

EXECUTIVE OFFICER SUMMARY REPORT
December 2, 2005

ITEM: 11

SUBJECT: **INAJA PROPERTY DONATION**

Michael Beck (Chairman, San Diego River Park Foundation and San Diego Director, Endangered Habitats League) will present an overview of a potential Inaja property donation and his recommendation for the Conservancy to take title to the property. The Board will consider adoption of a resolution (*tentative Resolution 05-28*) authorizing the Executive Officer to proceed with acceptance of the Inaja property. The Conservancy would establish an agreement with the San Diego River Park Foundation for long-term management of the property. (*Michael Beck*)

PURPOSE: Consideration and possible adoption of tentative Resolution 05-28.

DISCUSSION: The White Trust property is located near Inaja, west of Highway 78/79 between Wynola/Ritchie Road and Meyer's Orchard in the headwaters of the San Diego River watershed. (See Supporting Documents 2 and 3.) Coleman Creek, a tributary to the San Diego River, runs through the property. It appears that the property is partially located within the Conservancy's legal jurisdiction. More precise information will be presented at the December 2, 2005 meeting.

In his last will and testament, the late Mr. Dick White requested that approximately 100 acres of his 220-acre property be preserved in perpetuity by the San Diego River Park Foundation (Foundation). However in order to accept the donated land, the Foundation (not the decedent's estate) must raise approximately \$30,000 to \$50,000 to cover the costs of a boundary line adjustment and the creation of two new legal parcels under the California Subdivision Map Act (the law that governs the subdividing of land). Since the Conservancy is not constrained by the Map Act (because it's a public entity), the Foundation sought the San Diego River Conservancy's

assistance to facilitate the donation of the property for conservation purposes.

At this time, it is believed that the Conservancy is best positioned to most effectively transition the property. In the proposed partnership, the Conservancy would fund the transaction costs required to sever the donated portion of the current two-parcel ownership into a newly created conservation parcel. The Conservancy's transaction costs would include, at a minimum, the cost of a Phase 1 Environmental Site Assessment and project review by State staff including a formal review by the California Department of General Services (DGS) and approval by the Public Works Board (PWB). A land survey has already been conducted and an appraisal is not necessary for the *Conservancy's purposes* (since the acquisition is a donation). See estimate of the Conservancy's total costs below (under Fiscal Impacts).

As currently proposed, the Conservancy would take title to the donated property and the Foundation would commit to provide for its long-term maintenance. However in the interest of ensuring maximum consistency with the wishes of the donor, the mission of the Foundation, and the Conservancy's authorizing legislation, various alternative ownership and long-term management scenarios for the property are also under investigation. Based on the outcome of those investigations, tentative Resolution 05-28 authorizes the Executive Officer to accept the donation or to facilitate the donation to another entity for conservation purposes. The Resolution also establishes that the Conservancy will not accept the donation without a long-term agreement for maintenance, Department of General Services review, and Public Works Board approval.

LEGAL CONCERNS: (1) ***Is the Conservancy authorized to accept property (or pay costs to facilitate the donation to another entity) if the property is not located wholly within the Conservancy's legal jurisdiction?***

I have asked Deputy Attorney General Hayley Peterson to prepare a written legal opinion for the Conservancy answering this question. Ms. Peterson will also be prepared to address the issue orally at the December 2 Board meeting.

(2) ***To what extent would the Conservancy assume liability for the donated property (whether improved or unimproved)?***

I have also asked Ms. Peterson to address the liability issue for the Board on December 2. It is my understanding that to the

extent that the land remains unimproved, the State's liability is limited pursuant to Government Code 831.2 which grants the government limited immunity¹ to encourage public access.

(3) Which Conservancy funds can be used for this purpose?

As you know the River Conservancy currently has an Interagency Agreement (IAA) with the State Coastal Conservancy (SCC) for the provision of legal, administrative, and program services in the amount of \$298,000. Recall that the money in this IAA is the unused portion of the River Conservancy's support budget for FY 03/04 and 04/05 (original source is Environmental License Plate Funds). The IAA will pay for a large portion of the acquisition costs (approximately \$17,000 in attorney fees). Other, outside services (e.g., DGS review, PWB approval, Phase I Site Assessment, etc.) will also be contracted through the same IAA with State Coastal Conservancy.

FISCAL IMPACT:

As proposed, the Conservancy would cover the costs to accept the donation directly or to facilitate the donation of the property to another entity. In either case, costs are believed to be equivalent. Although total costs to the Conservancy are still under assessment, current estimates are shown below.

Phase 1 site assessment	\$ 3,500
All State Reviews and approvals	\$ 25,000
Survey (completed)	\$ 0
Appraisal (not needed?)	\$ 0
Other	\$ 0
Grand Total (approx)	\$28,500

CENTRAL ISSUE:

In light of the costs, liability, and other issues, is it in the Conservancy's best interest to accept the donated property or to facilitate the donation to another entity? The following discussion identifies key arguments both in favor and in opposition to the Conservancy accepting the donation (or facilitating the donation to another entity.) The discussion assumes that the Conservancy has legal authority to do so (i.e., all jurisdictional issues have been resolved).

Arguments in Support:

¹ Government Code 831.2 provides "Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach". In general, the Legislature has provided a statutory immunity from liability for public agencies operating recreational programs under a variety of circumstances. (see Gov. Code § 831.2 -831.7).

1. Helps the Foundation. The Foundation is our most important partner and has requested our assistance.

The Conservancy was created to develop the River Park in concert with our partners. One important role of the Conservancy is to bring resources to the table to facilitate our partner's progress towards our common objectives.

2. Ensures Property is Secured for River Park

Without the Conservancy's assistance, the property donation may not be successful. The parcel is a beautiful riparian habitat and valuable resource that will provide accessible wilderness to the public. As such this parcel would be an important addition to the River Park. Further, this donation represents the first property in the headwaters designated for the River Park that is partially within the Conservancy's jurisdiction.

3. Encourages Future Land Donations

Establishes precedent and protocol to simplify the process by which donors can contribute land to the River Park.

4. Builds Track Record /Demonstrates "Value Added"

Assuming we have legal authority to accept the property, the Conservancy can take credit for helping to facilitate this 100-acre donation to the River Park and the Conservancy will hold title to the property (our first land holding). The transaction clearly demonstrates the "value that the Conservancy has added" as well as overall progress towards common objectives.

5. Defines Important Conservancy Role – Facilitating Acquisitions by Providing Required "Upfront Costs"

One of biggest obstacles to land acquisition faced by nonprofits and other partners is how to secure the "upfront" funds needed to move the project forward. Typically nonprofits and other partners are strapped for cash and unable to use bond or grant monies for this purpose. Providing funding to our partners for upfront costs could be an important and unique role for the Conservancy to play in the overall River Park building effort.

6. Consistent with Authorizing Legislation and Mission

Assisting our partners with the donation of quality land for the River Park is fully consistent with our enabling statute. Holding lands in fee title accomplishes, in part, the Conservancy's mission.

7. Promotes Good Will and Trust between Conservancy and its Partners and Local Landowners

Building a trusting relationship with the community is crucial to the Conservancy's success.

8. Long-Term Management is Assured

Another major obstacle to land acquisition in general is how to pay for and provide management of the property in perpetuity. The Inaja parcel donation comes to the Conservancy with a guarantee for long-term maintenance in the form of a contract with the Foundation. The Conservancy will work with the Foundation to develop the management contract language as well as a property management plan for the Inaja property. The Foundation also plans to conduct a species survey of the parcel.

Arguments in Opposition:

1. Transaction Costs of Approximately \$28,000-\$30,000

The Conservancy pays the one-time transactions costs identified above and currently estimated at approximately \$30,000.

2. Assumption of Liability

The Conservancy assumes liability for the property. Ms. Peterson is currently assessing and will explain the type and extent of Conservancy liability associated with owning this property.

3. Assumption of Ownership Responsibilities

With the exception of long-term land management (the most important responsibility), the Conservancy assumes any additional responsibilities associated with property ownership (currently undefined).

4. Best Use of Limited Staff and Resources?

It's always important for the Governing Board to consider and understand "tradeoffs" and to agree that continuing to pursue this transaction is the best use of the Conservancy's very limited staff and resources.

5. Inaja Decision Pre-dates Adoption of Five-Year Infrastructure /Strategic Plan

With our consultant, I am currently working on the draft Five Year Infrastructure /Strategic Plan for the Conservancy and plan to present it to the Board in February 2006. After extensive Board discussion and consensus, the plan will describe the Conservancy's policies with respect to the role the Conservancy should play in acquisition

opportunities e.g., hold direct title to property vs. provide funding to allow partners to acquire property (vs. the range of options in between). The Inaja property decision will likely pre-date the Board's formal discussion and policy setting decisions for the Strategic Plan.

6. Inconsistent with State Coastal Conservancy (SCC) Model

As you will recall, Board Member Sam Schuchat (Executive Officer, State Coastal Conservancy) has advised the Governing Board of the River Conservancy to carefully consider land ownership decisions. Even with a large staff and significant resources, the SSC model for efficiency and success generally involves assuming the "funder", rather than the "owner", role in land acquisition deals. Other state conservancies do both. For example the California Tahoe Conservancy both funds and owns property.

ALTERNATIVES:

Consider alternative scenarios such as the Conservancy taking "interim" (length to be defined) title to the property with the stated intent to eventually transfer title to the Foundation in the future. It is my understanding that this approach would be consistent with the Foundation's and decedents ultimate wishes.

If it is determined that the Conservancy does not have legal authority to accept this property due to jurisdictional issues, I will present a few appropriate alternatives at the meeting for the Board's consideration.

SUPPORTING DOCUMENTS:

1. Tentative Resolution 05-28.
2. Map of White Trust/Inaja property and vicinity
3. Map of proposed new parcels

RECOMMENDATION: Discuss and take action as appropriate. Assuming it is determined that the Conservancy does have the legal authority to accept the property, adopt tentative Resolution 05-28 with amendments as needed.