the use in the wash area on Conservancy land if the tour operators stay on the existing path that has been created. A full evaluation would be done during the CEQA process, including coordination with the CVCC on uses outlined in the MSHCP Management Plan. He noted

that the frequency of tours is an issue to be considered as well as how many operators would be allowed to access the route. The Conservancy may need to initiate a competitive bid process and also determine how long the permit should be issued for.

He explained the Conservancy also has some fiscal issues to consider. Under CEQA we have the ability to ask for cost recovery and we also have the ability to charge a fee for use of the property.

He explained the policy options in greater detail and discussed the potential next steps in this process if the Board opts to proceed.

- 1) Receive the completed applications with the project description
- 2) Undertake the CEQA review
- 3) Coordinate with BLM, CVCC and other agencies as appropriate
- 4) Develop the recommended contract in terms of use
- 5) Return to the Board with specific proposals.

He clarified that today the Board will not be making any decisions on whether jeep tours will be permitted. The Board will simply be establishing a policy for applications to be considered. Staff would then return to the Board with specific proposals after evaluating them. He continued to explain the Board's options and told them that staff's recommendation is for the Board to adopt option one in the agenda attachment.

Joan Taylor asked how much staff time has gone in to this proposal so far. Bill answered approximately 20-30 hours. Joan noted that she would be open to option two, deferring action until after completion of the MSHCP Preserve System Management Plan. She believes that an enormous amount of staff time will need to be dedicated to the environmental review and contracting process and is concerned that allowing jeep tours in the absence of a more comprehensive plan for the MSHCP area may be setting a bad precedent. Staff should go to the advisory committee now and ask what their take is on this proposal before the operators waste a lot of money on CEQA.

Larry Spicer asked to open the public hearing for testimony. Paul Marchand asked if the Board wanted to take public comments before or after discussion. Larry Spicer answered that he may be influenced by the information presented to the Board by the operators.

Chairman Marchand opened the public hearing and called Annette Kesson of 5 Star Adventures. She explained that her company has been providing beneficial services for the area including cleaning up the area and rescuing people in need. According to Ms. Kesson, Dan Castell from the County stated that the route her company is using (Moon Shadow and Vista Chino) is okay for public use because the route was generally used by the public for 5 years. Ms. Kesson thinks maybe it needs to go to the courts and a law passed to establish it as a public road. Five Star Adventures is not proposing to use the route everyday and the path that they use was created by flooding. She described the area as a pristine and beautiful area that should be there for people to enjoy and learn about the desert. She explained that her company is very small and apologized for accessing the property on previous occasions illegally; however, she stated that she has ceased operating in that area until the permits are approved.

Chairman Marchand called Mitchell Casia from Desert Adventures. Mitchell explained that his company champions the right to take the public into these areas for their enjoyment. He believes that this area is not a high impact area and all the tour companies are conscious of the environment when they conduct the eco tours. He noted that Desert Adventures takes pride in educating people about the desert environment. He explained that all of the areas where they

provide tours are better off now than they were before the tours started. They often go out to these areas and remove trash; in one area in particular, they removed 20 tons of trash at their own expense. It is beneficial to the companies to keep the areas clean because this is how they make their money. The government agencies do not have the resources to monitor and management their own properties. He noted that the impact is minimal, that it's actually a positive impact on the environment and believes that this could be a good partnership because the tour companies would become the agencies' eyes and ears for monitoring these properties. They monitor illegal dumping and they have made citizen's arrests of violators, with three current cases pending in court to prosecute them. His company would like the opportunity to go into these areas and since this is public land he believes it would be unfair to only allow one company to access the property. He noted that his tours only go out twice a week and they never tour with more than two jeeps. . His company has always applied for permits before they use a route and will continue to do so. Desert Adventures encourages the Conservancy to allow these tours and believes that any company that is involved with this process should be required to give back by picking up trash and monitoring these areas. Desert Adventures would like the Conservancy to give this proposal every consideration.

Chairman Marchand called Jeff Gardner from Legendary Tours. Jeff explained that his company conducts eco-tours throughout the Coachella Valley with permission from the land owners. He is very satisfied with the product that his company currently presents to the public; however, he noted that he could not think of a more generous gift than to give tourists the opportunity to tour the San Andreas Fault Zone. His company has a deep respect for ecology and the balance of nature in this delicate area. They stay on designated routes and call attention to signs that denote delicate habitat areas. He added that the most powerful thing his company would be able to show would be the obvious up-thrusts in the terrain due to the action of tectonic plate movement. The walls along the side of the dry wash channels also offer a wealth of information on sedimentary layering. He would encourage guests to tour the CV Preserve before or after the tour. He noted that this request is not solely for financial gain but, he also feels that the desert is a gift and he would be privileged to share its beauty with others. He explained that they often find themselves in a situation where they become the "Citizen on Patrol" in these remote areas. He requests that the Conservancy and BLM give this proposal every consideration.

Paul Marchand asked if there were any further public comments and since there were none, he closed the public hearing and opened discussion on the item to the Governing Board.

Jim Ferguson motioned to approve staff recommendation of option one. Hank Hohenstein seconded the motion. Anne Sheehan asked for clarification of the motion. Chairman Marchand repeated Jim Ferguson's motion.

Anne Sheehan noted that she would be in support of the motion but, added that the Conservancy should take this opportunity to develop a policy for accessing our property. Bill Havert answered that at some point the Conservancy may have to adopt a regulation for use of Conservancy lands in general. Anne agreed and noted that as the Conservancy goes through the jeep tour process, issues may surface that we may not have identified yet.

Al Muth believes the Conservancy should wait until the MSHCP is adopted and the Management Plan is in place before we start creating smaller plans on our property that may not be consistent with the greater plan. He also noted that he understands the tour operators are doing a good job; however, if the Conservancy allows private use of public land then we should also allow public use of that land. Permission can't be solely granted to a for-profit organization.

Larry Spicer supports the motion to adopt option one for three reasons: 1) the use is consistent with the Conservancy's mission of public enjoyment and education, 2) the Conservancy may discover some useful information that may be helpful in developing the MSHCP Management Plan, and 3) he likes the idea of the constant monitoring by the tour operators.

Tom Kirk agreed and added that he is also open to option three, which is a longer term option of the Conservancy's seeking to convey this and other land to agencies with greater management capability, because option one may require a lot of staff time and expense involved and option three may allow the Conservancy to shorten the process into one action.

Ellen Trover also supports the motion as long as we own the property. She mentioned that trespassers had to access the area by crossing the Conservancy's property. She added that it was obvious this is not a short-term problem and the condition indicates that it has been going on for a long time. She thinks it is a good idea to have someone monitoring the area and reporting back to the Conservancy. She added that it would be nice to wait for the MSHCP Management Plan but she is concerned about what will happen in the interim if we wait.

Jim Ferguson clarified that the reason he made the motion is that we can either wait for the government bureaucracy to pass the MSHCP which has been 11 years in the making, we could also wait for a broader study on public access, or we could do the sensible thing and grant this one application and use it as an evolving model of how we want to use these lands and make them available consistent with the Conservancy's mission. The Conservancy is supposed to be spending money and time to make the lands available to the public for their use and enjoyment. He noted that the tour operators do not make money showing off beer cans, old cars and graffiti and he is confident that they will help the Conservancy monitor this property. He added that if we determine in the future that the burdens outweigh the benefits, then we can simply discontinue the tours. Hank Hohenstein concurred with the motion.

John Kalish added that the applicants have been informed that BLM would process their applications when they secured access to the non-BLM portions of the proposed tour route including the CVMC lands. During this application process, BLM would complete a full environmental review and application process that would be very similar to the Conservancy's process as outlined in the PowerPoint presentation. BLM could not prejudge the outcome of that process; however, any decision that they make would be consistent with the Conservancy's decision.

Chairman Marchand asked if the Board had any additional comments on this item. A motion was made and seconded (Ferguson/Hohenstein) to move staff's recommendation of option one on a two year trial basis, and if the burden outweighs the benefits, then we consider dismantling it at that time. The motion was adopted with the following members voting yes: J. Donnelly, J. Ferguson, H. Hohenstein, J. Kalish, A. Sheehan, L. Spicer, E. Trover, R. Wilson, and P. Marchand. The following members voted no: K. Dice, T. Kirk, E. Konno, A. Muth, and J. Taylor.

6.0 Information Items

None

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 asked that item 7.4, Attorney General's Report, be advanced to the beginning of the reports. John Saurenman introduced Laurie Pearlman from DOJ who will be taking over representation for the Conservancy. Chairman Marchand called for an omnibus motion to receive and file the remaining 3 written reports. A motion was made and seconded (Hohenstein/Sheehan) to receive and file written reports 7.1-7.3. The motion was adopted by all members saying "Aye" in a unanimous vote.

8.0 Adjourn to Regular Meeting on July 9, 2007.

Chairman Marchand adjourned the meeting without objection at 4:10 p.m.