

**COACHELLA VALLEY MOUNTAINS CONSERVANCY
REGULAR MEETING
73-710 Fred Waring Drive, Suite 115
Palm Desert, California
November 14, 2011 - 3:00 p.m.**

**Final
MINUTES**

MEMBERS PRESENT:

John J. Benoit, Riverside County Supervisor, District IV
Buford Crites, State Assembly Appointee – *Vice-Chairman*
John Donnelly, Wildlife Conservation Board
Jim Foote, U.S. Forest Service (voting for BLM)
Rick Hutcheson, City of Palm Springs
Patrick Kemp, Natural Resources Agency
Eddy Konno, California Department of Fish and Game
Karin Messaros, National Park Service
Gordon Moller, City of Rancho Mirage
Paul Riesman, California State Parks
Pedro Reyes, Department of Finance
Larry Spicer, City of Indian Wells
Joan Taylor, Governor's Appointee
Ellen Lloyd Trover, Senate Rules Committee Appointee – *Chairwoman*

MEMBERS ABSENT:

Karl Baker, City of Desert Hot Springs
Kristy Franklin, City of La Quinta
William Kroonen, City of Palm Desert
Richard Milanovich, Agua Caliente Band of Cahuilla Indians
Al Muth, University of California
Sam Toles, City of Cathedral City

STAFF PRESENT:

Kevin McKernan, Executive Director
Kerrie Godfrey, Staff Services Analyst
Laurie Pearlman, Department of Justice

OTHERS PRESENT:

Chris Van Vliet, C.L. Van Vliet & Co.
Essi Shahandeh, Essi Engineering
William Enos, City of Rancho Mirage

VACANT POSITIONS:

Vacant, Staff Environmental Scientist

1.0 Call to Order & Introductions

Chair Trover declared a quorum with 14 voting members present at 3:05 pm. Ellen welcomed Laurie Pearlman as the legal representative from the Department of Justice. Laurie Pearlman introduced herself to the members of the Board who had not met her at previous meetings.

2.0 Approval of Minutes of September 2011 meeting

Chair Trover asked if there were any comments additions or changes to the September 2011 Minutes. Larry Spicer noted that they were very comprehensive and

Chair Trover accepted the praise on behalf of the CVMC Staff. As there was no more discussion, a motion was made and seconded (Spicer/Moller) to approve the Minutes. The motion was adopted by the Board members saying "Aye" in a unanimous vote with the exception of Rick Hutcheson, Gordon Moller and Joan Taylor abstaining from the vote because they were not present at the last meeting.

3.0 Public Comments on Items Not on the Agenda

Chair Trover asked if there were any comments on any items on the agenda. She noted she had three public request forms on the Mirada encroachment issue completed.

Chair Trover called Mr. Chris Van Vliet from C.L. Van Vliet & Co. as the first public speaker. Mr. Van Vliet thanked the Board for having him at this meeting to speak about this project. He noted that he is a general contractor in the desert and has been for over 30 years. He builds custom homes. He noted that he does not know how much information the Board has on the subject project but, it is three lots in the Mirada Development that has been combined into one lot. The encroachment area is on the lot adjacent to the hillside. He then provided some background on the project. The custom home is 100% done. The owner is in Chicago and cannot get his occupancy certificate until this issue is resolved. Before any construction was done there was a storm channel that meanders on the hillside to collect all the storm water from the lot and dump it below. The approved grading plan modified some of the drains to aesthetic purposes. At some stage in 2008 the owner went down to the city and spoke with someone at the city and asked if he could modify them and move the storm drainage over the property line. He was not sure who he talked to at that stage but, he authorized his [owner's] civil engineer to redraw the plans to move the storm drain channel. The engineer revised the plans and submitted them in July 2010 to the City of Rancho Mirage as an as built plan. The City had a red line plan based on these plans and submitted them back to the Civil Engineer on record and he resubmitted a plan check #2 and that clearly showed the gutter portion (not the wall) over the property line. Mr. Van Vliet then received communication from the engineer that the "as built plan" was approved by the city. He noted that typically how the "as built plans" are handled is that throughout the project they make lots of changes in terms of drainage and they are picked up at the end of the project as "as built plans" and that is submitted at the very end of construction. The reason they submitted this plan early was because they knew it was a major revision and they wanted to make sure they had the City's blessing before they did it. So that's how they ended up where we are...they thought they had approval on it and they knew where the property line was and they know it was on City property but, they had no idea about any easements on the property. They feel that the City knew exactly what was going on and approved the plan. Now there is apparently some miscommunication whether that was an approval or not and the board will hear some differences of opinions as to where they stand on this issue. He showed the Board pictures of the project and noted that its about 700 ft long and not visible from the valley floor or anywhere in the Mirada basin and they built a big boulder retaining wall there which gives them much better drainage capabilities than the original plan. This drainage are has no impact on wildlife because it is below the Bighorn fence anywhere from 30, to 80 to 100 ft. and within 15 ft of the house.

Larry Spicer asked if we have heard this issue before.

Chair Trover responded that no the Board has not and this will be discussed in our closed session. Mr. Van Vliet is a member of the public that has requested to address us and because this issue will come before us in closed session he chose to appear today.

Kevin McKernan added that the Conservancy has a Conservation Easement on the property with the City as a part of the Bighorn Sheep mitigation several years ago.

Larry Spicer noted that he can attest to the quality of work of this contractor and would like to have this considered when talking about this issue. We are being asked to approve an encroachment for this project?

Chair Trover noted that we will be discussing this in closed session.

Larry Spicer asked for clarification from Mr. Van Vliet; the city gave you everything you thought you needed?

Mr. Van Vliet responded, yes, we thought we had everything we needed to move forward with the project. We had two full plans submitted to them and thought it was obvious where the project was located because we never would have gone over the property line if we thought there were an issue.

Larry Spicer responded; without being critical did the civil engineer miss picking that easement up or did the title company miss it?

Mr. Van Vliet responded that he did not know because that easement would have been on the city's property. The civil engineer is here and maybe he can address that concern.

Chair Trover noted that at this point I think we should have Mr. Enos who has also submitted a request to speak come before the Board. If these gentlemen wish to remain outside during the closed session so we can ask further questions of them it is their option but, it is closed session issue as far as the Board's discussion. She thanked Mr. Van Vliet for speaking.

Chair Trover introduced William Enos, City Engineer from the City of Rancho Mirage as the next public speaker. Mr. Enos noted that he first became aware of this issue in early September when the "as built grading plan" was submitted for this project. Our senior engineer, who has been plan checking for 20 years, reviewed the plan and discovered this encroachment. The engineer disapproved the plan and met Mr. Van Vliet at the site with the city community engineer to research how we got to this point. Just this morning I was made aware of the claim that there had been reviews earlier in 2009 and alleging that the City gave permission for this plan. Often times at the City we hear people say that they spoke with City Staff and got approval. Bottom line, if it is not in writing it did not happen; especially something as large as this. Our position is; I spoke with the City Manger, Director of Planning, Public Works, the planner assigned to this project and none of these folks have any knowledge of any approval by the City to allow this encroachment. Allegedly the plan that was supposedly submitted in August of 2010 clearly showed this encroachment; however the engineer was not made aware of this encroachment nor was the change pointed out to him. He noted that an email was sent out stating that the Senior Engineer Plan checker said he was very busy and the "as built" you propose seems OK but, if there are any major issues lets process them as a revision, if not lets wait for the "as built". There were never any revisions submitted or processed and never any further discussion about this. Our position is that we were not aware of this encroachment. The engineer did not become aware until 2011 when he told the contractor he could not approve the "as built plan" with the encroachment and nor did we ever give approval for it. Having said all this, we have reviewed the encroachment and have gone to the field, the wall was constructed

pretty much on the private side of the line and the encroachment is the drainage structure above the wall. It is all below grade as Mr. Van Vliet has pointed out and is not visible from anywhere else and also has been done in concrete to match the surroundings. The City thinks it would be impractical to remove the huge 9 foot wall and it is very beautiful. The contractor has done a great job up there and it looks very nice but, there is still the issue of the encroachment. So, again, I will lay out the facts as the City sees them and as the records shows; there was no approval in writing and that is where we stand.

Chair Trover asked Laurie Pearlman if she was correct in assuming that if during the closed session the Board can ask questions if these gentlemen wish to wait outside.

Laurie Pearlman responded; that would be correct.

Larry Spicer asked if we could ask questions now.

Laurie Pearlman responded, yes. Ellen added that she just thought we might want to get a better idea of the problem...then call them in to ask additional questions.

Larry Spicer asked if the concrete ditch was to protect the footing of the wall?

Mr. Enos responded is up high so it is to catch the drainage from coming down and going over the top of the wall.

Chair Trover noted that she believes we have some photos of the project.

Larry Spicer noted that usually the Civil Engineer works off a sheet and there is a line with long lines that indicates property lines. Everything you design should be on the private side of the property line. It is surprising that that encroachment was not visible on the plans and was allowed to happen.

Mr. Enos responded that he had good observation and I am not sure about this alleged approval that was verbally given to the owner of the home...whether it happened or not, I don't know. It appears that sometime in March 2009 when the supposed approval was given, that the owner just directed the landscape architect and engineer to do it. I don't know that the contractor just didn't go out and do it and then play catch up with the plans and then it finally shows up at city hall showing the encroachment.

Larry Spicer, noted that it was possible.

Chair Trover introduced the third public speaker, Essi Shahandeh, from Essi Engineering. Mr. Shahandeh explained the process that he went through to get his verbal approval and "as built plan". He noted that he was told he had approval by the landscape architect and he spoke to the city to get approval. He presented the plan to the City Engineer and was told everything was fine and to wait until the project was complete to submit the "as built plan". So that is what we did. At that time we had gone back and forth to the City so many times with changes.

Larry Spicer asked if the status now is that the owner can not get a certificate of occupancy.

Mr. Shahandeh responded, yes.

Larry Spicer asked if the maximum encroachment was 18 inches and Mr. Shahandeh responded, no, the maximum is 3 ft.

Chair Trover requested that the gentlemen from the public exit the room so the Board can go into closed session, item 4.0 on the agenda.

4.0 Closed Session – One matter scheduled

Commenced closed session at 3:20 on the Mitigation matter which consisted of a report from the Executive Director on a Conservation Easement encroachment issue. Adjourned closed session at 4:05.

5.0 Action Items - public hearing

5.1 Resolution 2011-13 approving a local assistance grant to the Friends of the Desert Mountains for the acquisition of approximately 19.90 acres (APNs 522-070-015, 522-080-017 and 522-080-054) in the HWY 111/I-10 and Whitewater Floodplain Conservation Area.

Kevin McKernan explained that this is continuation of the acquisitions that were approved at the March meeting where the Governing Board was briefed about the HWY 111/I-10 Conservation Area and the funding situation prior to the freeze on bond funds. Information about the appraisal process was also provided and subsequently grants were approved for the acquisition of 2 two parcels in the Edom Hill area at the July meeting and another two at the September Meeting. Since then, an additional land owner has expressed interest in selling their parcels located in the HWY111/I-10 Conservation Area. Kevin McKernan referred the Board to the map in the agenda and explained that the Friends has requested that the Conservancy approve a local assistance grant for \$116,000 plus closing costs, pending board approval for the acquisition of three parcels consisting of approximately 19.90 acres in the HWY111/I-10 area. These parcels belong to landowners who have been identified as willing sellers.

These parcels have been previously identified and approved by the board, STO and DOF as outlined in CVMC's current project list. These parcels have also been appraised using USPAP standards and the appraisal was reviewed and approved by an independent qualified appraiser.

Chair Trover asked if there was any further discussion on the item. Since there was none she asked for a motion to adopt resolution 2011-13. A motion was made and seconded (Spicer/Hutcheson) to adopt the motion. The motion passed with an "aye" vote of 13 Board members and one abstention by Joan Taylor who thought she may have a conflict of interest since she sits on both the Conservancy board and the Friends board.

5.2 Resolution 2011-14 approving a local assistance grant to the Friends of the Desert Mountains for acquisition of approximately 5.0 acres in the Stubbe Canyon Conservation Area.

Kevin McKernan explained that the proposed 5.0 acre acquisition in the Stubbe Canyon Conservation Area builds on previous efforts in this area to protect important habitat and natural processes as seen on the map below. The landowner was originally approached late in 2010 with an offer to purchase but was not interested in selling at that time. However, he recently

approached the Friends of the Desert Mountains with an offer to sell at the originally appraised price.

The Friends has requested that the Conservancy approve a local assistance grant not to exceed \$37,000 for the acquisition of the parcel consisting of approximately 5.0 acres in the Stubbe Canyon Conservation Area (APN 520-030-004). This parcel belongs to a landowner who has been identified as a willing seller.

These parcels have been previously identified and approved by the board, STO and DOF as outlined in CVMC's current project list. These parcels have also been appraised using USPAP standards and the appraisal was reviewed and approved by an independent qualified appraiser.

Chair Trover asked if there was any further discussion on the item. Since there was none she asked for a motion to adopt resolution 2011-14. A motion was made and seconded (Benoit/Hutcheson) to adopt the motion. The motion passed with an "aye" vote of 12 Board members one abstention by Joan Taylor who thought she may have a conflict of interest since she sits on both the Conservancy board and the Friends board. Buford Crites stepped out of the meeting and was not available to vote on this item. The motion passed.

- 5.3 Resolution 2011-15 approving a local assistance grant to the Friends of the Desert Mountains for acquisition of approximately 30.0 acres in the Santa Rosa Mountains Alluvial Fan Area.

The board was briefed on and approved a motion expressing a high priority in protecting the alluvial fans of the Santa Rosa Mountains at the May 9, 2011 board meeting. CVMC participation in acquisitions in the area, dates back to Su Hai (a 5,400 acre partnership acquisition among BLM, WCB, and CVMC in 2003), plus three grants to Friends for acquisitions in Sections 22, 25 and 27, and last year's LOH property acquisition in Sections 7 and 8 by BLM, WCB, and CVMC (matching funds for section 6 grant). With the acquisition from TPL, and subsequent acquisition by the Friends through local assistance grants, approximately 90% of the total conservation needs in that area will be completed.

The proposed 30 acre acquisition provides a key access linkage and control between two of the recent Desert Ranch acquisitions and further protects the significant cultural, geological and biological resources in this priority area. The map below outlines the recent 1,342 acre Desert Ranch acquisition, which has now in escrow and due to close by the end of November and where this key 30 acre parcel (highlighted in blue) is located in broader context.

The Friends has requested that the Conservancy approve a local assistance grant not to exceed \$196,000 for the acquisition of the parcel consisting of approximately 30.0 acres in the Santa Rosa Mountains Alluvial Fan Area (APN 755-290-005). This parcel belongs to a landowner who has been identified as a willing seller.

This parcel has been previously identified and approved by the board, STO and DOF as outlined in CVMC's current project list. This parcel has also been appraised complying with USPAP standards and the appraisal was reviewed and approved by an independent qualified appraiser.

Chair Trover asked if there was any further discussion on the item. Since there was none she asked for a motion to adopt resolution 2011-15. A motion was made and seconded (Benoit/Moller) to adopt the motion. The motion passed with an "aye" vote of 13 Board members one abstention by Joan Taylor who thought she may have a conflict of interest since she sits on both the Conservancy board and the Friends board.

5.4 a Pursuant to Government Code section 11125. 3 (a) (2), the Board may consider a request from Staff to take action on an item of business not appearing on the initial internet posted agenda. In order to take action, Board members must find that the matter needs immediate action.

Kevin McKernan explained that this was a late agenda item that we received in the 11th hour from a landowner that we work very closely with and has helped us facilitate purchases in that area. She owns this piece herself and it was a mistake on the part of Staff for not getting her an offer letter in time. There was a delay in receiving her signed vacant land purchase agreement and because we sent the agenda out a little early this time, this project just missed inclusion into the original agenda that was sent out. We sent a revised agenda a few days later to include this item but it still did not make the 10 day Bagley Keene timeframe to allow the Board to review the item. This is in the same neighborhood as the previous agenda item and will help us to control access and is a key access linkage and control between recent Desert Ranch acquisitions and further protects the significant cultural, geological and biological resources in this priority area.

Chair Trover noted that we first have to address the issue as to whether this item requires immediate action.

Supervisor Benoit noted that what was just explained did not resolve his concerns about this being an item that needs to be addressed immediately. We are talking about a person that we do business with regularly and nothing in what you just said warrants immediate action. So we are hurrying up for the benefit of someone we do business with all the time.

Kevin McKernan noted that staff is taking full responsibility for not getting this on the original agenda. The purchase agreement came in the day after we sent it out and we sent it out a day early. I fully respect your concerns and I am willing to pull the item until the next meeting. Although, she is willing to sell her property now and the Board was briefed on and approved a motion expressing a high priority in protecting the alluvial fans of the Santa Rosa Mountains at the May 2011 board meeting.

Larry Spicer moved that we bring it to the board, and acknowledge this is a little out of the ordinary, but my motivation for motioning is that we have a willing seller and I would like to see us move on that.

Supervisor Benoit added having no more justification than I had for what I said, I will second the motion.

Chair Trover asked Laurie Pearlman if we can do this based on the justification or must we find immediate necessity.

Laurie Pearlman responded that the Board must find that it needs immediate attention. The basis can be that time is of the essence.

Larry Spicer rephrased his motion to add that time is of the essence.

Chair Trover asked if there was any further discussion on the item. Since there was none she asked for a motion to add item 5.4b to the agenda. A motion was made and seconded (Spicer/Benoit) to adopt the motion. The motion was **not** passed by the following roll call vote: 10 “aye” votes, 3 no votes, Karin Messaros was not available to vote because she left the meeting early and one abstention by Joan Taylor who thought she may have a conflict of interest since she sits on both the Conservancy board and the Friends board.

- 5.4 b Resolution 2011-16 approving a local assistance grant to the Friends of the Desert Mountains for acquisition of approximately 10.0 acres in the Santa Rosa Mountains Alluvial Fan Area

The Board voted not to move forward with Item 5.4 b at this meeting so it will be added to the January 2012 meeting agenda.

- 5.5 Resolution 2011-17 approving a local assistance grant to the Friends of the Desert Mountains for Mirada Trails Maintenance Agreement.

Kevin McKernan explained that the Conservancy has an ongoing trails maintenance agreement with the Villas of Mirada Development and the City of Rancho Mirage on the Conservation Easement land surrounding the development. In the agreement dated December 2004 the “Developer agrees to cause such Association to provide an annual payment of \$5,000 to Conservancy (beginning in the year in which Developer receives its permit to commence grading for the Mirada Villas Project), or another entity acceptable to Conservancy, to pay the cost of maintaining trails in and over Conservation Easement Lands. Conservancy agrees to give priority to the maintenance of trails in areas adjacent to the Mirada Villas Project.” The Conservancy has collected the \$5000 per year since 2006 and now has accumulated \$30,000 to be used for the trails maintenance. The trails system consists of 3 trails surrounding the Villas of Mirada Development. A little over a year ago the Conservancy assessed the trails and determined that they required some maintenance. Due to the Geary Hund’s retirement and the State hiring freeze, the Conservancy does not have the staff to perform the maintenance or further assess and monitor the trails to meet the terms of the agreement and has decided to award a local assistance grant out of this account to an outside entity to perform these tasks. The Friends of the Desert Mountains (Friends) has the capacity through the National Monument Trail Stewards to complete the tasks required by the Conservancy’s existing agreement with the Villas of Mirada. This concept would be beneficial for both agencies as the Friends is already participating in the development of the National Monument Trails Map, in conjunction with many other agencies and entities. The local assistance grant would also help to implement one of the Friends priorities of Trail Planning and Development in the Coachella Valley. The planning effort will ensure that the trails are well maintained, safe, accessible and meet all Rancho Mirage and National Monument policies and regulations for recreational trails.

The Friends has requested that the Conservancy approve a local assistance grant not to exceed \$29,000 to provide trails assessment, planning and maintenance on the Mirada Trails System. The Conservancy will disburse grant funds based on actual time and materials as documented by the Friends.

Chair Trover asked for clarification on the term assessment planning and maintenance is there is a completion term that would be covered by this 29K?

Kevin McKernan responded that the term will be for 1 year with the option to extend as agreed by both parties.

Supervisor Benoit asked if they have been collecting the funds for 5 years.

Chair Trover clarified that CVMC has been collecting the funds.

Supervisor Benoit asked if we are going to spend it all in one year.

Kevin McKernan clarified that the maintenance has been deferred for the past 5 years and we get the \$5000 annually in perpetuity. So we have not done any of the maintenance and need to perform the deferred maintenance and we are only appropriated to keep up to \$29K in this fund at any given year. An assessment has been completed and we have waited until the fund builds up so we can contract to perform the work. We have also been working with the Rancho Mirage Trails committee making sure they have input into the process. There are some signs that have been long awaited to be put up and that will be pulled into this scope of work. Volunteer Services Coordinator with the Friends will be coordinating with the committee.

Larry Spicer asked; do I understand that this is a single contract.

Kevin McKernan responded that this is a local assistance grant.

Larry Spicer asked if this was an RFP?

Kevin McKernan responded that it was based on the organizations in the valley who have the ability to perform the work. The Friends works with the junior trail guides program and this is a good opportunity to provide them with training and trails maintenance tasks while at the same time get the deferred maintenance performed on the trails system. Maybe Jim Foote can speak about this.

Larry Spicer asked if we are OK to use a single source entity to perform this work.

It is not a contract, it is a grant and the same as our acquisitions, there are not a whole lot of entities available to compete for these funds.

Jim Foote, Monument Manager, this is the first I have heard of the project. It does commit National Monument Staff. I am concerned that there is a nexus here that this not public land so there is no tie here because these trails are on city land which is non federal property. And then so we are clear that the volunteers have to be working for the Friends and not under the BLM volunteer agreements. Should they be injured there would be an issue with

workman's compensation. So the Friends would need to revisit this to see if they are willing to take on the liability for service projects such as this.

Kevin McKernan said that the Friends Board reviewed and approved the grant so I have to assume they took your concerns into account. To my knowledge it was presented to us that they will use Friends volunteers and staff to perform the work.

Chair Trover asked Jim Foote if he was comfortable with the Board taking action on this today.

Jim Foote said he was fine with it. As long as the volunteers are signed up through the Friends and not BLM. I think this is a good project for the volunteers.

Chair Trover asked if there was any further discussion on the item. Since there was none she asked for a motion to adopt resolution 2011-17. A motion was made and seconded (Hutcheson/Moller) to adopt the motion. The motion passed with an "aye" vote of 11 Board members one abstention by Joan Taylor who thought she may have a conflict of interest since she sits on both the Conservancy board and the Friends board. Buford Crites stepped out of the meeting and was not available to vote on this item. Karin Messaros left the meeting early and was not present to vote on this item.

5.6 Adoption of 2012 meeting schedule.

Chair Trover asked any additions/deletions or changes to the meeting schedule for 2012. There was one change to the schedule which changed the date for the May meeting to May 14 instead of May 7 since it is the 2nd Monday of the month. She asked for a motion to adopt the meeting schedule. A motion was made and seconded (Benoit/Moller) to adopt the motion. The motion passed with an "aye" vote of 11 Board members present.

6.0 **Reports**

6.1 Written Reports.

Chair Trover asked if there were any discussion. Kevin McKernan provided the Board an update on recent acquisitions.

6.2 Board Member comments and reports from Conservancy member agencies.

Chair Trover asked if there were any discussion. There was none.

7.0 **Adjourn to the January 9, 2012 meeting**

A motion was made and seconded (Benoit/Konno) to adjourn the meeting. The meeting was adjourned without objection at 4:25 p.m.