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April 12, 2004

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Response to Management Letter Regarding
Propositions 12, 13, and 40 Bond Funds

Dear Mr. Hull:

Your Management Letter of March 24, 2004 regarding Proposition 12, 13, and 40 Bond Funds is before me. Although addressed to staff, it bears directly on the responsibilities of the Santa Monica Mountains Conservancy itself, and therefore it is more appropriate that I respond on behalf of the entire Conservancy. This response letter shares a common set of exhibits with the letter you will receive from Michael Berger, Chairperson of the Mountains Recreation & Conservation Authority. Please include these attached exhibits in the publication and distribution of this response.

A note on nomenclature: Public Resources Code Section 33200 provides that governing board *is* the Santa Monica Mountains Conservancy, so no further specific reference will be made to a board of directors or a governing board, only the "Conservancy." This is not only a stylistic convention, it sets the tone for my entire response, that it is the Conservancy members themselves who step up to the plate and take responsibility as fiduciaries. We have a well-known and capable staff, including the Executive Director, but he and they are just the hired help.

Your Management Letter vividly makes the case that nobody, no agency, is perfect; but when viewed in the light of the relevant statutes and even sister agency procedures, it does not make a case for the generalization that the Conservancy does not adequately manage and control bond program funds.

Throughout this response you will see a willingness to make changes, improve procedures, and accept constructive criticism. You will also see a staunch defense of the fundamental decision the Conservancy made many years ago, to work with local partners–on a regional basis–to ensure local buy-in with State conservation and open

space preservation objectives. This has meant extensive use of the Joint Exercise of Powers Act. It has had the result of securing well over 55,000 acres of protected open space in the Los Angeles and Ventura County metropolitan area. Today every one of those acres is open to the public at no cost to the State of California. That result could not have been achieved, especially in the most sophisticated real estate market outside of lower Manhattan, without the cooperation of our Joint Powers Partners at the Authority.

Finding 1: Lack of Operational Independence

Overview of the Joint Powers Concept

The concept of "operational independence" in a joint powers agreement must be challenged. California has been at the forefront of government reform efforts, at least at the local and regional levels, to breakdown bureaucratic barriers to getting a specific job done. That was the entire impetus for enactment of the original Joint Powers Act following the progressive reforms of Governor Hiram Johnson.

As the Court of Appeal has said, the Joint Exercise of Powers Act embodies "the idea of intergovernmental cooperation upon matters of mutual concern and benefit." *Beckwith v. County of Stanislaus* (1959) 175 Cal.App.2d 40 at 45.

The web page for the Joint Powers Agency formed by the State Personnel Board www.cps.ca.gov has as its banner "Nimble/Fast/Flexible." That really describes the whole rationale why many state agency and thousands of local and regional joint powers agencies have been formed in since 1921.

State government is no stranger to Joint Powers Agencies, indeed the California State Library website touts them:

> Because of the flexible nature of JPAs and the ease with which they can be formed, JPAs are used throughout California to facilitate public projects and services on a regional or area wide basis. In fact, most of the existing public library networks are JPAs." www.library.ca.gov [Emphasis added.]

Much of the Management Letter is based on a flawed premise that the levels of cooperation seen between the Conservancy and the Authority are a problem instead of a manifestation of the very intent of the Joint Powers Act itself.

The nature of a Joint Powers Agreement is a legally approved method of getting things done, not on an arms-length basis, but rather on a combined basis. After all, it's not called a joint-powers agreement for nothing. The essence of this approach is mutuality and cooperation. The very definition of the word "joint" means, "involving the united activity of two or more." (Merriam-Webster's Collegiate Dictionary, 11th ed. [emphasis added]) Governments at all levels should work together toward mutual goals.

Joint Powers Act Specifically Authorizes the Management Structure Between the Conservancy and the Authority.

We wished that the Management Letter had considered the legal framework of the Joint Exercise of Powers Act (Government Code Section 6500 *et seq*). The complete lack of reference to the Act may show unfamiliarity with its provisions.

Government Code 6500 defines "public agency" as "any state department or agency."

Government Code Section 6502 provides that "two or more public agencies by agreement may jointly exercise any power common to the contracting parties . . . ." Recall the Webster's definition of "joint" as "the united activity of two or more."

Joint Powers Agencies have unique management structures specifically authorized by statute. Government Code Section 6506 provides:

> "The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement or a commission or board constituted pursuant to the agreement or a person, firm or corporation, including a nonprofit corporation, designated in the agreement. One or more of the parties may agree to provide all or a portion of the services to the other parties in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any consideration other than such services." [Emphasis added.]

Thus, according to Section 6506, even if the Conservancy provided all the services to Authority, thus creating a totally unitary administrative structure, such an arrangement would be valid.

Where it Counts, Financial Checks and Balances, the Authority and Conservancy are Fully Separate

A major blind spot in the Management Letter is failure to recognize that there is financial separation between the Conservancy and Authority, which provides for inherent safeguards.

- Even though the Conservancy could administer the entire Joint Powers Agreement (Government Code Section 6506), from the inception Authority and Conservancy have had financial separation.

- The Authority's Financial Officer is designated in the Joint Powers Agreement as the General Manager of the Conejo Recreation & Park District.

- The Conejo District cuts all the checks, invests all the funds, and controls the bank accounts. Neither Conservancy employee nor any Authority employee has check writing authority.

- The Authority has an annual audit conducted by a firm selected by the Conejo District.

Integration of Functions is Appropriate in a Joint Powers Context and is Sanctioned by Precedent from Other Agencies

Government Code§ 6504 is explicit with respect to this issue: "(d) <u>personnel, equipment or property</u> of one or more of the parties to the agreement may be used in lieu of other contributions or advances." [Emphasis added.]

Each of the things cited by the Management Letter as evidence of a problem has precedent with other state agencies, including the California Resources Agency itself and two other state conservancies.

- *Use of letterhead and cards that imply employment other than by the Authority*. For the past several years the Legacy Project staff in the Resources Agency have been Authority employees, and are fully integrated into the Resources Agency structure: they use Agency e-mail addresses, stationary, telephones, fax machines, and office space. Although the Legacy Project has been cut back, as recently as January 30, 2004 the senior environmental program manager of the Legacy Project was an Authority employee, and two Legacy Project staffers continue to be Authority employees. These Authority employees are supervised by Resources Agency employees, even though it puts the Resources Agency on both sides of the deal, *i.e.,* as both the contract originator and supervising the employees of the contractor (Authority). It should be noted that this contract and its various extensions was approved by the Legal Office of the Department of General Services.

  This example is cited because, as the example shows, there is nothing wrong, and certainly not illegal, with the arrangement. In fact, it gets the job done without adding state employees, and in a flexible manner. While the Authority hires according to ability, it is not part of the civil service system with all its rigidity, and—unlike state civil service--its employees do not have a property right in their continued employment so staffing levels can be more easily adjusted to fit budget and time constraints.

- *Other Conservancies Use Authority Staff that are Integrated into the Operation of the Agency.*

  The same is true of the six (6) planners, specialists and other staff working for the Rivers and Mountains Conservancy, in their offices, using their equipment, e-mail addresses, letterhead and business cards, and supervised by the Executive Officer of Rivers and Mountains Conservancy.

  The same is true of the two (2) planners and interpretation specialists who are working for the Baldwin Hills Conservancy but who are employees of the

Authority. They use Baldwin Hills Conservancy offices, equipment, stationary, e-mail address, business cards, and are supervised by the Executive Officer of the Baldwin Hills Conservancy.

- *This practice has historical sanction*. Going back to the Deukmejian and Wilson Administrations. For many years the Chief of Enforcement of the California Coastal Commission was an Authority employee, writing enforcement letters, no less, on State letterhead, and using a state office, phone, etc., and supervised by the Executive Director of the Coastal Commission. The same was true of the ecologist who wrote official California State Parks EIR comment letters, on State letterhead, as well as performing many other state functions, including passing out his State Parks business card, as a Resource Ecologist with the Angeles District of the California Department of Parks and Recreation. Although an Authority employee, he was supervised by the State Parks District Superintendent, and, of course, used state equipment, *etc*. Needless to say, each of these contracts by which Authority performed core state functions through employees designated to work with the state agencies involved, was approved by the Department of General Services.

- *Common Internet addresses*. Better watch out Cooperative Personnel Services, the Joint Powers Agency mentioned earlier in which the State Personnel Board is a party, although it operates as a local California agency (even though it has the City of Las Vegas and the State of Wisconsin as parties), CPS has a State of California Internet domain name www.cps.ca.gov. There are probably other examples, but there is only so much time to conduct research on this kind of thing.

As a result of the Department of Finance auditor's comments prior to issuance of the Management Letter, the Authority has already separated from the Conservancy Internet domain and all Authority employees have e-mail addresses that do not reference the Conservancy.

Of course, of more concern in the Management Letter is the fact that the Executive Director of the Conservancy serves as *Ex Officio* Executive Officer of Authority (Authority Joint Powers Agreement, § 10.1.) and in this duality DOF finds adverse effects, including self-monitoring and dual allegiances, and even the sinister implication

that "employees will not act in the best interest of one entity over the other (or in the best interests of the State)."

This comment shows that the Management Letter analysis entirely misses the whole point of the Joint Exercise of Powers Act and the idea that where two entities, including not only different levels of California government, but indeed different States of the Union (Government Code§ 6500) combine for a common purpose, the arms-length relationship is replaced by a cooperative and mutual relationship.

There is no other way to read the Joint Powers Act. Were it otherwise, one entity could or should not administer the JPA on behalf of all the others, yet, of course this is explicitly sanctioned by Government Code Section 6506 (see above). There could not be officials voting on contracts, leases, and other transactions on both sides of the contract, yet Government Code Section 6508 explicitly authorizes such.

In these cases fiduciary duty of officers and employees is not waived, but rather the fiduciary duty is owed to the proper execution of the Joint Powers Agreement itself.

Again, take the example of Cooperative Personnel Services (CPS), probably one of the most successful JPAs in California. Their 2004 Annual Report can be found at their State of California domain www.cps.ca.gov. Pitty the poor Executive Officer of the California State Personnel Board who must balance his duty to SPB but also as a member of the Board of Directors of CPS which includes, in addition to the City of Las Vegas, the State of Wisconsin (!). It would be a legally impossible task unless the standard of fiduciary duty were to the implementation of the Joint Powers Agreement.

That does not mean that occasions cannot arise where an officer would have to recuse him/herself because of conflict. This happens all the time in government. But the mere possibility that the potential for recusal exists doesn't vitiate the governmental structure involved.

This issue of so-called "dual loyalties" in Joint Powers Agencies was directly addressed by the Attorney General in 60 Ops. Cal. Atty. Gen. 206 (1977) where the question was presented whether or not an attorney could work for a multi-school district employment relations JPA and still stay within the conflict of interest provisions of the State Bar Rules. The Attorney General ruled that while the potential for conflict arises, that mere

potential "does not preclude the attorney's acceptance of the employment" so long as there was full disclosure and the belief by the lawyer that his judgment was not compromised. The opinion contemplates recusal only upon certain fact circumstances, not incapacitation to accept employment based merely upon the "potential" for conflict.

The Fact of a Dual Position is Probative of Well Established Governmental Practice

There are certainly hundreds, and probably thousands of instances where officers and employees of one agency serve in an *Ex Officio* administrative capacity for another entity.

In fact, the practice is so common that since 1861 the law has provided:

> When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation shall be in the name of the office the duties of which he discharges. (Now Government Code Section 1220.)

This practice, of State Agency Executives serving as *Ex Officio* Executive Officers of Joint Powers Authorities, is sanctioned by the practice of other resources and environmental State Agencies in Southern California.

- For example, the Executive Officer of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy serves as *Ex Officio* Executive Officer of the Watershed Conservation Authority, a JPA of Rivers and Mountains Conservancy and the Los Angeles County Flood Control District that operates under the rules and restrictions of LACFCD. The Rivers and Mountains Conservancy is, of course, a Bond Funded conservancy within the California Resources Agency.

- Another example, the Executive Director of the Santa Monica Bay Restoration Commission, a state agency established pursuant to Div. 20.7 of the Public Resources Code, serves as *Ex Officio* Executive Officer of the Santa Monica Bay Restoration Authority, a joint powers agency established between the Restoration Commission and L.A. County Flood Control District. The Restoration Commission is, of course, also Bond Funded.

Irrespective of Staff Sharing, the Fiduciary Responsibility is Vested in an Independent Conservancy, and the Conservancy Members Have Carried Out Their Fiduciary Responsibilities

Even if there is sharing of staff, the fiduciary responsibilities rest with the governing bodies of each entity. On p. 3 of the Management Letter it is implied that Authority got a good "deal" on its grants because of the overhead amount. While overhead issues in general will be discussed infra, there is a wrong implication here that must be nipped in the bud. Authority doesn't appoint a member to Conservancy, the opposite is true. Every grant and indeed the Cost Allocation Plan itself (which is the source of the overhead calculation) has been approved by the full Conservancy, and by a unanimous vote.

If those grants are designed to enable Authority to carry them out effectively, then it is because the Conservancy has determined that it was in the State's interest to use this joint powers authority for the particular grant involved. The Conservancy is the fiduciary here, not the Executive Director or its Staff Counsel.

The Conservancy is the very epitome of an <u>independent</u> body. Three public members appointed by different appointing authorities (Governor, Speaker of the Assembly, Senate Rules Committee); the Resources Secretary or designee; the Superintendent of the Angeles District of California State Parks; the Superintendent of the Santa Monica Mountains National Recreation Area; a member appointed by the Mayor of the City of Los Angeles, and a County Supervisor appointed by the Los Angeles County Board of Supervisors and the Ventura County Board of Supervisors. The Ventura supervisor sits herself, while the Los Angeles Supervisor has a designee (I am honored to be that designee). Out of the nine full voting members, only two share a common appointing authority (the Governor). There are three *ex officio* members, one of whom, the Coastal Commission representative, gets to vote on coastal zone issues. The other two represent the Coastal Conservancy and the U.S. Forest Service.

There is absolutely no evidence that the Conservancy members have any "vested interest in, or allegiance to" the Authority any more than they would have a vested interest in the success of any grantee. Conservancy board members have no personal

stake in the Authority; the one Conservancy member appointee on the Authority doesn't get any payment nor any mileage from attending Authority meetings.

Federal Arbitrage Issue

We note that the Mountains Recreation & Conservation Authority response to the Management Letter thoroughly discusses, and addresses the arbitrage issue. At this point we will only reiterate what was said by outside counsel for the Authority. The issue is not that the Authority must demonstrate that it "is an operationally independent grantee," rather the test is a legal one of "related entity" by operation of the criteria in the Internal Revenue Code. The rules for determining "related entity" are discussed thoroughly by Samuel Norber, Esq. in **Exhibit 5**.

Response to Recommendations, Finding 1:

- **The member parties have amended the Authority Joint Powers Agreement to deal with concerns about independence and oversight.**

After the exit interview with Finance Department personnel, the parties to the JPA, acting in good faith to carry out its responsibilities, acted to amend the JPA to provide for an Assistant Financial Officer of Authority, who will be appointed by and report to the General Manager of the Conejo Recreation and Park District who also serves as the Financial Officer of the Authority. This amendment has been approved by all parties and is currently in effect. The Assistant Financial Officer position will supervise and be responsible for all Authority employees dealing with fiscal or financial issues, including accounts payable, accounts receivable, and budget performance. In addition, the Assistant Financial Officer will be responsible for authorization of all expenditures, approval of billings, and approval of invoices. The former "Director of Finance" position with Authority, who reported to the Chief Operating Officer, who in turn reported to the Executive Officer, has been abolished and the employee terminated.

Therefore, with respect to approval of any financial transactions, as a result of the changes made, the line of fiscal authority runs wholly outside of the Conservancy to appointees of a separate local park district with an elected Board of Directors.

Again, following the exit interview, and in good faith in order to strengthen the fiduciary responsibilities of both the Conservancy Board and the Authority Board, the Conservancy initiated an amendment to the JPA, which amendment has been approved by all parties and has taken effect, so that any contract, grant, memorandum of understanding or other such document between the Conservancy and Authority must be executed by the respective board chairpersons, on behalf of the governing boards, and not by staff members acting in an *ex officio* capacity.

- **Conservancy and Authority will independently and regularly monitor the status of grant projects and expenditures.**

The Authority Financial Officer (General Manager of the Conejo Recreation & Park District) will report quarterly to the Authority governing board on the status of grant projects and expenditures, a copy of such report to be delivered to the members of the governing boards of each of the parties to the Authority Joint Powers Agreement as an aid to their exercise of fiduciary responsibilities. The Conservancy Executive Director will report quarterly to each member of the Conservancy on the status of grant projects and expenditures as an aid to their exercise of fiduciary responsibility.

- **Actions have been taken to ensure that the public is not mislead as to the status of employees.**

The e-mail domain for Authority has already been changed so that there is no reference to Conservancy; Authority employees typically have their own Authority business cards, but if there are any business cards that say Conservancy belonging to Authority employees they will be confiscated. Documents on Conservancy letterhead will be signed by Conservancy officers and employees, and documents on Authority letterhead will be signed by Authority officers and employees.

Where Authority employees are validly performing functions for other agencies, Counsel has opined that, pursuant to Government Code Section 1220, they should do so under the form and authority of the entity for whom they are performing the service.

- **Taking into consideration the JPA amendments and other policy changes as described herein, the opinion of outside accountants and outside counsel is that**

the resulting Authority fiscal and governance structure meets the generally accepted accounting and legal standards to safeguard the interests of each party.

See attached **Exhibit 19** from Macias, Gini & Co., LLP, Certified Public Accountants, as to the fiscal responsibility and control issues according to generally accepted accounting standards.

See the attached **Exhibit 18** from Richards, Watson & Gershon, Attorneys at Law, as to the legal standards that have been complied with to ensure the appropriate level of safeguards, while maintaining the essential principles of the Joint Powers Act.

Finding 2. Conservancy Continues to Advance Funds

"Related Entity" Question has Been Thoroughly Reviewed

Please see the response of Mr. Berger on behalf of the Authority for the comprehensive discussion of this issue.

Advance Funds Have Been Returned

To date the Authority has complied to the extent of $2,610,039.71. We understand that well over $2,000,000 in additional funds are in process of being returned. All unencumbered advance funds will be returned.

Further Advances to the Authority Will Not Be Issued

The heading speaks for itself.

Finding 3. Grant Overhead Costs Appear Excessive

The Authority Has Discussed its Cost Allocation Plan

The Authority's response is definitive with respect to its Cost Allocation Plan. At this point we will only observe that before it was adopted by the Authority, the Conservancy reviewed and recommended it based on the independent and expert testimony of Mr. James Godsey, then of Quezada, Godsey & Co. I recall his testimony that the firm was a leader in developing cost allocation plans, and that they had just completed the first-ever indirect cost allocation plan for the City of Los Angeles, and that they had done so for a number of Joint Powers Authorities.

The Comparison Between the Authority and the Conservancy and Other Agencies is Misleading

Mr. Berger's comparison of the over $19,000,000 current fiscal year bond fund support expenditures with those of the Authority, speaks for itself as to the unfairness of the comparison made in the Management Letter. Speaking for the Conservancy, it derives only $429,000 in support from bond funds.

The Job Has to Get Done by Somebody: Alternatives Involve More State Personnel

Compared with the 72.7 authorized positions at the State Coastal Conservancy, including at least 19 administrative personnel (*Salaries & Wages Supp.* p. R-61), and the 37.4 authorized positions at Wildlife Conservation Board (*Salaries & Wages Supp.* p. R-59), the modest six at the Conservancy would have to be expanded considerably to deal with bond funded workload. The Conservancy believes the more prudent course is to continue its relationship with the Authority, rather than to attempt to contract with other over-worked (and staff frozen) agencies, or to contract such services out.

We note that Public Resources Code Section 33211(b) permits the Conservancy to contract out only when "in its opinion" the work or service "cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies." Because of the extensive expertise of the Authority, acknowledged by all

parties, the Conservancy could not make the finding required by Section 33211(b) were it to try to bid such work to consultants.

Revised Cost Allocation Policy is Being Developed

We are informed that a revised cost allocation policy is being developed, and the Macias, Gini & Co. letter (**Exhibit 9**) alludes to this. In the new policy costs will not be assessed across the entire capital cost structure, but as overhead on personnel. The overall result is not likely to change much because the cost plan was based on actual expenditures. A very low rate on capital projects is likely to be replaced with a much higher rate (such as with most agencies where overhead rates of 100% or more are not unheard of–including by the Department of General Services).

Vehicle Costs Were Reasonable and Based on CalTrans Model

The first vehicle cost allocation plan used by the Authority was a State agency model, that of CalTrans. After operational experience showed that a different model better described the Authority's actual vehicle use patterns, the Department of General Services model was adopted. Changing models as new information is developed doesn't mean the original model was inappropriate, just that the Authority is trying to always improve its practices. We see no reason to recalculate all vehicle expenditures when the original model was reasonable at the time.

Response to Recommendations, Finding No. 3:

- **The Cost Allocation Plan used by the Authority was valid when undertaken and during the time frame of the bond fund expenditures covered in the Management Letter. The Authority with encouragement from the Conservancy has contracted with outside accountants to develop a revised cost allocation method that will comply with these recommendations. Issues having to do with apportionment between overhead and direct costs will be determined by the new cost allocation plan.**

- **The Conservancy disagrees that overhead was overstated, and no evidence has been shown to the contrary.**

The Authority's response deals at great length with the cost allocation plan, and includes the opinion of a respected outside accountancy firm that all costs were correctly and fairly allocated in accordance with OMB Circulars and accepted practice. Based on this information, the Conservancy has no basis to require a recalculation of overhead.

- **The Resources Agency Prop. 13 grant was appropriately spent and no funds are due back to Agency**.

The attached opinion of Chief Staff Counsel deals extensively with this issue (see **Exhibit 21**) and we note the opinion as well from the Macias, Gini & Co. firm (**Exhibit 9**) confirms the treatment of expenses in this grant.

- **Vehicle cost allocation was valid when CalTrans methods were first used, improving the method does not imply that prior charges were unreasonable.**

Finding 4. Administrative Services Contract

The Contract is Valid and Was Approved by General Services

The attached opinion of Chief Staff Counsel discusses this issue (**Exhibit 21**). The authority to contract is clear and checks and balances applied, especially in that it was approved by the Office of Legal Services of Department of General Services.

Unallowable Costs

This issue has been discussed at length by Mr. Berger's response. We endorse the position taken by the Authority, and note that the full $2,293 has been reimbursed to the Authority under circumstances that are unfair to the employee involved. Frankly, I cannot imagine a more wrong headed move than to charge an employee for doing the public's business *even when on vacation.* The poor hotel record keeping in Mexico should not cost him over $1,700, but that was his choice to pay.

Finding 5. Consistency of Grant with Bond Acts

Consistency of Grants with Bond Fund Purposes has been Addressed by Counsel

The opinion of counsel, **Exhibit 21**, is explicit. All grants were consistent with approved Bond Fund purposes and are legal.

Los Angeles River Center and Gardens

The River Center is a major public use area, and one of the most attractive venues of its kind in Los Angeles. Attached you will find letters from the State Senator representing the area, the Assemblymember of the area, and the entire rainbow of community groups attesting to its value. I cannot speak more eloquently than their voices. See **Exhibits 22**, **23**, and **24**.

Response to Recommendations, Finding 5:

- **All grant contracts are legal and valid, as per counsel, and none should be cancelled.**
- **The Conservancy has implemented procedures calling for specific counsel determination of the validity of each grant to be awarded.**
- **The Conservancy has asked the Attorney General to review the grants in question.**

Government Code Section 11157 specifically provides that the Attorney General is the advisor to all agencies as to their powers. The Conservancy has referred the questions regarding these grants to the Office of the Attorney General for their review.

Finding 6. Improve Grant Procedures

Grant Procedures Are Being Improved

We agree that some procedures can be improved. The extensive discussion of this in Mr. Berger's response is adopted herein as the comment of the Conservancy as well. **Exhibit 3** shows the comprehensive matrix of changes that are being implemented to be consistent with the recommendations.

Response to Recommendations, Finding 6

- **The Conservancy will be implementing its share of the changes as described in Exhibit 3.**

- **Better controls over Credit Card Purchases are being implemented with the Cal-Card system.**

Finding 7. Legal Costs and Loans

The opinion of Chief Staff Counsel, **Exhibit 21**, constitutes the Conservancy's response to this finding. All costs were appropriate.

Response to Recommendations, Finding 7:

- **As per Conservancy counsel, all costs were appropriate. The Attorney General's Office, in accordance with the Government Code has been requested to reviews litigation related costs and loans.**

- **Control sections are premature in light of Conservancy counsel opinion and the lack of a review, as yet, by the Attorney General.**

- **There is no warrant, and it is poor public policy, to restrict project planning and design grants.**

Contrary to what is stated in the Management letter, project planning and design grants are frequently awarded.

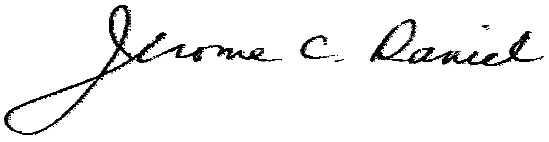
A search of the Proposition 40 database using the word "planning" came up with 30 entries. All the way from California State Parks "Upper Watershed Planning" grant (to itself) to the Coastal Conservancy's "San Francisco Bay Area Conservancy Program: Planning and Development" grant to the Greenbelt Alliance. See "planning" under the advanced search function: http://www.4050bonds.resources.ca.gov/SearchResults.asap

- This database is not current and does not reflect many recently awarded project planning and development grants. Attached is a review of the last several months of Coastal Conservancy agendas, and the last year of Tahoe Conservancy agendas, it shows 31 Coastal Conservancy grants involving planning since October of 2003, and 16 Tahoe Conservancy planning grants in the past year (March 2003 to March 2004).

- **Exhibit 25** is a comprehensive list of recently approved planning grants from our sister conservancies.

We appreciate the opportunity to comment and hope that our responses will be seen in the light that they were intended, as a commitment to move forward with appropriate change, while not destroying the cooperative relationship with our partners that has made the Santa Monica Mountains Conservancy story such a success.

Sincerely,



JEROME C. DANIEL
Chairperson

cc: The Conservancy
MRCA Governing Board Members
Mike Chrisman, Secretary for Resources
Don Wallace, Assistant Secretary
Elaine Berghausen, Deputy Assistant Secretary

Tex Ward, Financial Officer, MRCA
Joseph Edmiston, Executive Director
Rorie Skei, Chief Deputy Director
Laurie Collins, Chief Staff Counsel
Reva Feldman, Chief Operating Officer, MRCA