

**SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK
JOINT POWERS AUTHORITY
Minutes of April 20th, 2012**

MEMBERS PRESENT

Jim Cunningham-Vice Chair
Don Mosier
Lesa Heebner
Pam Slater-Price
Dianne Jacob
Sherri Lightner
Tom Golich
Becky Bartling

REPRESENTING

City of Poway
City of Del Mar
City of Solana Beach
County of San Diego
County of San Diego
City of San Diego
Citizens Advisory Committee
22 District Agricultural Association

VISITORS/STAFF PRESENT

Wayne Brechtel	JPA Counsel
Dick Bobertz	San Dieguito River Park JPA
Susan Carter	San Dieguito River Park JPA
Shawna Anderson	San Dieguito River Park JPA
Jan Lines	San Dieguito River Park JPA
Lynne Baker	San Dieguito River Valley Conservancy
Jacqueline Winterer	Friends of the San Diego River Park
Cory Ha'o	CAC Representative
David Kreitzer	San Dieguito River Valley Conservancy
Anne Harvey	Carmel Valley Planning Board
Jan Fuchs	Project Review Committee
John Lomac	C-3
Nick Marinovich	C-3
Diane Coombs	C-3
Margaret Schlesinger	CAC member
Jeff Barnouw	CAC member
Nate Hausman	Sierra Club
Alice Brown	Del Mar Lagoon Committee
Jessica Norton	County Parks and Rec.
Ramona Kiltz	San Diego Resident
Ramin Rezaifar	Area homeowner

Introduction and Announcements

Vice Chair Cunningham convened the meeting at 10:35 a.m. in the County Administration Building, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101

Boardmember Golich introduced the CAC members in attendance as Jacqueline Winterer, Lynne Baker, Anne Harvey, David Kreitzer, Margaret Schlesinger, Cory Ha'o, Diane Coombs, Jan Fuchs.

Approval of Minutes of February 17, 2012

Boardmember Golich made a motion to approve the minutes of February 17, 2012, Boardmember Lightner seconded the motion. All in favor.

Executive Director's Report- Director Bobertz reported on two events that are coming up, one is the Del Mar/ San Dieguito Lagoon Days on April 22 at 11:00 a.m. at the Powerhouse in Del Mar. Boardmember Mosier said that there will be a presentation on global warming on coastal water levels. This presentation will be provided by the Lagoon Preservation Committee. Mr. Bobertz said that the second event we will be having with the San Dieguito River Valley Conservancy is our Annual Volunteer Appreciation lunch on May 12 from 1p.m. to 4 at Felicita Park in Escondido.

Public Comment- Diane Coombs said that she is proposing that recognition be given to Peter Douglas at the wetland restoration project because he was instrumental in getting the wetland mitigation project for San Dieguito. Ms. Coombs reminded the Board of the battle to get this project and felt that without Mr. Douglas we would not have this restoration. It was noted that Mr. Douglas was a champion for the entire California coastline and we need to acknowledge all his efforts.

Vice-Chair Cunningham requested a change on the agenda to move items 2 and 3 to accommodate Boardmember Lightner who will be recusing herself on item 2. There were no objections to the move.

CONSENT

1. Adopt Resolution Applying for Community Enhancement Program Funds

Recommendation: Adopt the attached draft resolution approving the filing of an application for County of San Diego Community Enhancement Program funding for the County's 201213 fiscal year.

Boardmember Lightner made a motion to approve staff recommendation and Boardmember Golich seconded. Boardmembers Slater-Price and Jacob recused themselves from the vote Yes 4, 2 abstained

ACTION AGENDA

Budget committee Report and Recommendation

- a. Fiscal Year 2012-13 Budget and Salary/Staffing Schedule

Recommendation: Adopt FY 12/13 Budget and Salary/Staffing Schedule

Director Bobertz said that the Budget Committee, comprised of Olga Diaz, Don Mosier, Sherri Lightner and Lesa Heebner (Jim Cunningham attended one of the meetings) met on April 3rd and 13th and had extensive discussions. One of the items that they considered was reductions to staff benefits over the last 4 years that includes the ongoing health insurance cap and offset to pension which has saved the JPA \$110K. Due to the fact that the health benefits will go up another 5% this year the Budget Committee is recommending a 4% increase for employees to offset this increase. The member agency assessment formula was discussed and for the upcoming year will be a transitional assessment with the contribution adjusting in the FY 13/14 year. This budget year shows an anticipated \$15K from the City of San Diego through Boardmember Lightner's office to help offset the shortfall that has occurred over the last few years. This

budget will also allow the addition of a temporary ranger to full time and restore a \$1000 uniform allowance for the rangers.

Boardmember Jacob stated that increasing the assessment to FY 08/09 status may not be done by the County due to the fact that this would be subsidizing the City of San Diego, which has stopped contributing to the JPA budget. Ms. Jacob said that a change order could be submitted to the County board but this additional \$89K would have to be voted on and she felt it would be safer to adopt the budget without this additional funding.

Boardmember Slater- Price felt that we really need to find funding for this budget to maintain the agency. She suggested that the audience members let their councilmember know what good work the River Park does and support the budget for this year. She also indicated that she would be meeting with the County CEO to encourage support of the proposed budget.

Boardmember Lightner said that she had proposed that the City of San Diego assign a ranger to the River Park for additional help with projects. Ms. Lightner stated that she is asking her fellow City of San Diego council members to try to find funds that can be donated to the River Park from their budgets before the end of the year.

Boardmember Mosier said that we just received the "Quality of Life" report from the San Diego Foundation and we should support the budget recommendation to keep our community enhanced with the ongoing River Park efforts. The River Park is a regional asset and it needs to be supported.

Boardmember Heebner said that the Budget Committee's recommended assessment levels for this year is an interim step and that future budget year assessments will be as the Board agreed last December. Ms. Heebner said that the City of Solana Beach will be paying the higher assessment for this year to help with the budget crisis.

Vice-Chair Cunningham thanked the Budget Committee for its very difficult decisions and he applauded all their efforts. Mr. Cunningham asked the County of San Diego representatives to push for the change order or asking other board members for additional support.

Boardmember Golich made a motion to approve the budget as presented. Board member Heebner seconded with a friendly amendment that this is an interim budget to get us through the FY 12/13 year and then revert back to the formula that was voted on in December 1211.

All in favor.

At 10:05 Boardmember Lightner left the meeting.

1. Rancho Del Mar (former Hu property)

Recommendation: *Send letter requesting that the City of San Diego Land & Use & Housing Council Committee docket this issue for an upcoming meeting to investigate the applicability of Prop A on the Rancho Del Mar property/project and consider a moratorium on processing this and any other*

development proposals in the NCFUA until a joint LU&H/Planning Commission public workshop is held to review the status and procedures on remaining undeveloped Prop A lands.

Shawna Anderson reported that a JPA Board approved letter was sent out to the City of San Diego Attorney regarding the Rancho Del Mar issue after the February JPA meeting. Ms. Anderson said that we did not get a response from our letter yet but the Carmel Valley Planning Board received a response from the City Attorney which left unresolved questions and concerns about the interpretation of this complicated issue. Ms. Anderson reviewed the undeveloped land in the FPA of the River Park with a PowerPoint presentation of the site. This is a 23 acre site to the north of the Polo Fields which is in the flood plain and zoned for agricultural use and covered by Prop A restrictions. The proponents of this proposed 224 unit residential care facility have submitted plans for this facility to the City of San Diego Land Use & Housing Council Committee. Prop A was voted on in 1985 and requires a vote of the public before any land in the future urbanizing area can be changed to a more intensive land designation. The City of San Diego Municipal code defines the Prop A lands as low density, residential open space, natural resource based parks or agricultural uses. After Prop A was passed by the public the City of San Diego amended the city municipal code in 1990 to allow for some uses that would not have to be voted on by the people and made it more restrictive for some uses. The proponents of this project have disputed the findings of the City code since this is an intermediate care facility and allowed under the amendment from 1990. It was concluded by the planning commission that the applicant would be able to amend the code with a CUP without a vote of the people. This project proposes 14ft. of fill to raise the site out of the flood plain with retaining walls.

Ms. Anderson explained that the Project Review Committee feels that the proponent cannot go back and change the amendment of 1990 since it made Prop A more restrictive. The PRC has spent countless hours on this issue and Ms. Anderson commended them for all their hard work. It was noted that the Sierra Club in collaboration with Jay Powell who helped author Prop A has recommended rejection of the project. The Citizens Advisory Committee met and unanimously supported the PRC's recommendation that this project not be permitted because it does not meet the requirements of Prop A. Ms. Anderson said that many organizations represented here today requested that the City of San Diego Land Use Committee docket this issue so that a workshop can be held for public input.

Counsel Brechtel said that the general plan for this area calls for a vote from the people for any changes to the code that would intensify use.

Speaker, Nick Maranovich from C-3 said that he only heard about this project on March 5th of this year. C-3 is writing an article in their newsletter in support of the staff recommendation. In an important matter like this one, process and protocol and the law is very important and it is very clear that in the initiative language it calls for "a vote of the people". Somehow the City of San Diego is now trying to find a way to get around this Prop A initiative where this care facility is not allowed without a public vote. Mr. Maranovich stated that the voters have spoken in 1985 and Shawna Anderson should be commended for writing something that can explain this very complicated project.

Speaker Margaret Schlesinger who represents the PRC and League of Women Voters is compiling a letter reiterating that any changes to the code must have a vote from the people. This property is zoned agricultural managed growth. She urged the JPA Board to support staffs recommendation.

Speaker Nate Hausman from the Sierra Club supports the staff recommendation to docket the proposal and asked for suspension of the project so that the City's Land Use Committee can be informed and a workshop held for public remarks.

Speaker Jeff Barnouw from Friends of San Dieguito River Valley supports the staffs recommendation. The City of San Diego has betrayed the Prop A mandate and it is necessary for the JPA to send a letter and oppose this.

Speaker David Kreitzer, said that he was chairman of Prop A in 1985 and this mandate was very clear. He supports a hearing and public workshop to resolve the issue.

Speaker Anne Harvey said the Carmel Valley Planning Board and SDRVC always understood that this property is Prop A and the 1990 ordinance would confirm this with more restrictions. She supports a moratorium so that this issue can be resolved.

Speaker Cory Ha'o said that a project like this may be needed but not at this site. He felt that the citizens of San Diego spoke in 1985 making a covenant to protect our open space. It was noted that bringing in fill dirt will harm the natural area and our environment and he supports the workshop idea so all sides of the project can speak on the issue.

Speaker Diane Coombs said that she was a founding member of the managed growth initiative with attorney Dwight Worden. They worked to get the City of San Diego to oversee the projects that would impact the natural areas.

Speaker John Lomac said that as 2012 president of C-3 he has gone to the site and this project is another example of how carefully we need to follow proposed facilities like this one to the end. Recently there was a proposed sale of some City of San Diego property and a group of concerned people saw that it did not sell since it was open space. C-3 appreciates all that the JPA does and will be there to help with all matters that arise from this proposed project.

Speaker Ramin Rezaiifar, a homeowner from this area, said that he feels that this proposed project will change the face of this area forever and it goes against the voters' wishes. This is a complicated issue and he appreciates all that we are doing to save this area.

Speaker Jan Fuchs, PRC chair, said that Prop A must be enforced to carry out the direction of the voters. Ms. Fuchs stated that the organization represented here today and members of our community need to make sure that this project is not allowed in this area without the required vote. She supports staff recommendation.

Vice Chair Cunningham directed that the JPA minutes include the letter from Mr. Dawe, who represents the proponent, which had been provided to the JPA Board.

Pam Slater Price thanked everyone who came out today. Ms. Slater-Price stated that this project is an abomination of process and must be corrected. The unchecked committee that oversees these issues seems to be out of control and this cannot go on.

Board member Slater Price made a motion to support staffs recommendation and Board member Mosier seconded. All in favor.

INFORMATION

2. Coordination Report

a. San Dieguito River Valley Conservancy- Lynne Baker announced that the Conservancy had established a new level of membership for younger folks - Park Rocktane (Trail Blazers) will allow us to recruit the younger generation who have their Smartphones ready to organize events and trail hikes. Ms. Baker said that their members are from all areas of San Diego and will be there to support this and all River Park issues in the future. Ms. Baker stated that they received a small grant to do some work in Santa Ysabel and are focused on getting more members.

b. Friends of the San Dieguito River Valley- Jeff Barnouw said that the Friends have gotten together with an attorney and some of the neighbors of the property adjacent to the Rancho Del Mar to put some pressure on the City of San Diego to respond to our issues about this project.

c. Volcan Mountain Preserve Foundation- None

d. San Dieguito Lagoon Committee- Alice Brown said that Lagoon Day will be held this Sunday, April 22 with a speaker from Scripps Institute on the effects of climate change.

3. Status Report

a. River Park Projects- Deputy Director Susan Carter said that the W-19 project to create another 60 acres of wetlands at the lagoon is moving forward. A workshop was held to discuss hydrology that was attended by herself and Shawna Anderson. Another item to report is the new Dust Devil Nature Trail, which was formerly called the Mesa Loop Trail is now open to the public. The Dust Devils are a group of volunteers who work on our trails every week and we wanted to acknowledge all their hard work. The Horsepark Trail will be partially open next month, although the area adjacent to the horse rings will not be done until the fall. One of the bridges that was damaged in the 2007 fire is being recycled to the Horsepark Trail and we are happy to use it to keep costs down and it is gratifying to be able to recycle it. The Sikes Adobe Master Plan draft was presented to several organizations and the CAC to develop input. A grant for the Santa Ysabel General Store Backcountry Visitor Center concept plan was received by the Conservancy. Ms. Carter said that the mile markers that were proposed by the Friends of the San Dieguito River Valley are being made and there will be a mile marker and a ½ mile marker all along the Coast to Crest Trail, half with the logo of the Friends and half with the logo of the Conservancy. This will cover about 31 miles for now.

4. Jurisdictional Status Reports- Boardmember Slater-Price said that listening to the Dalai Lama speak was a wonderful experience and recommended anyone who would like to watch can view it on the internet.

5. Communications-

a. Response from County re Rancho Guejito Grading Violations

6. Closed Session

- a. Conference with Legal Counsel pursuant to Government Code Sec 54956.9(a) regarding pending litigation: City of Solana Beach et al. v. 22nd District Agricultural Association.
- b. Conference with Legal Counsel to discuss liability claim pursuant to California Government code Sec. 54956.9(b) (1) and (3) Tri-Group construction Delay Damages Claim.

Counsel Brechtel stated that the Board met in closed session and provided direction to counsel and no further action was taken.

Vice-Chair Cunningham adjourned the meeting at 11:30 a.m.

These minutes approved by Board Action

Date

Executive Director

DRAFT

S E L T Z E R | C A P L A N | M C M A H O N | V I T E K
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April 20, 2012

**Hand-delivered at
meeting of April 20, 2012**

San Dieguito River Valley
Joint Powers Authority
Board of Directors

Re: Agenda Item 2 Rancho Del Mar (former Hu property)
April 20, 2012

Honorable Chair and Members of the Board:

Our firm represents Polo View, LLC, the applicant for the Continuing Care Retirement Facility proposed for the southeast quadrant of El Camino Real and Via de la Valle.

Requested Action

We respectfully request that the Joint Powers Authority Board not accept the Staff recommendation including the request for a moratorium.

Reasons for the recommendation

- 1) The City has consistently held that (a) development may occur consistent with the uses allowed on August 1, 1984, the effective date of Proposition A (City Attorney Memorandum of Law 95-84) and (b) the City Council may amend the Land Development Code provided that the revisions are neutral or more restrictive compared to the regulations in effect on August 1, 1984 (City Attorney Memorandum of Law 90-69 and 86-59).
- 2) City Attorney Memorandum of Law 95-84 states:

Development may occur within the FUA without a vote of the people if that development is in accordance with regulations in place on the effective date of Prop. A. This rule is derived from the express terms of Prop. A itself, which simply precludes, without first getting the approval of a majority of the electorate, amendments to the General Plan to change the designation from

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Future Urbanizing and amendment to the text or maps of the General Plan to allow development rights beyond those in effect on August 1, 1984.

- 3) The Staff recommendation is inconsistent with the action by the Planning Commission on December 15, 2011, to “determine that a continuing care facility is consistent with the intensity of use as defined in 1984 for an intermediate care facility”.
- 4) The City Attorney expressly opined (in its letter dated February 23, 2012, to the Chair of the Carmel Valley Community Planning Board) that the staff report to the Planning Commission is consistent with the Office of the City Attorney’s interpretation of the application of Proposition A.
- 5) The Planning Commission did not approve the continuing care facility. Such an action only can be taken after consideration by appropriate advisory committees, the Planning Commission and City Council. The opponents to the action of the Planning Commission were at the Commission meeting and did not prevail. Nor was there a timely motion to reconsider the action of the Planning Commission.
- 6) The Staff report to the JPA Board repeatedly refers to residential use limitations. The proposed continuing care retirement community, however, is not a residential use.
- 7) The Staff report to the Joint Powers Authority Board refers to a 1995 Report to the Planning Commission from the City Attorney and takes a portion of a single sentence from the 1995 Report out of its context. The 1995 Report actually concludes that the City may adopt a specific plan that revises the zoning regulations without voter approval provided “the uses and density do not exceed the authorized uses and density which existed in 1984, the Proposition A date.”¹
- 8) The Staff report to the Joint Powers Authority Board contains outdated depictions and descriptions of the project as it is currently evolving.

We do not disagree that the City Council has the power and authority (subject to certain constitutional and statutory rights) to modify ordinances regulating the allowable uses in a way more restrictive than allowed under the Progress Guide and General Plan of the City of San Diego as the same existed on August 1, 1984. The City Council, however, also has authority to reverse the more restrictive zoning adopted after the approval of Proposition A.

¹ The 1995 Report states: “Under Proposition A, a specific plan could be implemented without voter approval only if the uses and density do not exceed the authorized uses and density which existed in 1984, the Proposition A date. Proposition A basically froze uses and density in the future urbanizing area and requires a majority vote of the electorate to increase uses and density.”

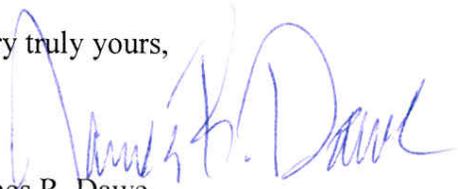
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We hereby, incorporate, by reference, our past correspondence to the Citizen Advisory Committee.

Our client is committed to work with all advisory groups including the Joint Powers Authority when the application is duly presented.

Thank you for your consideration of the foregoing.

Very truly yours,



James R. Dawe
Seltzer Caplan McMahon Vitek
A Law Corporation

cc: Polo View, LLC
Ms. Susan Carter (via electronic mail)
Mr. Wayne Brechtel (via electronic mail)