

COASTAL CONSERVANCY

Staff Recommendation
September 24, 2009

RANCHO PALOS VERDES NCCP: UPPER FILIORUM ACQUISITION

File No. 05-071-02
Project Manager: Bob Thiel

RECOMMENDED ACTION: Modification of prior Conservancy authorization to disburse up to \$5,500,000 to the City of Rancho Palos Verdes to acquire 160.5 acres of the Upper Filiorum Property to help implement the City's Natural Communities Conservation Plan.

LOCATION: City of Rancho Palos Verdes, Los Angeles County

PROGRAM CATEGORY: Reservation of Significant Coastal Resource Areas

EXHIBITS

- Exhibit 1: [September 25, 2008 staff recommendation](#)
 - Exhibit 2: [Aerial photo of Filiorum and Donation Tracts](#)
 - Exhibit 3: [Site map](#)
 - Exhibit 4: [Filiorum and Donation Tract boundaries](#)
 - Exhibit 5: [Location of Filiorum Tract within Landslide Moratorium Area](#)
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RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31350-31356 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed \$5,500,000 (five million five hundred thousand dollars) to the City of Rancho Palos Verdes to acquire approximately 160.5 acres of the Upper Filiorum Property known as the Filiorum Tract (consisting of Los Angeles County Assessor Parcel Number 7581-023-029 and a portion of APN 7581-023-034) on the Palos Verdes Peninsula in Los Angeles County to protect significant coastal resource areas. This authorization is subject to the following conditions:

1. Prior to the disbursement of funds for acquisition, the City of Rancho Palos Verdes (the City) shall submit for the review and approval of the Executive Officer of the Conservancy all relevant acquisition documents, including but not limited to the

appraisal, environmental assessments, agreement of purchase and sale, escrow instructions, and documents of title necessary to the acquisition.

2. The City shall pay no more than fair market value for the property.
3. The City shall permanently dedicate the property for habitat and resource protection, open space preservation, and public access (to the extent compatible with habitat and resource protection) in a manner acceptable to the Executive Officer.
4. The City shall acknowledge Conservancy funding by erecting and maintaining on the Filiorum Tract, or at another approved location, a sign that has been reviewed and approved by the Executive Officer.

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with the purposes and objectives of Chapter 8 of Division 21 of the Public Resources Code (Sections 31350-31356) regarding reservation of significant coastal resource areas.
2. The proposed authorization is consistent with the current Project Selection Criteria and Guidelines.”

PROJECT SUMMARY:

This project would provide funds to the City of Rancho Palos Verdes (the “City) to acquire approximately 160.5 acres of the Upper Filiorum property (the “Filiorum Tract”) in order to implement the City’s Natural Communities Conservation Plan. As part of the transaction, the seller will donate the remaining 29.4 acres of the Upper Filiorum property (the “Donation Tract”), resulting in conservation of 190 acres of undeveloped property on the Palos Verdes Peninsula for habitat and open space preservation and limited compatible public access.

On September 25, 2008, the Conservancy authorized a grant of up to \$5.5 million to the City to enable it to purchase the entire 190-acre Upper Filiorum Property, as well as an adjacent 27-acre site, known as the Plumtree property, for which the City held an option to purchase (see Exhibit 1). The state’s funding crisis and resulting freeze on state bond funds, however, prevented the City from closing on either acquisition by the March 30, 2009 deadline imposed in its original purchase and sale agreement. The City has now renegotiated the acquisition with the seller. Although the City has lost the opportunity to purchase the Plumtree property, its new agreement with the seller allows the City to acquire, through purchase and donation, the entire Upper Filiorum property at a savings of \$2.7 million over the purchase price in its earlier agreement.

The current project would involve the City’s purchase of 160.5 acres of the Upper Filiorum property, consisting of Los Angeles County Assessor Parcel Number 7581-023-029 and a portion of APN 7581-023-034, outlined on Exhibits 2 and 4 as “the Filiorum Tract.” The purchase price for that acreage will be \$6.5 million. The Filiorum Tract is located on the hillside above Palos Verdes Drive South and owned by the seller, York Long Point Associates, L.P. Simultaneously with the close of escrow on the City’s purchase, the seller would donate to the

City the Donation Tract, the remaining 29.4 acres of the Upper Filiorum property, which consists of APN 7572-002-022 and a portion of APN 7581-023-034. In return, the seller would receive certain mitigation credits for the potential residential development of an adjacent property that is located outside of the City's NCCP Preserve.

The Filiorum Tract is located below the southern end of Crenshaw Boulevard. The Donation Tract is located southeast of the Filiorum Tract, near Plumtree Road and Cinnamon Lane (see Exhibits 2 and 3). Because of severe slopes, about 107 acres total of both Tracts is zoned Open Space Hazard, a designation that generally permits only limited recreational use without permanent structures. The balance of each Tract is zoned residential: about 70 acres total of both Tracts is zoned RS-1 (one unit per one-acre lot), while the remaining 13 acres is zoned RS-2 (which permits two residences per one-acre lot).

The revised project differs from the previously approved project in both the amount of acreage that the City would acquire for inclusion in the Palos Verdes Nature Preserve and the price it would pay to acquire the Upper Filiorum site. The project that was originally reviewed by the Conservancy a year ago involved the City's outright purchase of the entire Upper Filiorum property for \$9.2 million, along with its option to purchase the smaller Plumtree property for \$3.0 million. This staff recommendation updates the previous Conservancy authorization to reflect the revised transaction.

As with the earlier project, this acquisition would connect two reserve components of the City's Palos Verdes Nature Preserve (the Preserve), a 1,400-acre preserve that is being assembled under a plan being prepared under the state's Natural Communities Conservation Planning (NCCP) Act. (See the maps and photos attached as exhibits to Exhibit 1). The Upper Filiorum property would link the Three Sisters Reserve on the west with the Portuguese Bend Reserve to the east and provide a critical linkage between habitats that support the California gnatcatcher, Palos Verdes blue butterfly, and other special status species. Upper Filiorum is the last major segment of private property for acquisition and inclusion in the Preserve under the City's draft NCCP plan. The plan originally identified Upper Filiorum, the 423-acre Portuguese Bend (or Hon) property, and the 43-acre Agua Amarga Canyon parcel as the major private lands to be purchased for the Preserve. The latter two properties were both acquired by the City in 2005, with Coastal Conservancy and other funding.

The City would acquire and own the 190 acres of the Upper Filiorum Property and add it to the Preserve. Concurrently with the acquisition, the City would grant a conservation easement over the property in favor of the Palos Verdes Land Peninsula Land Conservancy (PVPLC), which has entered into an interim agreement with the City to manage the Preserve. The conservation easement would identify the California Department of Fish and Game as a third party beneficiary to enforce the provisions of the easement.

The City and the owner of the Upper Filiorum property have entered into a purchase and sale agreement, under which the City is to purchase the Filiorum Tract for \$6.5 million and the seller will donate the Donation Tract to the City in return for certain mitigation credits on the potential development of adjacent property. In addition to the proposed Conservancy funding for this project, the City will contribute \$600,000 for the acquisition, with the \$400,000 balance of the purchase price provided by the Palos Verdes Peninsula Land Conservancy and private donors

(See the “Project Financing” section below).

The September 25, 2008 staff recommendation (Exhibit 1) outlines the development of the City’s NCCP Preserve program, as well as the legal basis for that effort. It also describes the Upper Filiorum site and environmental setting, as well as the habitats and ecological communities that the City and its partners are seeking to conserve through this acquisition. The following section describes the changes to the project and the circumstances that generated them.

SUPPLEMENTAL PROJECT HISTORY

Within weeks after the Conservancy authorized funding for the Upper Filiorum and Plumtree acquisitions last September, two events altered the dynamics of the project. The first was a court decision invalidating certain land-use restrictions on the Palos Verdes Peninsula. The second was the State’s freeze on bond funding.

The *Monks* decision:

The Portuguese Bend section of the Palos Verdes Peninsula has an extensive history of unstable soil conditions, active landslides and other mass movement. In 1978, the City adopted a moratorium on the construction of new homes in the vicinity of a recent landslide, but established a process to allow owners of undeveloped lots to seek an exclusion from the moratorium. At the suggestion of the City’s geologist, the City divided the moratorium area into eight separate zones, which differ in their geologic stability and in their proximity to active landslide areas. Zone 1---in which the Upper Filiorum and Plumtree properties are located---consists of 550 acres at the top of the moratorium area and was characterized by the City’s geologist in 1993 as one “unaffected by large historic landslides. . .” Located below Zone 1 is Zone 2: 130 acres that he similarly described as “unaffected by large historic landslides.” In contrast, the remaining zones located to the south and east of Zones 1 and 2 encompass the areas of active or recent landslide activity (see Exhibit 5).

In 2002, the City amended the moratorium ordinance to clarify the geologic standard that must be satisfied for a landowner to develop property within any of the Zones. Several owners of residentially-zoned vacant lots in Zone 2---some of whom had been waiting decades for approval to build homes on their properties---then sued the City, alleging inverse condemnation under the takings clause of the California constitution. After five years of litigation that included two trial court decisions and an intervening appellate court ruling, the Second District Court of Appeal found for the property owners, concluding that the City’s moratorium deprived them of all economically beneficial use of their property and as a result constituted a permanent taking. [*Monks v. City of Rancho Palos Verdes*, 167 Cal.App 4th 263, 84 Cal.Rptr.3d 75 (2008).]

The lower court had held that the City’s ordinance was reasonable on several grounds, but the Court of Appeal disagreed. The trial court had found that the moratorium was not “permanent,” since the plaintiffs could have sought an exclusion from the moratorium through the city’s administrative process, albeit only by proving the stability of geologic conditions across all of Zone 2 through extensive (and extremely expensive) geotechnical studies. The appellate court said such an exercise was futile, since “the plaintiffs should not be required to pay between \$500,000 and \$1 million to conduct a study in an attempt to prove what the city would not

believe.” The trial court had also held that City was justified under state nuisance law in responding to the risk of significant land movement by restricting development in the moratorium area. But the Court of Appeal said that for the City to prevail on those grounds, it would have had to demonstrate that the construction of homes on plaintiffs’ lots would pose a significant harm to persons or property, which the City had failed to do.

Block glides, such as those on the Palos Verdes Peninsula, the Court of Appeal said, are “large blocks of earth that move slowly along a single plane” and generally present no risk of harm to people. According to the Court of Appeal, the City had not argued that construction on plaintiffs’ lots was likely to damage the property of others or to cause a block glide by weakening the stability of Zone 2. The Court of Appeal also found that the evidence at trial failed to establish a reasonable probability of personal injury or property damage, other than the possibility that the homes the plaintiffs wanted to build could be damaged in the distant future—damage that could then be repaired. The appellate court noted that the City’s own conduct in approving additions to existing homes in Zone 2 from 1988 to 2005 was inconsistent with its assertion that construction on the plaintiff’s lots would be detrimental to public safety. As a consequence, the Court of Appeal said, “[t]he risk of property damage and personal injury . . . is not sufficient in any practical sense to justify applying the moratorium to plaintiffs’ lots.”

Although the City appealed the decision of the Court of Appeal, the Supreme Court of California declined to review it.

The *Monks* decision had immediate implications for the City’s proposed acquisition of the Upper Filiorum and Plumtree properties. First, it called into question the development potential of property located within the moratorium area, which had usually been considered to be severely limited. By doing so, it also called into question assumptions about the value of that property. Second, the *Monks* decision caused the seller of the Upper Filiorum and Plumtree properties, York Long Point Associates L.P., to reevaluate the economic wisdom of selling the Plumtree property to the City for inclusion in the Preserve. If the moratorium ordinance constituted a permanent taking as applied to property within Zone 2, then it seemed likely that a court would apply a similar reasoning to property within Zone 1, further removed from any known historic landslide activity, where the Upper Filiorum and Plumtree properties were both located.

The State bond freeze

On December 18, 2008 (a day after the state Supreme Court declined to review the *Monks* decision) the state Department of Finance issued a budget letter (08-33) directing all state entities with expenditure control over bond-funded programs to suspend projects funded with state bond monies and to “cease authorizing any new grants or obligations for bond projects, including new phases for existing projects.” That order effectively froze or blocked much of the funding which the City was relying on to buy the Upper Filiorum and Plumtree properties.

As the September 25, 2008 staff recommendation outlines, the City had planned to use not only the Coastal Conservancy grant, but also \$2.0 million in USFWS funds from the Wildlife Conservation Board to help fund the acquisitions. The budget letter directive froze the Coastal Conservancy’s contribution; it also prevented the WCB (which had not yet authorized its funding) from considering its grant to the City. The bond freeze thus created a serious dilemma for the City: its purchase and sale agreement with the seller required the City to close on the

purchase by March 30, 2009. But with state funds frozen, the only alternatives available were foundation and other private monies, which the City and the PVPLC weren't able to raise in time. When the purchase and sale agreement expired, the seller withdrew both its offer to sell the Upper Filiorum property to the City for \$9.2 million, as well as the City's option to purchase the Plumtree property for \$3.0 million.

After failing to close on the acquisitions by March 30, the City began a new round of discussions with the seller to secure a feasible alternative to the original project. By that time, the seller had concluded that, in light of the *Monks* decision, it could probably obtain development entitlements on the Plumtree lots and as a result, the value of those lots was much greater than the \$3.0 million for which it had previously offered to sell the property to the City. The City ultimately concluded that the seller's new asking price for the Plumtree property greatly exceeded the property's potential habitat value for the Preserve. And so the parties focused instead on renegotiating a new agreement for only the Upper Filiorum property.

The revised purchase and sale agreement

The City and the seller have negotiated a new agreement under which the City is to purchase the 160.5-acre Filiorum Tract for \$6.5 million on or before December 31, 2009. At the closing, the seller will then donate to the City the 29.4 acre Donation Tract. The seller, which has filed an application with the City for residential development on the Plumtree property, will then be credited with mitigation for the loss of potential habitat as a result of any such development. The City, DFG and USFWS have evaluated the amount of coastal sage scrub and grassland habitat that would be lost if the Plumtree property were completely developed and have determined that the dedication of the 30-acre Donation Tract would fully mitigate for the loss of habitat present on the Plumtree property. The terms of the purchase and sale agreement provide that the seller would not be required in the future to donate additional land or money for conservation purposes to compensate for the loss of habitat on the Plumtree property as a result of its development. Because the seller's permit applications are subject to discretionary review, however, the agreement is not a guaranty that York Long Point will be allowed to develop the Plumtree Property or that the City would not require any additional mitigation or dedication of land for other purposes, such as conditioning seller's project on installation of a new fire access road.

The parties have also had the Upper Filiorum property reappraised as of June 30, 2009. The appraisal includes the agreed and supportable assumption that the reasoning in the *Monks* decision would extend and apply to properties within Zone 1 (which is further distant from historic landslide activity) and, as a result, permit a landowner to pursue development approvals under the City's standard discretionary-review processes.

PROJECT FINANCING:

Coastal Conservancy	\$5,500,000
City of Rancho Palos Verdes	600,000
Palos Verdes Peninsula Land Conservancy and private donations	400,000
Total project cost	\$6,500,000

The anticipated source of funds for this project is an appropriation to the Conservancy from Proposition 84---the Safe Drinking Water, Water Quality and Supply, Flood Control River and Coastal Protection Bond Act of 2006 (Public Resources Code Sections 75001 et seq). Consistent with the purposes specified in Section 75060 of that bond act, the acquisition of the Upper Filiorum property would protect natural habitat values of coastal lands on the Palos Verdes Peninsula, as well as promote access to and enjoyment of the coastal resources of the state.

In evaluating acquisition projects for the purpose of natural resource protection under Proposition 84, the Conservancy is directed by Section 75071 of the bond act to give priority to projects that meet one or more of the five criteria specified in Section 75071. Acquisition of the Upper Filiorum property by the City would meet at least three of those criteria:

1. “Properties that link to, or contribute to linking, existing protected areas with other large blocks of protected habitat. . .” [§75071(a)]. As discussed above, the acquisition of the Upper Filiorum site would provide the necessary connection between the 98-acre Three Sisters Reserve with the 423-acre Portuguese Bend Reserve.

2. “Properties that support relatively large areas of under-protected major habitat types” [§75071(c)]. The proposed acquisition would help protect an important segment of coastal sage scrub, an ecological community whose losses in Southern California have exceeded 90 percent of its original extent.

3. “Properties for which there is a non-state matching contribution toward the acquisition, restoration, stewardship or management costs.” [§75071(e)]. As shown above, the local and private contribution towards these acquisitions would represent more than 15 percent of the purchase price.

As also mandated by Section 75071(f) of the bond act, Conservancy staff has submitted to the Resources Agency, and has posted on the Conservancy’s website, an explanation of how the proposed acquisitions meet the criteria established in Section 75071.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

As discussed in the earlier staff recommendation (Exhibit 1), funding for the acquisition of the Upper Filiorum property is consistent with Chapter 8 of the Conservancy’s enabling legislation, Division 21 of the Public Resources Code (Sections 31350-31356), regarding reservation of significant coastal resource areas.

CONSISTENCY WITH CONSERVANCY’S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

The proposed project would be consistent with the goals and objectives of the Conservancy’s 2007 Strategic Plan, as described in the September 25, 2008 staff recommendation (Exhibit 1).

CONSISTENCY WITH CONSERVANCY'S CLIMATE-CHANGE POLICY

The proposed project is consistent with *Coastal Conservancy Policy Statement on Climate Change*, adopted on June 4, 2009, which recognizes that “protection, restoration, and enhancement of habitats, ecosystem processes, and open space is essential to minimizing threats from global warming to California's biodiversity. . .” By securing a significant linkage between existing habitat areas on the Palos Verdes Peninsula, the proposed acquisition will protect potential migration corridors, promote the survival of listed and other native species and biodiversity, and help preserve key ecosystem processes within the Preserve.

In addition, the Policy directs Conservancy staff to consider climate change in evaluating which projects to fund and the manner in which projects are selected. Staff has taken into account the relevant considerations in connection with its proposal for funding the acquisition of the Filiorum Tract, as detailed in the “CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES” section, below.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The September 25, 2008 staff recommendation (Exhibit 1) discusses in detail how the proposed acquisition of the Upper Filiorum property is consistent with the Conservancy's Project Selection Criteria and Guidelines, dated September 20, 2007, that then applied to the project. The *Coastal Conservancy Policy Statement on Climate Change* and revised Project Selection Criteria, adopted by the Conservancy on June 4, 2009, include three new criteria intended to address greenhouse gas emissions, vulnerability to sea level rise and other climate change impacts. The revised project is consistent with each of those three new criteria, as well as each of the criteria that were reviewed in the earlier staff recommendation:

Required Criteria

Sea level rise vulnerability: The elevation of the Upper Filiorum site ranges from 475 feet above mean sea level (MSL) along its southern boundary to 1100 feet above MSL in its northeastern corner. As a result, the property is not located in an area considered vulnerable to future sea level rise by the end of this century.

Additional Criteria:

Minimization of greenhouse gas emissions: The proposed project involves only a transfer of title to existing open space and would therefore not directly contribute to the generation of greenhouse gas emissions. As this report discusses in more detail in its section on “Consistency with CEQA,” the preservation of the Upper Filiorum property as habitat and open space will help sequester carbon on the Palos Verdes Peninsula, although in amounts that are difficult to estimate at this time.

Vulnerability from climate change impacts other than sea level rise: In preparing and implementing their final Subarea Management Plan for the property, the City and its project partners on the Palos Verdes Preserve intend to adopt robust adaptation measures and strategies to address potential impacts of climate change. Those measures will include monitoring change in the landscape over time, managing and eradicating invasive species, and implementing an

extensive adaptive management plan, particularly for the state- and federally-listed species that are the focus of the Subarea Plan.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

Although located outside the designated Coastal Zone within the City of Rancho Palos Verdes, acquisition of the Upper Filiorum property would be consistent with the mandates of the Coastal Act and the City's Coastal Specific Plan, as discussed in the September 25, 2008 staff recommendation (Exhibit 1).

COMPLIANCE WITH CEQA:

As specified in the earlier staff recommendation (Exhibit 1), the acquisition of the Upper Filiorum property is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Sections 15313 and 15325 of 14 Cal. Code of Regulations (CCR). Section 15313 exempts acquisition of lands for fish and wildlife conservation purposes and for preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. The proposed project is similarly exempt pursuant to 14 CCR Section 15325 because it involves a transfer of ownership in order to preserve existing natural conditions and open space.

Those exemptions are applicable to this project, even after analysis of any potential impacts relating to climate change. Recent legislation, an Attorney General's opinion, litigation and both interim CEQA guidance and proposed CEQA guidelines all demonstrate that any CEQA analysis by the Conservancy must now consider the climate change-related impacts of a project. In this instance, it is clear that the proposed project would not involve the generation of greenhouse gas emissions that could have a significant effect on the environment.

The proposed project involves only the acquisition of the Upper Filiorum property by the City. It does not include any construction, restoration or similar alterations to the landscape that might directly or indirectly involve the generation of greenhouse gas emissions. It is possible that the transfer of the Upper Filiorum site into public ownership could increase the attractiveness, and thus the potential use, of the informal social trails that are now on the property, and as a result increase the number of vehicle trips to the Preserve over those that are now made by visitors to the Preserve. But such an increase is very speculative and its extent cannot be reasonably calculated at this time. And the incremental contribution of any such trips and their effect on GHG emissions would not be cumulatively considerable, based on standards of practicality and reasonableness.

Even under a worst-case analysis, this project is carbon neutral. Any resulting increase in greenhouse gas emissions that might result, directly or indirectly, from this acquisition would be offset by the ability of the vegetation on the site to sequester carbon, although the sequestration potential of the site is difficult to forecast at this point. The City has not yet mapped or cataloged the vegetation communities of the Upper Filiorum site in any precise way. In addition, there does not appear to be any generally-accepted formula for calculating the carbon sequestration rates of coastal sage scrub communities. But by preserving the site as habitat and open space---

and by protecting it in perpetuity from any future development---the City's acquisition of this property will contribute to the long-term reduction of overall emissions in the region.

Upon Conservancy approval of the proposed authorization, staff will file a Notice of Exemption for the project.