



Council Agenda Report

To: Mayor Kearsley and the Honorable Members of the City Council
Prepared by: Christi Hogin, City Attorney
Date prepared: January 5, 2007 Meeting date: January ~~8~~¹⁷, 2007
Subject: Update on status of litigation over SMMC's PWP and consideration of settlement proposal

RECOMMENDED ACTION: Provide direction to the City Attorney with respect to potential settlement

FISCAL IMPACT: If settlement is successful, the City will save funds otherwise required to defend and prosecute the lawsuits filed in connection with the PWP. The City's current budget is sufficient to cover these litigation costs.

DISCUSSION: As you know, the Santa Monica Mountains Conservancy (the Conservancy) and Mountains Recreation Conservation Authority (MRCA) approved a Public Works Plan that, among other things, proposes to obtain approval for improvements to the Conservancy's parks and recreation areas, allow various uses, and endorse a trail acquisition plan. The Plan may be viewed on the MRCA's website at <http://www.mrca.ca.gov/pwp.html> and the Planning Division also has some copies of the draft plan. The City has determined that the plan itself is problematic for various reasons, including among others, the fact that it permits camping in Escondido, allows extensive event uses at the Ramirez Canyon (Streisand Center), and proposes trails that do not correspond with the City's Master Trails Plan. In many respects the plan is inconsistent with the LCP. However, many aspects of the plan are positive and its overall goal – improved recreation areas linked by a trail system – is one share by the City.

Aside from the content of the plan, The City has expressed its concern over this unusual deployment of a "public works plan." The proposals in the "plan" (such as adding parking spaces, restroom, trailheads, camp sites) appear to be simply development within the meaning of the Coastal Act and therefore simply subject to obtaining a CDP consistent with the LCP. In the past the Conservancy has received its CDPs from the Coastal Commission. Now that the City has a certified LCP, the Conservancy would be required to apply to the City for a CDP. In lieu of that, the

Conservancy elected to propose a public works plan, which is subject to approval by the Coastal Commission, not the City, although the Commission must "consult" with the City.

The Ramirez Canyon Preservation Association (a group of Ramirez Canyon homeowners) has been actively opposing the plan and is pursuing litigation to challenge the Conservancy's use of the Streisand Center. The Ramirez homeowners sought an injunction in a Superior Court to enforce a previous judgment, which motion was denied on procedural grounds. The Ramirez homeowners then filed a writ of mandate with the appellate court on December 21, 2006, seeking to challenge that ruling; but the Court of Appeal denied that writ the next day, December 22. The Ramirez homeowners still have time to appeal the ruling, if they choose. They may also file a new lawsuit.

Litigation. The Santa Monica Mountains Conservancy and the Mountains Recreation and Conservation Authority filed a lawsuit against the City seeking declaratory relief (that is a judicial declaration of the rights and responsibilities of the parties) on three matters: whether the Conservancy is immune from local land use regulations; whether the current uses of Ramirez are consistent with the LCP; whether a CDP is required for the current uses as Ramirez. This lawsuit was served by mail on the City January 4, 2007. In response, I will prepare an answer but also a cross-complaint for an injunction asserting violations of the Coastal Act. At Council direction, I have also prepared and will file the lawsuit that addresses the two claims that arose from the Conservancy and MRCA's approval of the PWP: namely, that the SMMC/MRCA violated CEQA and that the PWP exceeds those agencies' authority (because of LCP inconsistencies, provisions that go beyond the scope of PWP and procedural irregularities in its adoption).

Settlement. This past couple of weeks has also brought some encouraging discussions with the Conservancy and MRCA with respect to a possible settlement of the lawsuits and the dispute over the PWP. I am encouraged by the current state of the settlement proposal. The SMMC and the MRCA have called a special meeting for next Friday for the purpose of considering a settlement proposal. I am presenting this to the City Council tonight for feedback with respect to the proposal.

As discussed above, the City's primary legal objection to the PWP was procedural. By using the PWP and not an LCP amendment or CDPs, the SMMC/MRCA believed it had charted a course to project approvals that avoided the City almost entirely (save the Coastal Commission's duty to "consult" with the City). By employing the mechanism of an LCP amendment the City would be able to assume the role reserved in the Coastal Act for local government with respect to the sort of planning contemplated by the substance of the PWP. During the hearings on an LCP amendment, the City would be able to work out with the Conservancy/MRCA policies that achieved our shared goals and did not otherwise impair the City's land use policies.

Of course, one of the pressing issues underlying the PWP is the uses of Ramirez Park (the Streisand Center). Thus, in order to address that issue in the interim period while we undergo the process that we hope will ultimately resolve this matter, the City and the SMMC/MRCA would agree to suspend the litigation and stipulate to a preliminary injunction (which is a court order) that would be in effect while the Conservancy seeks an LCP amendment from the City. The Injunction would limit the Conservancy's uses in Ramirez, essentially maintaining *status quo*; the heart of the injunction would read as follows:

That the Conservancy and the MRCA be enjoined and restrained pending a final judgment in this action from using the property known as the Ramirez Canyon Park other than for the following ongoing activities (and necessary associated activities), which specifically do not include renting out the facility for private events and/or parties:

- A. Administrative and government offices for up to 15 employees
- B. A residential caretaker and his family
- C. Two special programs a week for disabled youth and/or for seniors
- D. Occasional employee training programs
- E. On-going property maintenance

The City would also be enjoined from taking any enforcement action or proceeding against the Conservancy, on the above activities, under the LCP, Coastal Act or City ordinances, except that the City may enforce the stipulated Preliminary Injunction. The exact language is still being worked out.

While that injunction is in place, within agreed timeframes: the following would occur:

The Conservancy and the MRCA will each meet and rescind their respective approvals of the PWP. (NOTE: this action will essentially moot our CEQA and PWP causes of action. As a result, we will likely dismiss that lawsuit as soon as this action is taken)

The Conservancy will apply to the City for an LCP amendment that would incorporate the substance of the PWP (the trails to link up the recreation areas, the improvements in the parks, the uses), except that the PWP would not include camping in Escondido but instead propose camping in Charmlee. The LCP amendment would also propose merging the Park and City shuttles to link up Zuma, Headlands, Charmlee and Corral Canyon.

The City would hold public hearings before the Planning Commission and the City Council and would process the LCP amendment as the City would any amendment. As you know, LCP amendments are subject to certification by the Coastal Commission.

This process outlined here will give the City the full extent of local control afforded by the Coastal Act but, as is always the case, in the end, we will need to address any issues raised by the Coastal Commission. Also note that the LCP amendment will create the uses and development and policies for the SMMC/MRCA properties. Individual projects may still require a CDP. Projects requiring CDPs are subject to CEQA review. LCP amendments are not.

Since this settlement primarily provides for a procedural vehicle, all of the substantive elements of the plan will be debated and considered in the public hearings. As such, only after the hearings and the Coastal Commission action will we know whether this proposal will succeed or fail at resolving the current dispute over the PWP.

Success scenario: If the City Council approves an LCP amendment acceptable to the SMMC/MRCA and the Coastal Commission certifies that amendment as approved by the City or suggests modifications acceptable to both the City and the SMMC/MRCA, the lawsuits are dismissed.

Failure scenario: If the City Council fails to approve an LCP amendment acceptable to the SMMC/MRCA or the Coastal Commission fails to certify the LCP amendment approved by the City Council or the Coastal Commission insists on modifications unacceptable to either the SMMC/MRCA or the City, the parties may resume the litigation.

As indicated above, the Conservancy and the MRCA will meet on Friday to consider this proposal.