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Laurie Collins  
Chief Staff Counsel  
Santa Monica Mountains Conservancy  
Los Angeles River Center and Gardens  
570 West Avenue Twenty-Six, Suite 100  
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RE: Request for Review of Grants SMM-03128, SMM-03123 and NP-02171

Dear Ms. Collins:

On November 3, 2005, you wrote to my office asking that we advise the Conservancy whether the above-referenced grants to the Mountains Recreation and Conservation Authority (MRCA) conformed to the General Obligation Bond Law and Proposition 40. The Conservancy awarded each of these grants to the MRCA in 2003, and for at least two of them (SMM-03128 and NP-02171), the MRCA has completely expended all the funds in conformity with the grant. We understand that the MRCA has spent most of the funds awarded in SMM-03123. Our understanding is that the Conservancy now is requesting our review of these 2003 grants because the Department of Finance raised questions about them in its 2005 audit of the Conservancy's use of bond funds. In responding to Finance, the Conservancy indicated that it would submit these grants to the Attorney General for review.

We note that because the Conservancy issued these grants in 2003, they were not subject to the requirement that the Attorney General review and approve them prior to encumbering the funds. The Legislature first imposed that requirement in the 2004 budget. Therefore, our review of these grants here is not governed by the standards the Legislature wrote into the 2004 budget for prior Attorney General review of grants. However, with regard to grants to the MRCA, the Legislature provided as follows:

The Conservancy shall secure refunds from the [MRCA] of the unencumbered balances of previous years' grants made from the funding authority to the Conservancy. For purposes of this provision 'unencumbered balance' means funds that are not essential to fulfill the obligations of an enforceable, legal and binding contract as determined by the Office of the Attorney General. . . .

(See, e.g., Stats. 2004, Ch. 208, § 2.00, item 3810-301-0005, provision 6.)

### Summary of Conclusions

Had the Conservancy asked our views regarding grants NP-02171 and SMM-03123, we likely would have raised concerns about whether these grants complied with Proposition 40. Because all of the funds allocated to NP-02171 have been expended, the budget language does not impose an obligation on the Conservancy to attempt to secure a refund. However, we understand that a portion of SMM-03123 has not been expended, and the Conservancy should seek a refund of those unexpended funds from the MRCA. In contrast, we find that SMM-03128 is consistent with Proposition 40.

### The General Obligation Bond Act And Proposition 40

We begin our review with the General Obligation Bond Law and Proposition 40. Government Code section 16727, subdivision (a) establishes the general rule on the use of bond proceeds to pay for the costs of constructing or acquiring capital assets. Generally, section 16727 limits the use of bond proceeds to acquiring capital assets which means, in essence, purchasing physical property or major maintenance, reconstruction or retrofitting of a property. Under section 16727, allowable costs also include costs which are "incidentally but directly related to construction or acquisition, including, but not limited to," activities such as planning, management and design.

Where, however, the voters in a bond act have approved other uses of bond proceeds which conflict with the General Obligation Bond Law, the terms of the bond act will control. Proposition 40 incorporates the provisions of the General Obligation Bond Law including section 16727. Proposition 40 dedicates \$40 million to the Conservancy for its use or for grants for the acquisition, development, rehabilitation, restoration or protection of a capital asset that is a land or water resources. Additionally, the Conservancy or a grantee may use Proposition 40 proceeds for preservation of a land or water resource which includes interpretation of such a resource. Finally, Proposition 40 funds can be used for activities which are incidentally but directly related to the acquisition, development, rehabilitation, restoration, protection or preservation (including interpretation) of land or water resources.

None of these grants involves the acquisition or construction of a capital asset. Thus, Government Code section 16727 does not cover them. Our review of them must focus on whether the activities they funded are "interpretation" for purposes of Proposition 40. With this background in mind, we turn to the individual grants.

### Grant SMM-03128

The Conservancy and the MRCA executed this grant agreement in August 2003. The Conservancy granted \$435,960 to the MRCA for "education and interpretation programs." In prior advice to the Conservancy, we have noted that Proposition 40 did not authorize the

Conservancy to use bond funds for education. However, we have also advised the Conservancy that Proposition 40 does contemplate the use of bond funds for "interpretation" which includes expenditures on programs with interpretive functions such as the construction of exhibits, kiosks or signage located at and relating to land, air or water resources. Interpretation can also include docent or ranger programs that interpret the land, air or water resources of, and that are conducted at, the parks under the Conservancy's jurisdiction. We have recognized that a common meaning of "interpretation" is "explanation" which indicates that an interpretive program can have an educational purpose, i.e., "interpretation" can be educational.

The MRCA has summarized the activities that this grant funded as follows:

This grant was used to provide basic interpretive services for Ramirez Canyon Park, Ed Davis Park at Towsley Canyon, the Los Angeles River Center, Temescal Gateway Park, Franklin Canyon Park, and other parks under the Conservancy's jurisdiction that were operated and managed by the MRCA during the 2003/2004 fiscal year. These services provided for the interpretation of land, air and water resources of specific parks under Conservancy jurisdiction, . . . Staff funded by this grant developed and created performance standards and objectives for interpretive materials and programs and evaluated interpretive programs and materials relating to Conservancy parkland; provided direct project management; developed and produced brochures and written materials interpreting the land, air and water resources of specific parks under Conservancy jurisdiction; delivered ranger-and docent-led programs interpreting the land, air and water resources of specific parks under Conservancy jurisdiction.

In addition, the MRCA used funds from this grant to develop displays, kiosk and other wayside exhibits for use in parks such as Ahmanson Ranch, Corral Canyon Trailhead, Joughin Ranch, Hall Beckley Canyon and Heidelberg Park.

Based on the information that the Conservancy has provided to us, we conclude that this grant is consistent with Proposition 40's authorization of expenditures for interpretation including planning and design for interpretation at parks within the Conservancy's jurisdiction. The fact that the grant is labeled as being for educational and interpretation programs does not govern our analysis. Rather, our conclusion is based on the activities funded which all fall within the scope of "interpretation" under Proposition 40.

#### Grant SMM-03123

In July 2003, the Conservancy approved a grant of \$217,980 in Proposition 40 funds to the MRCA for financial support of the Heart of the Park Shuttle project. This shuttle project is a cooperative project involving the National Park Service (NPS), Conservancy, MRCA, California Department of Parks and Recreation, and Los Angeles County Department of Beaches and Harbors. The NPS describes the project as intended to connect 10 federal, state and county park units in the heart of the Santa Monica Mountains National Recreation Area and to increase access

options to the parks while reducing traffic and air pollution. The MRCA has executed a contract in the amount of about \$150,000 with Connex to fund the operating costs of the shuttle during its first year. The MRCA has also committed \$13,000 in projected personnel costs to administer this contract. Additional funding for the project has come from the National Park Service which purchased the shuttle buses and funded the construction of the shuttle stops and installation of wayside displays and interpretive materials. The California Department of Parks and Recreation and Los Angeles County provided onsite construction assistance and continue to provide police services for the shuttle. It is our understanding that the shuttle buses carry interpretive materials for shuttle riders and that Connex drivers have been trained to provide park information to riders.

We recognize that cooperating with other park agencies on means of improving access to the parks of the Conservancy and the other park agencies creates benefits for the agencies and for the public. However, our standard in reviewing the use of bond funds must be the bond act and, where applicable, the General Obligation Bond Law. Under Proposition 40, this grant would be appropriate only if the shuttle operation qualifies as "interpretation." After reviewing the matter, we cannot conclude that the shuttle operation is interpretation pursuant to Proposition 40. We have several reasons for this conclusion. First, while Proposition 40 does permit expenditure of bond funds for interpretation, we have concluded previously that such interpretation must occur at a Conservancy park. Here, while the shuttles may spend some time at shuttle stops in Conservancy parks, it is clear that they will also spend a considerable amount of time on public highways and at other parks that the Conservancy does not own or operate. Second, while the shuttle drivers will have the ability to do some interpretation with regard to Conservancy parks, that will be a relatively small part of their responsibilities. Other responsibilities include the safe operation of the shuttles and interpretation of other parks that the shuttle visits.

Given the relatively small part that interpretation of Conservancy parks will play in the operation of the shuttle and the shuttles will spend a relatively small amount of time at Conservancy parks, we cannot conclude that this grant is a proper expenditure of Proposition 40 funds. Had the Conservancy consulted us prior to entering into this grant, we would have advised it either not to enter into the grant or to restructure the arrangement with the other park agencies so that Proposition 40 funds would be used for purposes related to the Conservancy's parks.

#### Grant NP-02171

In April 2003, the Conservancy granted \$110,000 to the MRCA to contract with the California Institute of Public Affairs (CIPA) to develop an urban outreach strategy. The Conservancy later amended the grant to increase it to \$132,000. In its proposal, CIPA outlined the following tasks to be accomplished as a part of this project:

1. Actively involve the Conservancy in the Fifth World Parks Congress and ensure that the Conservancy has a key role in a follow-up international program on urban outreach;

2. "Plan and begin to develop a regional structure for cooperation on urban outreach" in the greater Los Angeles area;
3. Make recommendations to the Conservancy on how two of its sites can become "prime centers for demonstrating state-of-the-art methods"; and
4. "Explore means of addressing questions surrounding methods and evaluation in order to make a stronger case for urban outreach."

As we have noted above, Proposition 40 dedicated \$40 million to the Conservancy for various activities including interpretation of the Conservancy's parks. We cannot conclude that the activities that this grants funds are "interpretation" for purposes of Proposition 40. For example, the first task listed above is to involve the Conservancy in the Fifth World Parks Congress (which was held in Durban, South Africa). We do not believe that such an activity, however worthwhile, can qualify as interpretation of a land or water resource under Proposition 40.

Similarly, the second task involved beginning to develop a regional structure for cooperation on urban outreach in the Los Angeles area. CIPA's goals for this task included the presentation of the "case for urban outreach to community and political leaders and the media, projecting a vivid regional image for protected areas and their multiple benefits." CIPA also planned to "provide sophisticated expertise in raising, distributing, and monitoring use of funds from governmental sources, foundations, and major business and individual donors." Again, while these may be worthwhile goals, we do not believe they constitute "interpretation" of Conservancy parks.

CIPA explains its third task as follows:

CIPA will recommend how two SMMC sites -- the Augustus F. Hawkins Natural Park and Temescal Gateway Park -- can become prime centers for experimenting with and demonstrating state-of-the-art methods, with the aim of making the Conservancy a world leader in urban outreach.

This task does not appear to involve interpreting the land or water resources of these two Conservancy parks. So, too, the fourth task deals with "addressing questions surrounding methods and evaluation the present difficulties in making a case for funding urban outreach." This task does not address interpreting land or water resources at Conservancy parks.

Our conclusion is that if the Conservancy had sought our advice prior to issuing this grant, we would have advised that the grant did not conform to Proposition 40.

#### Future Actions Regarding SMM-03123 and NP-02171

Although we have concluded that we would have advised the Conservancy against

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entering into SMM-03123 and NP-02171 had we been consulted at the time, that does not end the matter. Pursuant to provision 6 of item 3810-301-0005 of the 2004 Budget Act, the Conservancy need seek refunds from the MRCA of funds that are unencumbered. While we could expend significant effort parsing the question whether the grants in question are "enforceable, legal and binding" contracts as used in provision 6, it is more productive to focus first on whether any unencumbered funds remain. While "unencumbered" is given a specific definition in the budget language, a basic premise of the budget language is that the funds are available for refund – that is, the funds have not been spent already on the activities specified in the grant contracts. Here, our understanding is that all the funds allocated to NP-02171 have been expended. Therefore, no funds involved in that contract are available to be refunded. As for SMM-03123, we understand that the MRCA continues to hold some of those funds. We believe the Conservancy should seek a refund from the MRCA of the unexpended funds allocated to SMM-03123. Our understanding is that the MRCA does not object to the refund of the funds to the Conservancy.

We note that the Conservancy has not sought our advice on whether it has other options regarding refunds from the MRCA. If the Conservancy desires such advice, it may request it, and we will provide that advice in a manner that will protect our attorney-client relationship with the Conservancy.

Please do not hesitate to contact us if you have any questions about the foregoing.

Sincerely,



JOHN A. SAURENMAN  
Supervising Deputy Attorney General

For BILL LOCKYER  
Attorney General