

Memorandum

To : The Conservancy
The Advisory Committee

Date: April 25, 2011

From :  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

Subject: **Agenda Item 14: Consideration of revised resolution concerning public benefits program associated with Coastal Development Permit application numbers 4-10-040, 4-10-041, 4-10-042, 4-10-043, 4-10-044, 4-10-045 and 4-10-046 (formerly application numbers 4-07-067, 4-07-068, 4-07-146, 4-07-147, 4-07-148 and 4-08-043) and authorizing entering into an agreement to secure such public benefits, Sweetwater Mesa, unincorporated Malibu area.**

Staff Recommendation: That the Conservancy endorse a proposed public benefits program offered by the applicants of Coastal Development Permit application numbers 4-10-040, 4-10-041, 4-10-042, 4-10-043, 4-10-044, and 4-10-045 (formerly application numbers 4-07-067, 4-07-068, 4-07-146, 4-07-147, 4-07-148 and 4-08-043) and authorize entering into an agreement to secure such public benefits.

Background: The six subject Coastal Development Permit applications to the California Coastal Commission were addressed by a Conservancy letter to the Commission dated November 2009. The letter raised numerous concerns with the projects. The applications are for a total of five single family residences served by a new common roadway, a water line from an offsite area, and an internal lot line adjustment. Some of the issues raised in that letter, most notably physical geological feasibility, have been addressed to staff's satisfaction.

Representatives for the applicants approached staff to formulate a substantial public benefits package to augment already proposed mitigation measures if the projects are approved by the Commission. Los Angeles County already approved the projects as individual plot plan projects with Categorical Exemptions. Staff engaged in the formulation of the program. The basic program framework consists of: (a) deed restriction areas around the proposed houses, (b) conservation easement over approx. 97 acres (c) \$750,000 in funding for the acquisition and development of the Coastal Slope Trail between the subject project eastward to the Mountains Recreation and Conservation Authority's Tuna Canyon Park, (d) dedications of key Coastal Slope Trail easements at no public cost over three offsite parcels (Carbon Mesa parcels) with development areas in the City of Malibu, and (e) \$250,000 of pre-acquisition and trail design services.

The proposed deed restricted areas are shown on the attached figure prepared by the applicant's engineer. Also find attached the draft Public Benefits Agreement Term Sheet, draft OTD for the Carbon Mesa Coastal Slope trail, map depicting location of pads on Carbon Mesa lots,

map depicting proposed Coastal Slope Trail alignment, draft letter of non-opposition for Carbon Mesa parcels development.

Since the January 24, 2011 meeting of the Conservancy when acceptance of the Public Benefits Program was deliberated, staff has worked to modify the Public Benefits Program term sheet to further define what types of improvements can be constructed within the fuel modification zone and when the program benefits transfer and vest.

Elements of Public Benefits Program

1. Dedication of deed restriction over property located between the first 100 feet of the fuel modification zone and the conservation easement area as depicted on the attached map of the project with reserved right to make improvements therein subject to the approval of the Conservancy's Executive Director and subject to Commission approval.
2. Dedication of deed restriction over 100 foot wide fuel modification zone with reserved right to make certain defined future improvements subject to Commission approval.
3. Dedication of conservation easement over remainder of the lots with limited reserved rights consistent with standard conservation easements.
4. Dedication Coastal Slope Trail over three Carbon Mesa lots.
5. Grant of \$750,000 to acquire or improve the Coastal Slope Trail easements.
6. Commitment to pay \$250,000 for design and acquisition services.
7. Dedication of Coastal Slope Trail over Sweetwater Mesa project area.

MRCA/Conservancy Obligations

1. The Conservancy and MRCA to take a neutral position on the project but may ask the Commission to consider its 2009 comment letter. The letter is attached.
2. The Conservancy to support the Public Benefits Program by resolution and in writing and by speaking in favor of the Public Benefits Program.
3. The Conservancy and MRCA to not oppose development of a single family residence on each of the three pads depicted on the attached Carbon Mesa exhibit.

Escrow , Recording and Vesting of the Public Benefits Program Elements

1. Sweetwater Offers to Dedicate: a) deed restriction over property located within second 100 foot fuel modification zone on each lot; b) deed restriction over property located outside the approved development area within the first 100 feet of fuel modification; c) Coastal Slope Trail easement; and, d) conservation easement.
 - i) OTDs will be deposited into an escrow prior to the Commission hearing;
 - ii) if the Project is approved by the Commission escrow will cause the offers to dedicate to be recorded;
 - iii) upon Final Approval of the Project, which is defined below, the offers to dedicate will vest.
2. Carbon Mesa Coastal Slope Trail Easement Offers to Dedicate:
 - i) OTDs will be deposited into an escrow prior to the Commission hearing;
 - ii) if the Project is approved by the Commission escrow will cause the offers to dedicate to be recorded;
 - iii) upon the earlier of either Final Approval of the Project, which is defined below, or final action of the City of Malibu approving development on a Carbon Meas lot owners pad the offer(s) to dedicate will vest.
3. \$750,000 funding for Coastal Slope acquisitions and/or improvements:
 - i) letter of credit securing the payment will be deposited into escrow prior to Commission hearing and will be released by escrow after Final Approval..
4. \$250,000 service contract will be deposited into escrow prior to Commission hearing and will be released by escrow after Commission Approval..

Final Project Approval Required for Vesting OTDs

Final Approval is defined in relevant part as follows:

“Final Approval is obtained to construct five new single family residences ...as proposed in California Coastal Commission coastal development permit applications 4-10-040, 4-10-

041, 4-10-42, 4-10-043, 4-10-44, and 4-10-045 (Sweetwater Mesa Projects). Final approval of the Sweetwater Mesa Projects means that the project, **as conditioned by the California Coastal Commission** or other administrative or regulatory body **and as accepted by the applicants has received approvals from all government agencies...** which is: i) final and not appealable; ii) all judicial challenges or administrative appeals are resolved in favor of the Projects; and, iii) the statute of limitations for challenging any approvals of the Projects has run. **Notwithstanding the foregoing, if one or more the project applicants does not seek to obtain final approval of that applicant's Sweetwater Mesa Project, this offer to dedicate shall vest if all the remaining applicants receive Final Approval..."**