

Memorandum

To : The Conservancy
The Advisory Committee

Date : December 2, 2008


From : Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Director

Subject: **Agenda Item No. 13. Consideration of resolution authorizing competitive bid solicitation for five year, limited term, lease of Temescal Canyon pool.**

Staff Recommendation: That the Conservancy and the Advisory Committee adopt the attached resolution authorizing the proposed bid solicitation for a limited term, five year, lease of Temescal Canyon pool, subject to the conditions as proposed.

Legislative Authority: Section 33206 of the Santa Monica Mountains Conservancy Act provides that: “The conservancy may lease lands acquired in accordance and for purposes consistent with this division [Santa Monica Mountains Conservancy Act].”

Background: The Temescal Canyon pool, previously leased by the Pacific Palisades-Malibu YMCA, was closed by the Y in February of 2008. It was clear to all parties that the pool had come to the end of its existing life. Under the 1994 agreement with the Y, this was the triggering event for a new lease. In February and March of this year it appeared that the repairs would be relatively minor. (See attached e-mail between Carol Pfannkuche, Executive Director of the Y, and Joyce Whitehead, Temescal Canyon manager.)

At the March 2008 Conservancy meeting a five-year lease was authorized. (See attached staff report.)

Nothing happened from the YMCA. Your Executive Director called the Y’s Director and was told that the problem was with “the lawyers.”

Then, in a document dated June 18, 2008, we received an extraordinary “term sheet” from Larry Rosen, CEO of the downtown Metropolitan YMCA. It was for a 55 year ground lease, with two 20 year extensions, total of 95 years at \$1 per year. This document is attached. Besides also involving an option to buy two additional acres of the Temescal Conference and Retreat Center, this proposal from the Y distinguished itself by being *confidential*. The YMCA wanted “[t]his Term Sheet and all information exchanged between the parties shall be kept confidential, shall not be reproduced or disclosed . . . [except to consultants].”

Your staff responded to Mr. Rosen on June 23, 2008 that such a proposal could not be entertained for various reasons of state law.

The next communication we received from the YMCA was dated July 29, 2008 from Mr. Michael Kinal, Executive Vice President Capital Projects of the Metropolitan Los Angeles YMCA. It was that letter that started in motion the sequence of events that leads us to this situation. This letter, copy attached, terminated the lease between the Y and the Conservancy, and stated explicitly that “all prior agreements between the parties in connection with the Pool Site have expired and, accordingly, the YMCA has terminated its operations therefrom.”

The letter goes on to state:

The YMCA has taken care to secure the Pool Site on behalf of the SMMC to the best of its ability, but in doing so does not purport to have any rights in connection with the continued use or occupancy thereof. It is the YMCA’s belief that it has previously performed all of its obligations under the prior agreements related to the Pool Site, and has no further responsibility in connection therewith.

This is about as clear a “walk away” statement as can be.

The Conservancy and its site manager, the MRCA, were faced with dealing with a potential liability. Civil engineers Penfield & Smith were consulted and their recommendations are before you.

Meanwhile, the Pacific Palisades Residents Association held a meeting on November 10, 2008 at which the Conservancy was urged to approve a short-term lease during which time other alternatives could be pursued. Because a short-term lease had been in contemplation back in March, your Executive Director agreed to propose terms and conditions under which the pool could be temporarily reopened with a substantial contribution to the “at risk youth” component of the Temescal Canyon program required by the conditions under which the Temescal Canyon Conference & Retreat Center was acquired using funds provided by the Los Angeles County Regional Park and Open Space District.

The limited term, five year, bid solicitation: Attached you will find a copy of the proposed bid solicitation that has been published in the local Pacific Palisades newspaper.

Notwithstanding the proposal made at the Pacific Palisades Residents Association meeting, both of the entities seeking a lease of the Temescal Pool (YMCA and Friends Temescal Pool) have rejected a five year lease as too short.

The reasoning behind such rejection is important. At least \$400,000 worth of improvements needs to be made to the pool. Based on staff's evaluation of the Y's own engineering report, this amount is likely to be much more. Both the YMCA and Mr. Yeh's organization, Friends Temescal Pool, have said that to justify this level of fund-raising a longer term lease is necessary.

It is obvious that given the level of investment, even a ten year lease would be extended given the argument that if the pool was in good condition, use thereof should be extended through its then "useful life" which could be twenty or thirty years.

Long Term Leased of the Temescal Pool is Not Legally Approvable at this Time: Such a lease commitment cannot be sustained on the basis of the information before the Conservancy. The Conservancy's ability to lease property is constrained by statute. Typically state government agencies don't lease public property for private use, even if the private entity serves a good purpose. There are obvious reasons why such restrictions apply: public land isn't "up for grabs," even to otherwise well-meaning organizations. When the taxpayers purchase property it is for a specific public purpose.

Section 33206 of the Santa Monica Mountains Conservancy Act provides: "*The conservancy may lease lands acquired in accordance and for purposes consistent with this division [i.e., the Conservancy Act].*" (Emphasis added.)

This is a high standard: "in accordance and for purposes consistent" with the Conservancy Act. The overwhelming majority of all of the Conservancy's land has been acquired using money allocated by bond propositions approved by the voters, this includes every acre at Temescal Canyon.

This is not to say that under the appropriate circumstances a private pool cannot meet the criteria of the Santa Monica Mountains Conservancy Act. But it does suggest that unless the role of that pool is clearly identified within the mission of the Conservancy and the objectives to be fulfilled by the particular property in question, then the Conservancy is without jurisdiction to issue a long term lease, and could very well be sued and lose a case that could otherwise have been won had the appropriate planning procedures been applied.

Real Time Considerations Militate Against a Premature Commitment of Resources to the Temescal Canyon Pool: The pool is not necessary, and in fact detracts from, the mission of the Temescal Canyon Conference & Retreat Center and Temescal Gateway Park. An "in lane" swimming program does not fit with any current or contemplated programs of the Conservancy or the Mountains Recreation and Conservation Authority. Traffic, parking problems, and the need for the space occupied by the pool for at-risk-youth programs militates in favor of a comprehensive planning process prior to the long-term commitment of resources to the pool lease. This being said, it is not necessarily true that under all circumstances such a program isn't possible after a master planning process has been completed. The long-term trade-off between

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commitment of land to the pool and other park uses is a legitimate subject of park planning, but should be explicitly decided, not implicitly assumed by a long term lease to a private entity.

Item 14 on the agenda addresses this issue.