

MRCA
5/4/11 Attachment
Item VIII

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Sweetwater Mesa Public Benefits Agreement Term Sheet

This term sheet outlines the terms of a proposed public benefits agreement between Vera Properties, LLLP, Lunch Properties, LLLP, Morleigh Properties, LLLP, Mulryan Properties, LLLP and Ronan Properties, LLLP (collectively, "Sweetwater Mesa Landowners"), on one hand, and the Santa Monica Mountains Conservancy ("SMMC") and the Mountains Recreation and Conservation Authority ("MRCA"), on the other.

The overall purpose of the agreement is that SMMC/MRCA will take a neutral position on the Sweetwater Mesa Landowners' proposed development of five single family residences as proposed in their pending applications before the Coastal Commission ("Project") and support the conservation easements, deed restrictions and a trail acquisition package to provide a public trail extending between the Sweetwater Mesa Landowners' properties and Tuna Canyon Park ("Public Benefits Program"). The Public Benefits Program will entail a commitment from the Sweetwater Mesa Landowners in excess of \$1 million, consisting of \$750,000 in funds to acquire either fee title or trail easement rights and improve the same, plus the acquisition of trail easements which the parties have previously negotiated and the commitment of the Sweetwater Mesa Landowners' consultants, at the Sweetwater Mesa Landowners' sole expense, to negotiate and assist SMMC/MRCA in the acquisition of additional trail access rights, which are valued in excess of \$1 million. All of the foregoing is contingent on final approval from the Coastal Commission, the County of Los Angeles and City of Malibu and any other permitting authority to construct the Project as defined in paragraph III.E.3.c. and subject to termination as provided in paragraph III.F.

I. Condition Precedent to Effectiveness of Agreement

- A. The following paragraphs B and C are conditions precedent to the effectiveness and validity of the agreement. The failure of the following conditions precedent shall make the agreement void and of no further force and effect.
- B. SMMC/MRCA adopts a formal resolution in support of the Public Benefits Program.
- C. SMMC/MRCA will take a neutral position on the Project. SMMC/MRCA may inform the Coastal Commission that it has previously submitted concerns about the Project in writing in 2009, that the Coastal Commission may consider the concerns it previously expressed in writing in rendering its decision regarding the Project, and that the SMMC/MRCA supports the Public Benefits Program.

II. MRCA/SMMC Obligations

A. SMMC/MRCA shall:

1. Support the Public Benefits Program before the California Coastal Commission, the County of Los Angeles, the City of Malibu and any other governmental agencies from which approvals are required to develop the Projects and
2. Support of the Public Benefits Program shall include, at a Sweetwater Mesa Landowner's request: (i) communicating support for the Public Benefits Program in writing, and (ii) attending public meetings and hearings and speaking in favor of the Public Benefits Program.

III. Sweetwater Mesa Landowners Obligations

- A. The Sweetwater Mesa Landowners shall provide offer to trail access rights for a public trail across those portions of the properties depicted in attached Exhibit 1 ("Trail Dedication Area"), which shall require dedication of a public trail over the Trail Dedication Area at such time as the Sweetwater Mesa Landowners receive Final Approval of the Project on the Sweetwater Mesa Landowners' properties as defined below. The offers to dedicate in favor of MRCA shall be recorded within 30-days of the approval of all of the applications for the Project by the Coastal Commission. The offers to dedicate shall vest and be accepted by the MRCA only upon Final Approval of the Project, as defined below. The offers to dedicate shall state that they terminate automatically if the the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G.. MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request.
- B. The Sweetwater Mesa Landowners shall provide conservation easements over the portions of their respective properties depicted in the attached Exhibit 1 ("Easement Area"), for purposes of preserving and protecting the Easement Area as natural open space. Offers to dedicate the conservation easements in favor of MRCA shall be recorded within 30-days of the approval of all of the applications for the Project by the Coastal Commission. The offers to dedicate shall vest and be accepted by the MRCA only upon Final Approval of the Project, as defined in paragraph III.F.3.c and after completion of all grading necessary to delineate the boundaries of such conservation easement. The offers to dedicate shall state that they terminate automatically if the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G.. MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request. MRCA's right to enter onto the Easement Area shall be subject to 72-hour advance written notice. The conservation easements shall reserve the following rights for the Sweetwater Mesa Landowner and their successors:

1. The right to clear vegetation within the Easement Area to comply with fuel modification and other mandatory governmentally-imposed requirements;
 2. The right to engage in activities in or upon the Easement Area to facilitate the construction, maintenance, repair or replacement of any improvement on the Sweetwater Mesa Landowners' properties, including, without limitation, any improvements contemplated by any approval to develop the Projects or required by any governmental agency;
 3. The right to construct, maintain, repair, replace or access necessary improvements within the Easement Area for the development of the Projects (including, without limitation, roads, drainage improvements and water and other utility lines) or to comply with conditions imposed by a governmental agency;
 4. The right to engage in activities in or upon the Easement Area in order to comply with any requests for information by a governmental agency;
 5. The right to use the Easement Area for walking or riding of horses; and
 6. The right to otherwise enter in or upon the Easement Area for any other purpose whatsoever, provided that such entry does not violate the purpose of the easement.
- C. The Sweetwater Mesa Landowners shall provide deed restrictions over the portions of their respective properties depicted in the attached Exhibit 1 ("Deed Restriction Area 1"), located outside of the first 100 feet of the fuel modification from the structures approved prior to the date of recordation on the Sweetwater Mesa Landowners' respective properties. Offers to dedicate the deed restrictions in favor of MRCA shall be recorded within 30-days of the approval of all of the applications for the Project by the Coastal Commission. The offers to dedicate shall vest and be accepted by the MRCA only upon Final Approval of the Project, as defined below, and after completion of all grading necessary to delineate the boundaries of such Deed Restriction Areas. The offers to dedicate shall state that they terminate automatically if the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G. MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request.
- D. Any development, as defined in Public Resources Section 30106, proposed within Deed Restriction Area 1 following the recordation of the deed restriction and not subject to a coastal development permit approved by the Coastal Commission prior to the date of recordation, shall be subject to the

following prior to the submission of an application for a coastal development permit or other land use approval for such development:

1. The Sweetwater Mesa Landowner proposing the development shall submit plans for such construction to the Executive Director of the Santa Monica Mountains Conservancy (“ED”), for review and approval, which shall not be withheld unreasonably.
2. The ED’s review and approval shall be based on and limited to the following concerns and interests (a) potential adverse impacts to public viewsheds on public land including future public viewsheds on public land, (b) glare and maintenance of dark sky conditions, (c) habitat loss and/or degradation (including impacts to Coast horned lizard), (d) habitat fragmentation, (e) clearance of established plant communities where the dominant species are California native plants (“Native Vegetation”), (f) ecological impacts due to use of rodenticides, (g) introduction of non-native species, and (h) erosion. New development shall not expand the area of governmentally required fuel modification beyond the limits required for existing development at the time of the application for the new development, provided that such expansions may occur in locations where Native Vegetation is not present
3. No habitable structure or part of a habitable structure (as defined by Los Angeles County Fire code or regulation, or by applicable law in the absence of such code or regulation) shall be located on the Deed Restriction Area, except with the consent of the ED, which may be withheld for any reason. Nothing herein shall in any way prevent the repair, replacement, construction or reconstruction of a habitable structure on the Development Area.
4. In the event that the Sweetwater Mesa Landowner making the application disputes the determination of the ED or the parties have a disagreement with respect to the ED’s consideration of the application, the parties shall submit the dispute to mediation or binding arbitration on the following terms:
 - a. Either party may elect to proceed to arbitration or mediation by sending written notice to the other party of such election. In the event a party elects to mediate the dispute, the other party shall inform the noticing party whether they consent to the mediation on or before 30-days following receipt of the election. In the event that the parties do not mutually agree to mediation, the dispute shall proceed to binding arbitration. In the event that the dispute is not concluded following a mediation, the matter shall proceed to binding arbitration.

- b. On or before 30-days following receipt of notice, the parties shall select an arbitrator or mediator, who shall be a former or retired justice of the California Court of Appeal or any higher court in California, unless the parties agree otherwise. If the parties do not agree on an arbitrator, on or before 60 days following receipt of notice, the parties shall submit a request to a private dispute resolution service for selection of an arbitrator or mediator meeting the qualifications set forth above or to the Los Angeles Superior Court in the event such service does not exist or the parties cannot agree on a service. The parties shall share the cost of the arbitrator or mediator equally.
- c. In the event the parties engage in a mediation and the dispute is not resolved at the conclusion of the mediation, on or before 15-days after the conclusion of the mediation, each party shall inform the other whether they agree to the mediator serving as the arbitrator. In the event the parties do not agree to the mediator serving as the arbitrator, within 30-days after the conclusion of the mediation, the parties shall select an arbitrator in the manner set forth above.
- d. The subject of the arbitration shall be limited to whether the ED's approval has been unreasonably withheld, whether the proposed development should be approved by the ED based on the criteria set forth above for the ED's decision and applicable law, whether any disputed terms of an ED approval may be applied to the development based on the criteria set forth above for the ED's decision and applicable law and any other matter which the parties mutually agree may be decided by the arbitrator. The arbitrator's decision may be based on the evidence and information presented at the arbitration.
- e. All awards and orders of the arbitrator shall be final and binding subject to confirmation, correction or vacation pursuant to California Code of Civil Procedure Sections 1285 and following. The arbitrator(s) shall decide the matter in accordance with California law and applicable federal law, including, applicable law regarding permissible regulation and imposition of conditions and exactions by a governmental agency, which shall apply to the ED's decision. Any error in law by the arbitrator or in application of the law shall be deemed in excess of the arbitrator's authority. Any such error in law may be reviewed de novo by Superior Court upon a Petition To Vacate or Confirm the arbitration award and may thereafter be appealed as with any other judgment.
- f. An arbitration or mediation shall conclude on or before 90-days from the date that an arbitrator or mediator is selected for such proceeding and shall be conducted in accordance with California

Code of Civil Procedure section 1282 et seq. The parties may conduct discovery in accordance with Code of Civil Procedure section 1283.05. Notwithstanding any provision to the contrary, the parties shall bear their own costs and attorney fees in the arbitration and in connection with any action or proceeding to enforce the requirements of this Section or to enforce the arbitration award.

- E. The Sweetwater Mesa Landowners shall provide deed restrictions over the portions of their respective properties depicted in the attached Exhibit 1 (“Deed Restriction Area 2”), located outside of the approved 10,000 square foot development area (“Development Area”) and the first 100 feet of the fuel modification from the structures approved prior to the date of recordation on the Sweetwater Mesa Landowners’ respective properties (“Development Area”). Offers to dedicate the deed restrictions in favor of MRCA shall be recorded within 30-days of the approval of all of the applications for the Project by the Coastal Commission. The offers to dedicate shall vest and be accepted by the MRCA only upon Final Approval of the Project, as defined below, and after completion of all grading necessary to delineate the boundaries of such Deed Restriction Areas. The offers to dedicate shall state that they terminate automatically if the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G. . MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request.
1. Any structure, as defined in the Uniform Building Code, proposed following recordation of the deed restriction and not subject to a coastal development permit approved by the Coastal Commission prior to the date of recordation, shall be subject to the requirements of Section III.D. Such structures shall be limited to one stable and/or corral per approved parcel. Nothing herein shall restrict walks, trails, patios not to exceed 2,000 square feet, landscaping, gardens occupying up to 30 percent of the deed restriction area, sitting areas, (benches and tables), wildlife permeable walls and fencing and drainage improvements to the extent permitted by applicable law.
 2. All landscaping shall consist of California native plants.
- F. The Sweetwater Mesa Landowners shall take the following actions in furtherance of the MRCA’s completion of a public trail between the Sweetwater Mesa Landowners’ properties and Tuna Canyon Park (the “Trail”):
1. (i) The Sweetwater Mesa Landowners shall obtain offers to dedicate trail access rights for a public trail across the northern portions of APNs _____, _____, and _____ which are currently owned by Pebblecreek, LLC,

Watercrest Vista, LLC, and Bigrock Canyon, LLC (collectively, “Pebblecreek Properties”), which shall require dedication of a public trail on the Pebblecreek Properties at such time as the Sweetwater Mesa Landowners receive Final Approval of the Project on the Sweetwater Mesa Landowners’ properties as defined below. In exchange for the three offers to dedicate trail access rights on the Pebblecreek Properties, MRCA/SMMC agree to not oppose permitted residential development and accessory uses on any of the Pebblecreek Properties within the building sites on those properties, as defined in F.1.(iii) on those properties and shall confirm such agreement in writing with the Pebblecreek Property owners. Prior to final vesting of the trail easements described herein, MRCA and SMMC reserve the right to oppose the development unless applicant(s) agree to MRCA accepting the herein described trail easements. The offers to dedicate in favor of MRCA shall be recorded within 30-days of the approval of all of the applications for the Project by the Coastal Commission. The offers to dedicate shall vest and be accepted by the MRCA only upon Final Approval of the Project, as defined below. The offers to dedicate shall state that they terminate automatically if the the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G.. MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request.

(ii) As used in this paragraph, and wherever else in this agreement the “Pebblecreek Properties” is mentioned, the term “approved” building sites shall refer to the three (3) pads within the City of Malibu, generally depicted on Exhibit 5 of Coastal Commission Permit Application 4-96-015 entitled “Conceptual Access Road and Pads” a copy of which exhibit is attached hereto as attachment []. .

2. Prior to the date of the hearing before the California Coastal Commission on the applications for the development of the Sweetwater Mesa Properties, the Sweetwater Mesa Landowners shall deposit into escrow (i) the offers to dedicate the conservation easements described in Section III.A., (ii) the offers to dedicate the deed restriction for Deed Restriction Area 1 described in Section III.B, (iii) the offers to dedicate the deed restrictions for Deed Restriction Area 2 described in Section III.D., and (iv) the offers to dedicate the trails on the Pebblecreek Properties described in Section III.E. to be held and recorded in accordance with the terms of this agreement (“Pebblecreek OTD”). Concurrent with the deposit of the above listed documents into escrow, MRCA and SMMC shall deposit into escrow their respective written agreements not to oppose the development on the Pebblecreek Properties within the approved building sites on those properties in accordance with Section III.F.1 (“Non-Opposition Agreements”). Escrow shall be instructed to release the Non-Opposition Agreements to the Pebblecreek Property Owners upon

deposit of the Pebblecreek OTD(s) into escrow. The parties shall cooperate to facilitate the opening of the escrow.

3. The Sweetwater Mesa Landowners shall provide funds in the amount of \$750,000 to the SMMC/MRCA to purchase fee interests, easements or other rights to complete the Trail.
 - a. Prior to the date of the hearing before the California Coastal Commission on the applications for the development of the Sweetwater Mesa Properties, the Sweetwater Mesa Landowners shall deposit a letter of credit in the amount of \$750,000 into an escrow to be held in accordance with the terms of this agreement. The escrow shall release the letter of credit to the MRCA only upon Final Approval of the Project, as defined below. The escrow shall release the letter of credit to the Sweetwater Mesa Landowners on their request if the Sweetwater Mesa Landowners do not receive final approval of the Project, as defined in paragraph III.F.3.c or an event of termination occurs as set forth in paragraph III.G. MRCA shall execute and deliver documentation to vacate or remove the offers to dedicate within seven-days after request. The Sweetwater Mesa Landowners may replace the letter of credit with an equivalent letter of credit or funds deposited into escrow at any time.
 - b. Escrow shall deposit the funds into an interest bearing account either (i) no later than 30-days after Final Approval of the Project on the Sweetwater Mesa Landowner's' property or (ii) no later than ten (10) days prior to the commencement of construction of such Project, whichever occurs first.
 - c. Final Approval of a Project means that the Project, as conditioned by the California Coastal Commission or other administrative or regulatory body and as accepted by the applicants has received approvals from all government agencies (including but not limited to the California Coastal Commission, the City of Malibu, the County of Los Angeles and the Regional Water Quality Control Board) which is final and not appealable, (ii) all judicial challenges or administrative appeals are resolved in favor of the Projects and (iii) the statute of limitations for challenging any of the approvals of the Projects has run. Notwithstanding the foregoing, if one or more of the project applicants does not seek to obtain final approval of that applicant's Sweetwater Mesa Project, the Public Benefits Program shall vest if all of the remaining applicants receive Final Approval of their respective Sweetwater Mesa Projects.

4. Following Coastal Commission approval of all of the applications for the Project, MRCA may employ Schmitz & Associates to assist MRCA staff in securing agreements to acquire title or easements to complete the Trail between the Pebblecreek Owners Property and Tuna Canyon Park. Schmitz & Associates shall bill the Sweetwater Mesa Landowners for such services and the Sweetwater Mesa Landowners shall be obligated to pay for such services up to an aggregate amount \$250,000.
- G. This Agreement shall terminate and the parties shall have no obligation to perform any of the covenants herein if (i) the MRCA or SMMC oppose any of the Sweetwater Mesa Landowners Projects before the Coastal Commission, County of Los Angeles, City of Malibu or any other governmental agency whose approval is necessary for Final Approval of the Project, (ii) SMMC or MRCA fail to support the Public Benefits Program in accordance with Section II., or (iii) the Sweetwater Mesa Landowners do not receive final approval of all of the Projects,