



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 4, 2012

Agenda Item 9A
Approvals: _____
City Manager _____
Dept. Head _____
Attorney _____
Finance _____

Department: City Manager
Prepared By: George Scarborough, City Manager

Subject: *LETTER TO WILDLIFE AGENCIES REQUESTING RELEASE OF NCCP FUNDS*

Summary: As a requirement of the Interim Habitat Loss Mitigation Plan (IHLMP) required by the U.S. Fish and Wildlife Service and the California Department of Fish and Game (the Wildlife Agencies) fees have been collected from Talega residential units to mitigate the impacts on the gnatcatcher resulting from the Talega development.

The fee is a \$25 per Talega residential unit perpetual annual payment to be held by the Nature Conservancy until the Wildlife Agencies direct the Nature Conservancy to release the funds.

The original intent of these fees was to assist in the ongoing management of the Southern Sub regional Natural Communities Conservancy Planning Preserve (NCCP). It was expected that the restored and preserved habitat within the Talega development would become part of the NCCP.

Ultimately the NCCP was not established but the obligation to collect funds for the habitat management continues.

The total of these funds held by the Nature Conservancy is \$721,575.

In 2010 the City of San Clemente, the Rancho Mission Viejo, LLC, The Reserve at Ranch Mission Viejo and the Rancho Mission Viejo Land Trust (RMVLT) entered into an agreement to assign the Donna O'Neil Land Conservancy Easement to The Reserve at Rancho Mission Viejo. Among other benefits, the assignment provided improved funding for the management of the Conservancy and critical habitat monitoring.

Section 13 of the agreement provides:

"The City agrees, at no cost to City, to join with the RMVLT in petitioning the Wildlife Agencies to release the NCCP funds from the Conservancy Account to the RMVLT for use on RMV Habitat Reserve lands, and it particular to apply fees collected from Talega residents for use on Richard & Donna O'Neill Conservancy."

Section 12 (c) of the agreement provides:

"If all or a portion of the account is released by the Wildlife Agencies to the RMVLT, then RMVLT agrees to allocate those fees (\$25/household) collected annually in perpetuity from Talega residents for use solely on Richard & Donna O'Neill Land Conservancy."

Attached is a copy of a letter to the Wildlife Agencies requesting the release of the funds. The letter is to be jointly executed by the City and RMVLT.

Recommended

Action: STAFF RECOMMENDS THAT the City Council authorize the City Manager to execute the attached letter on behalf of the City of San Clemente.

Fiscal Impact: None.

Attachments: Draft letter to U.S. Fish & Wildlife Services and California Department of Fish and Game regarding release of Mitigation Fees

Notification: RMVLT
Talega Master HOA
Patricia Holloway

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July 13, 2012

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U.S. Fish & Wildlife Service
6010 Hidden Valley Road
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Ed Pert
Regional Manager
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San Diego, CA 92123-4813

Subject: Mitigation Fees Collected Pursuant to Interim Habitat Loss Permits

Dear Jim and Ed:

Rancho Mission Viejo Land Trust (RMVLT) and the City of San Clemente ("City") are aware that pursuant to certain Interim Habitat Loss Plans and associated 4(d) permits issued by USFWS within the Southern Subregion, certain "Mitigation Fees" have been collected by the County of Orange and other local jurisdictions including the City. For example, the City has collected a \$25 per unit per year fee from the residents of the Talega Planned Community. The City has collected \$721,575 in fulfillment of this agreement.

Per an agreement between USFWS, the California Department of Fish and game (CDFG) and The Nature Conservancy (TNC) dated September 28, 2000 these Mitigation Fees are to be held in trust by TNC until such time as USFWS and CDFG direct TNC to release the funds. The TNC agreement specifies that the Mitigation Fees shall be used "to finance the acquisition and management, including restoration and enhancement, of habitat for the gnatcatcher" (Section 1(a) (3) Page 2, TNC Agreement).

Section 1(b)(4) of the TNC Agreement further provides that:

If the Service and CDFG do not direct the Conservancy to release all funds within the Conservation Account within 5 years after the date of this Agreement, then the Conservancy may transfer the Conservation Account to a non-profit entity located within the NCCP Southern Subregion of Orange County that agrees to the Conservation Account for the purposes stated in this Agreement, provided that the prior written approval of such transfer, and the plans for use of the Conservation Account by the transferee, shall be first obtained for both the Service and CDFG.

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It is our understanding that as of this date, which is well past the five years referenced above, TNC has not received direction from USFWS or CDFG to release the funds in the Conservation Account, therefore the provision cited above is applicable.

At this time, RMVLT and the City respectfully request that USFWS and CDFG direct TNC to release the Conservation Account Funds to RMVLT for the following purposes:

1. Management, including restoration and enhancement of habitat for the gnatcatcher. As you are aware, RMVLT is a 501 (c) (3) non-profit private foundation formed in accordance with the provisions of the Southern Subregion Habitat Conservation Plan (SSHCP) specifically to collect, invest and distribute funding for the maintenance and monitoring of the Southern Subregion Habitat Reserve Lands. Specifically the funds collected by RMVLT are to be used to implement the Habitat Reserve Management and Monitoring Program (HRMP) set forth in the SSHCP. To our knowledge we are the only non-profit with a USFWS approved management and monitoring program for the gnatcatcher in the Subregion, and therefore the only non-profit eligible to receive the funds.
2. Education, including the general public and school children about the importance of preserving California's wildlands. Through our public education and school programs, we provide several thousand visitors a year the opportunity to experience The Reserve at Rancho Mission Viejo and learn about our native habitats, the species that inhabit them and how both need to be preserved and managed.

It has been more than thirteen years since the Talega 4(d) permit was issued and coastal sage scrub impacted. Isn't it time that the Conservation Account funds were put to good use? If we work as partners, as we are in the SSHCP, we believe that we can make positive use of the Conservation Account funds.

We look forward to an opportunity to discuss this further. Thank you.

Sincerely,

Richard Broming
Director

George Scarborough
City Manager

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