



March 14, 2014

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**CITY MANAGER**

Daniel Singer

Santa Barbara Board of Supervisors  
Attn: Chairman Steve Lavagnino  
105 E. Anapamu Street  
Santa Barbara CA, 93101

RE: Goleta Beach County Park Managed Retreat Project 2.0

Dear Chairman Steve Lavagnino, and Board of Supervisors:

I am writing to you on behalf of the City of Goleta regarding Board Agenda Item No. 4 for your March 18, 2014 meeting. As you are aware, this matter is the Santa Barbara Board of Supervisor's (the "Board") consideration of the Goleta Beach County Park Managed Retreat Project 2.0<sup>1</sup> (the "Project"). A proposed Final Environmental Impact Report ("FEIR") is part of the Board's agenda packet regarding the Project (State Clearinghouse No. 2012061040). In July 2013, the Goleta City Council expressed its concern regarding the Project during its regular meeting (July 16, 2013) and in subsequent comment letters that were incorporated into the FEIR.

As noted in a letter dated August 30, 2013 (the "August 30<sup>th</sup> Letter"), the City urges the Board to obtain a Coastal Commission permit for the "No Project Alternative Scenario 2" identified in the FEIR.<sup>2</sup> In addition, as suggested in the August 30<sup>th</sup> Letter, the City believes "that Alternative 2 be revised to ensure that the current revetment will be left in place if the experimental measures prove insufficient. This is absolutely critical for the future of the Park, inclusive of the sandy beach, park facilities, restaurant, pier, and other amenities."<sup>3</sup>

For all of the reasons stated in the August 30<sup>th</sup> Letter (and accompanying verbal and written comments submitted on the City's behalf), the City of Goleta reasserts that the Project should be revised as set forth above.

<sup>1</sup> Designated as Case Numbers 11DVP-00000-00016 and 11CDP-00000-00069.

<sup>2</sup> August 30<sup>th</sup> Letter, FEIR pp.A-74 to A-75.

<sup>3</sup> August 30<sup>th</sup> Letter, FEIR p.A-75.

Based upon the responses to comments provided by the County and set forth in the FEIR,<sup>4</sup> the City anticipated that the Board would certify the FEIR, make a decision regarding the Project, and apply to the Coastal Commission for a permit to save Goleta Beach. A review of the March 18, 2014 Agenda (the “Agenda”) and accompanying staff report regarding the Project, however, makes it apparent that the Board is instead intent upon violating California law: the staff report regarding the Project lacks any recommendation regarding the FEIR or the Project (moreover, the Agenda description does not provide the Board with the option of certifying the FEIR).

Instead, the staff report suggests that the Board should – without complying with the California Environmental Quality Act (“CEQA”) – select an alternative relating to the Project and submit that selection to the Coastal Commission for review. Presumably, this is being suggested based upon the erroneous assumption that the Board can bypass CEQA requirements by submitting a plan regarding Goleta Beach to the Coastal Commission.<sup>5</sup>

Setting aside, for a moment, how such action clearly violates California law, we must note that the Board’s plan is a complete abdication of its legal and fiduciary duty to the residents of Santa Barbara County: it relinquishes local control to a state board of appointed commissioners who are wholly unaccountable to the voters. It is disappointing that the Board would abandon its democratic principles.

Even if the Board is willing to utilize such tactics, however, the proposed action violates California law. Public Resources Code § 21100 states that:

All lead agencies shall prepare, or cause to be prepared by contract, **and certify the completion of**, an environmental impact report **on any project** which they propose to carry out or approve that may have a significant effect on the environment.<sup>6</sup>

Further, the CEQA Guidelines (14 Cal. Code of Regs. § 15000, *et seq.*) state that:

- (a) **Prior to approving a project** the lead agency **shall certify** that:
- (1) **The final EIR has been completed in compliance with CEQA;**
  - (2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body **reviewed and considered the**

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<sup>4</sup> See, e.g., FEIR pp.A-97, A-98, A-99, A-106, A-115, and A-694.

<sup>5</sup> See Public Resources Code § 21080.5.

<sup>6</sup> (Emphasis added) Pub. Res. Code § 21100(a).

***information contained in the final EIR prior to approving the project,***  
and

(3) The final EIR reflects the lead agency's independent judgment and analysis.<sup>7</sup>

Any argument that the Board's planned action as to the Project does not constitute approval for the Project was long ago decided by the California Supreme Court<sup>8</sup>: approval occurs when an agency *first* exercises its discretion to commit to a particular project, not when it exercises the *last* discretionary approval.

The Board must certify the FEIR before it can take any action as to the Project (or any of its alternatives). Consequently, should the Board move forward with the suggestions set forth in the staff report for this matter, the City will be forced to consider its legal options to challenge the Board's actions, including recovery of legal fees.

The City urges that the Board postpone any decision regarding the Project in order to seek additional public input. As noted in the Mayor's letter dated August 30, 2013 (the "Mayor's Letter"):

The Goleta Beach County Park (Park) is a uniquely accessible public space and beach, including a popular restaurant and well-used pier, that is part of the County's identity, and promotes a sense of place and small town values that are vital to our residents, businesses, and guests. As the most widely-utilized public park in the County, Park users should have participated fully in the development of a project description such that a future project is reflective of the desires and values of the Park users. Given that this outreach did not occur, it comes as no surprise that our public feels unrepresented as it relates to the Project.

\* \* \*

Traditional public outreach techniques, such as a County-hosted project website, project design workshops, and informational and education displays provided at the Park are all standard tools to help educate the public and receive feedback on significant projects in a community. The County failed in all these regards. Note that the recently installed sign displayed at the Park is better suited as a public notice sign for the expansion of an existing business than a multi-million dollar redesign of

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<sup>7</sup> (Emphasis added) CEQA Guidelines § 15090(a).

<sup>8</sup> *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135 (confirming CEQA Guidelines § 15352 regarding "approval" of a project: "approval occurs upon the earliest commitment to issue.").

the most popular Park in the County. This public outreach neglect has an unnecessary polarizing effect on our community. ***For these reasons, I suggest that you re-engage with our public and together, revisit and revise the proposed project.***<sup>9</sup>

The City would prefer avoiding costly legal wrangling and instead engage in meaningful dialogue regarding the future of Goleta Beach. While that has not yet occurred, the City hopes that the Supervisors will keep faith with the voters that entrusted them with preserving precious public resources and do the right thing: postpone a decision and reengage public dialogue.

Sincerely,



Tim W. Giles  
City Attorney

C: Mayor and Councilmembers, City of Goleta  
Daniel Singer  
Michael C. Ghizzoni  
Mona Miyasato

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<sup>9</sup> (Emphasis added) Mayor's Letter, FEIR pp.A-111 to A-112.