San Diego River Conservancy (SDRC)
MINUTES of DECEMBER 2, 2005 PUBLIC MEETING

(Draft Minutes for Approval February 10, 2006)

Chairperson Frye called the December 2, 2005 meeting of San Diego River Conservancy to order at 9:00 AM.

1. Roll Call

Members Present:
Donna Frye, Chair *(City Council of San Diego)*
Toni Atkins *(Public at Large, Appointed by Assembly)*
Jim Bartell *(Public at Large, Appointed by Governor)*
Jim Peugh *(Public at Large, Appointed by Senate)*
Dr. Susan Hector *(Public at Large, Appointed by Governor)*
Norman Roberts *(Public at Large, Appointed by Governor) – Arrives at 9:07*
Karen Scarborough *(Secretary of Resources Agency Designee) – Arrives at 9:15*

Non-Voting Members Present:
Jack Minan, Vice-Chair *(San Diego Regional Water Quality Control Board Designee)*

Others Present:
Mike McCann *(San Diego Regional Water Quality Control Board Alternate Designee)*
Deborah Jayne, Executive Officer
Hayley Peterson, Deputy Attorney General
Susan Huntington, staff

Absent:
Anne Sheehan *(Director of Finance Designee)*
Al Wright *(Executive Director, Wildlife Conservation Board)*
Sam Schuchat *(Secretary of Resources Agency –Alternate)*

Senator Kehoe comments taken out of order

Senator Kehoe stopped by to give a short talk and offer her support. She expressed the desire to make 2006 a year of renewed momentum in which the profile of the Conservancy will increase here in San Diego and in Sacramento. She also reminded us that the legislation sunsets in January of 2010 and stressed the importance of getting as many projects as possible underway to ensure there will be continued funding, to fuel public support, and to demonstrate the value of the Conservancy.

A discussion ensued about increasing the membership of the board and the ½ mile on either side of the river jurisdiction. Senator Kehoe commented that we need to be judicious about how large the board is, what its make-up is, and that we may want to

consider a Technical Advisory Committee as a shortfall. She also believes the ½ mile jurisdiction isn't large enough and would like to see the Conservancy be the management agency for the entire San Diego River watershed, but is concerned that the larger the jurisdiction is, the greater the opposition to the Conservancy may be.

Further discussion included ideas for broader outreach to the public such as organizing a river clean-up day or purchasing additional parcels and having a ribbon cutting.

In closing, Senator Kehoe again expressed her desire to see the Conservancy succeed and become a permanent organization, and pledged her support for whatever was necessary to make that happen.

2. Approval of Minutes

Board Member Atkins moved approval of the minutes of the August 12, 2005 public meeting. The motion was seconded by Board Member Minan and adopted by a voice vote of 7-0.

3. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority which is not on the agenda. Submission of information in writing is encouraged. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Presentation times may be reduced depending on the number of speakers.

There were no public comments.

4. Chairman's and Governing Board Members' Comments

These items are for Board discussion only and the Board will take no formal action.

There were no comments.

5. Executive Officer's Report (*Deborah Jayne)*

The following topics *may* be included on the Executive Officer's Report. The Board may take an action:

a) Five Year Infrastructure Plan / Strategic Plan
b) San Diego River Hydrology Study
c) $50,000 SEP from Metropolitan Transit System (MTS) Application
d) Senate Bill 153
e) Previously Approved Proposition 40 River Parkways Projects
    - Ocean Beach Bicycle Path Extension (City of San Diego)
    - Mission Valley Preserve Restoration (City of San Diego)
    - Eagle Peak Acquisition (San Diego River Park Foundation)
f) High priority acquisition in City of San Diego
g) FY 06 Federal Appropriation for acquisitions in Cleveland National Forest / El Capitan Heights

h) Water quality at Qualcomm Stadium
i) Grantville Redevelopment Area
j) SDSU Master Plan Revision / Development at Adobe Falls
k) TransNet II Environmental Mitigation Program
l) Fashion Valley Road repair and Arco gas station at Fashion Valley and Friars
m) Electronic upgrade of parcel map inventory
n) Environmental Services Contract

In the interest of time, Deborah Jayne suggested that most items should be tabled until the end of the meeting and gave a quick update only on Item a above.

A. Five Year Infrastructure / Strategic Plan
Deborah Jayne noted that we now have our Five Year/Strategic Plan underway, and mentioned that we have a new consultant, Anne Van Lear, on board. Anne's primary role is to help us put together our strategic plan and brings with her many areas of expertise, including real estate. Ms Jayne hopes to bring a draft Five Year Plan to the Board in February.

6. Deputy Attorney General's Report *(Jamee Patterson)*
This item is for Board discussion only and the Board will take no formal action.

The Deputy Attorney General did not have a report.

Consent Item 7

7. Pursuit of All Potential Funding Sources
Consideration and possible adoption of a general resolution (*tentative Resolution 05-26*) authorizing the Executive Officer to participate in, or prepare and submit an application for, all applicable potential funding programs which support the programs and mission of the Conservancy. *(Chairperson Frye)*

Board Member Minan made a motion to approve Consent Item 7. The motion was seconded by Board Member Bartell. Discussion ensued about changing the phrase "all applicable…" to "any applicable…", but it was decided to keep the language as originally written and the motion passed by a voice vote of 7-0. (The Board adopted Resolution 05-26)

8. Election of Governing Board Officers
The Board will receive nominations and elect officers for the Governing Board. The Chairperson and Vice-Chair will serve two year terms of office. *(Chairperson Frye)*

Board Member Atkins made a motion that Ms. Frye serve as Chair and Mr. Minan serve as Vice-Chair. The motion was seconded by Board Member Peugh. The motion passed by a voice vote of 7-0.

9. Resolution of Appreciation for Board Member Jennifer Kraus

Upon approval of the Governing Board, Chairperson Frye will present Board Member Kraus with a Resolution of Appreciation (*tentative Resolution 05-27*) for her service to the San Diego River Conservancy. *(Chairperson Frye)*

Board Member Atkins moved approval to adopt the resolution. The motion was seconded by Board Member Minan and passed by a voice vote of 7-0.

10. Governing Board Meeting Schedule for 2006

The Governing Board will consider adoption of the proposed meeting schedule for calendar year 2006. *(Deborah Jayne)*

Ms. Frye requested a short report from Ms. Jayne on this item. Ms. Jayne suggested that we continue to set aside 6 calendar dates per year to conduct Conservancy business, but proposed that two of those meeting dates could be "flexible", and perhaps take a different format than traditional board meetings – e.g. an informal workshop, a subcommittee meeting, a trip to Sacramento to meet with legislators. The point of including these "flexible" format dates is to provide opportunities for board members to get further engaged in working on Conservancy issues, and to encourage creative ways to make things happen.

Ms Jayne also mentioned that creating the agenda packets for the Board takes a significant amount of her time and stressed that she was more than happy to do it, but wanted the Board to be aware that her time is limited and the trade-off is that she can't spend time doing other things the Board hired her to do while she is preparing those packets.

Board member Hector moved to adopt the Governing Board Meeting Schedule for 2006 as proposed including four "regular" format meetings and two "flexible" format meetings. The motion was seconded by Board Member Atkins and discussion ensued about whether the language may decrease flexibility when the intent is to increase flexibility. Ms Frye suggested the language of the motion be changed to read "at least two flexible format meetings may be held per year". She further recommended that the dates for the flexible format meeting not be specified at this time. Board members Hector and Atkins accepted the amendment and the motion passed by a voice vote of 7-0.

11. Inaja Property Donation

Michael Beck (Executive 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 property maintenance. (*Michael Beck)*

Ms. Jayne made several comments before Mr. Beck's presentation. She wanted to point out that new information became available since writing the recommendation for Item 11, and that her recommendation had changed in light of that new information.

The late Mr. Dick White requested in his last will and testament that approximately 100 of his 220 acre property be preserved in perpetuity by the San Diego River Park Foundation. This property has significant resource value and is beautiful, riparian habitat in the headwaters of the San Diego River that will provide public access to wilderness lands. Ms. Jayne believes it is a good addition to the River Park, is consistent with the mission of the Conservancy and advances the purposes of the Conservancy as stated in our enabling statute.

Mr. White wanted to donate the property to the Foundation, but in order to accept the donated land, the Foundation would be required to raise approximately $30,000 - $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. This is money that the Foundation does not have. Since the Conservancy is not constrained by the Map Act (because it's a public entity), the Foundation sought the Conservancy's assistance to facilitate the donation of the property. Specifically, Mr. Beck recommended that the Conservancy take title to the property, that we enter into a long term management contract with the Foundation, and that the Foundation would manage the property in perpetuity.

An important thing to understand is that the land to be donated does not lie wholly within the Conservancy jurisdiction. Approximately 63% (66 acres) of the land is located within our jurisdiction, while about 37% (38 acres) lies outside our jurisdiction. The question that arises is "Does the Conservancy have the legal authority to take title to a property that is not wholly in our jurisdiction?"

Because this is a fairly common situation, and because our statute is unclear on the jurisdiction question, Ms. Jayne asked our legal council to provide her legal opinion. Board members received a written copy of Ms. Peterson's response. In essence, Ms Peterson's opinion is that the Conservancy is limited to exercising its jurisdiction within the San Diego River Area as defined in statute (i.e., .5 miles on … thread of River). Purchasing, accepting donations, or expending funds to facilitate the purchase of property by another entity would constitute an exercise of jurisdiction. Essentially, no authority exists within our statute to undertake activities outside of the San Diego River area.

Ms. Peterson continues that with respect to parcels that straddle the boundaries of the jurisdiction, it is not clear whether the Conservancy has authority and thus becomes a policy question for the Board. She further points out that if the Conservancy decides to exercise its jurisdiction in an expansive manner, there is still a risk that one or more entities that approve the Conservancy expenditures could disagree. Finally, Ms. Peterson indicates that the conservancy may be able to avoid this issue by forming a Joint Powers Authority that would have jurisdiction over the property.

Ms. Jayne wrote the Executive Officer Summary Report and her recommendation assuming that the Conservancy had the legal authority to accept the property. In that report she recommended adoption of the Resolution and specifically recommended the

Conservancy take title to the property, but in light of this new information has revised her recommendation.
Two important questions need to be answered.

1)Should the Conservancy take some sort of action to ensure that the donation to the River Park is successful, whether that be accepting the donation or facilitating so that someone else can accept the property? Is this land a priority and is this the right thing to do?

2) If it's the right thing to do then how best can we facilitate this donation?

Ms. Jayne feels the answer to the first question is YES, it's the right thing to do. Thus, we should facilitate this donation by some means.

It helps the Foundation, which is our most important partner and which has requested our assistance. An important role of the Conservancy is to bring resources to the table to facilitate our partner's progress toward our common objectives.

It ensures property is secured for the River Park. Without the Conservancy's assistance, the property donation may not be successful

It encourages future land donations and establishes a precedent and protocol to simplify the process by which donors can contribute land to the River Park.

It builds a track record and demonstrates value added. The Conservancy can take credit for helping to facilitate this land donation to the River Park.

It defines an important Conservancy role of facilitating acquisitions by providing upfront costs. Providing funding to our partners for upfront costs could be a unique role for the Conservancy to play in the overall River Park building effort.

Arguments in opposition of accepting the donation or facilitating the donation include: cost (currently estimated at approximately $30,000), assumption of liability and ownership responsibilities (if Conservancy took title), is it the best use of limited staff and resources (tradeoffs), Inaja decision would pre-date adoption of the Strategic Plan, it's inconsistent with the State Coastal Conservancy Model (assume the "funder" not the "owner" role in land acquisition).

Despite the cons, Ms. Jayne's underlying recommendation is to make sure this donation to the River Park is successful. The specific mechanism we choose needs to accomplish the donation, be acceptable and work well for the Foundation, be consistent with the donor's wishes, and be consistent with the Conservancy's authorizing legislation.

Four alternatives were presented for the Board's consideration:

1) ***Accept title to the property. Legal council advises that the Board can make the policy call and exercise jurisdiction in an expansive manner, but there is a risk that***

the decision may be challenged. This alternative is no longer recommended by Ms. Jayne

2) ***Make a grant to the Foundation to cover the costs of compliance with the Map Act so the Foundation can accept the donated land. This is the alternative now recommended by Ms. Jayne.***
3) ***Ask another agency with jurisdiction to make a grant to the Foundation (e.g., SCC). This would be the ideal recommendation since the Conservancy wouldn't have to use it's money and an entity that does have jurisdiction would be providing the funds, but it is still uncertain if this can be done.***
4) ***Form a Joint Powers Agreement that would have jurisdiction over the property. This probably isn't a viable option for this donation, which needs to happen now, but it would help us resolve similar issues in the future.***

A final consideration is the tradeoff on the use of Conservancy money. We would use our IAA money (currently $298,000) which is our unused support budget from FY03-04 and FY04-05. The purpose of the IAA funds is to pay for administrative support, consulting for the Strategic Plan, legal services, contract services and program services, so we would have $30,000-$50,000 (maximum cost per Mr. Beck) less for these purposes.

Mr. Bartell commented that he was comfortable with the original recommendation to have the Conservancy take title to the property.

Mr. Peugh acknowledged that he is on the board of the SD River Park Foundation, but that both he and Ms. Peterson agree there is no conflict of interest since the Foundation is not a business entity and there is no economic benefit involved, and thus he intends to participate in the discussion.

Michael Beck introduced himself as Chair of the SD River Park Foundation, and began his comments by stating that the crux of the issue is time. The Foundation approached the Conservancy for two reasons. 1) They didn't have the money to do the subdivision and 2) it was going to take too long to go through the subdivision process to make this occur. However, Mr. Beck has discovered that it may take longer for the Conservancy to accept the donation than it would take the Foundation to go through the subdivision process at the County of SD.

From Mr. Beck's perspective, acquiring 100 acres of land for the River Park should be a given and what needs to be done now is determine the most expedient way to acquire that land. Mr. Beck is getting a lot of pressure from the family to make this happen as soon as possible. That is, if it's going to take 6 months for the Conservancy to take title to the property, and the Foundation can get through the subdivision process in 4 months, then we should go through the Foundation. Mr. Beck's main concern is that this land be preserved and he is fine with either entity taking title.

Mr. Beck spoke with the County to confirm the cost for the subdivision to happen and they felt it would be more on the order of $25,000 - $30,000, but Ms. Jayne wanted to be conservative and have the Foundation ask for an amount not to exceed $50,000.

Ms. Scarborough commented that she wanted the Conservancy to acquire the land and work out a management agreement with the Foundation, but was willing to look at whatever way was faster. Mr. Beck agreed that it would look great for the Conservancy to be able to show the 100 acres on their books.

Mr. Minan commented that expediency is the "right ball" to keep our eyes on. He was also concerned that the testamentary document specified the Foundation as the recipient and did not know if the State could step in legally and be substituted. He felt the best course of action was to make a grant to the Foundation and perhaps have the Foundation adopt a resolution that recognized the Conservancy as a major player in the acquisition of the property.

Mr. Minan made a motion to adopt resolution 05-28 with the following modifications:
1) in line 3 to insert the word "either" after the word "necessary"
2) in line 4 after the word "property" to insert the phrase "or assist the River Park Foundation in its acquisition"
3) in paragraph 3, line 2, delete the words "should this not be possible"
4) in paragraph 3, line 3, add the words "up to a maximum of $50,000" after the words "reasonable funds"

Mr. Peugh seconded the motion.

After discussion regarding how to move forward most expeditiously, Mr. Minan amended the motion to reinsert and slightly modify the language in paragraph 3, line 2 to read "should this not be expedient". Mr. Peugh agreed to the changes and the motion was adopted by a voice vote of 7-0.

12. Helix Water District Restoration Project in El Monte Valley
Mark Weston (General Manager, Helix Water District) and Michael Beck (Executive Director, Endangered Habitats League) will present an overview of Helix Water District's partnership with the Endangered Habitats League, and their mutual efforts to restore critical habitat along a two-mile stretch of the San Diego River in El Monte Valley (previously slated to become a golf course). The Board may take an action. *(Mark Weston and Michael Beck)*

Mr. Weston's presentation gave history and background on the river flow in the El Monte Valley, and an overview of the efforts to restore habitat along the river.

Board Member Bartell made a motion to accept the Helix Water District report. The motion was seconded by Board Member Peugh and adopted by a voice vote of 6-0 (Board Member Atkins had to leave during the presentation).

13. San Diego Police Department Presentation/Partnership Opportunities
Officer Jim Needham (San Diego Police Department, Western Division) will provide an informational report on the San Diego Police Department's efforts to improve public safety along the San Diego Riverbed in Mission Valley. The presentation will emphasize specific ways in which Conservancy can partner with and support the Department. The Board may take an action. *(Officer Jim Needham)*

The presentation focused on issues and problems in the riverbed, and how PD and the Conservancy can partner to make the riverbed a safer place.

Board Member Bartell made a motion to accept the Police Department's report. The motion was seconded by Board Member Atkins and adopted by a voice vote of 6-0 (Board Member Scarborough was temporarily out of the room).

14. Lakeside's River Park Conservancy Presentation/Partnership Opportunities

Deborah Jones (Executive Director, Lakeside's River Park Conservancy) will provide an overview of Lakeside's River Park Conservancy's accomplishments and future plans. The presentation will emphasize specific ways in which the San Diego River Conservancy can partner with and support the Lakeside's River Park Conservancy. The Board may take an action. *(Deborah Jones)*

Ms. Jones' presentation focused on current projects the Lakeside River Park Conservancy is involved in and how the SDRC can possibly partner with them.

Board Member Atkins? made a motion to accept Ms. Jones' report. The motion was seconded by Board Member Bartell? and adopted by a voice vote of 7-0.

15. Administrative Matters

This item is for minor administrative matters only and the Board will take no formal action.

16. Executive Session

Following or any time during the meeting, the Governing Board may recess or adjourn to closed session to consider pending or potential litigation; property negotiations; or personnel-related matters. Authority: Government Code Section 11126(a), (c) (7), or (e).

17. Arrangements for Next Meeting and Adjournment

Friday, April 14, 2006 (or as determined under item 11 above)
9:00 am to 11:30 am
Location: San Diego Regional Water Quality Control Board Office
9174 Sky Park Court, Suite 100
San Diego, California
(858) 467-2733

Chairperson Frye adjourned the meeting at approximately 12:00pm.