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February 2, 2015

BY MAIL AND EMAIL

Chris Barton
East Bay Regional Park District
ASD Division, Fourth Floor
2950 Peralta Oaks Court
Oakland, CA 94605

RE: Albany Beach SEIR, SPRAWLDEF comments

Dear Mr. Barton:

Thank you for the opportunity to comment upon the Supplemental Environmental Impact Report (SEIR) for the Albany Beach Restoration and Public Access Project. SCH #2012032072.

I write representing SPRAWLDEF (Sustainability, Parks, Recycling and Wildlife Legal Defense Fund). As the SEIR states, the court in *SPRAWLDEF v. EBRPD* issued a statement of decision requiring that the District address deficiencies in the original EIR pertaining to unleashed dogs at the project location.

The fundamental failure identified by the Court was the EIR's failure to confront head-on that Albany Beach has become a *de facto* off-leash dog park.

To its credit, the SEIR responds with actual information about off-leash dog use. Its figures confirm that almost half the current use is by those who ignore the leash requirements, who refuse to instead use the ample nearby off-leash facility at Point Isabel.

But the SEIR fails, miserably, to address the land use conflict between these off-leash scofflaws and the greater number of visitors, including families, the elderly and the handicapped, for whom the Albany Beach access project is proposed.

By concluding—without basis—that this conflict is insignificant, the District evades the tough job of coming up with the alternatives and mitigation measures to this conflict.

The SEIR should be supplemented to provide a good-faith discussion of actual land use conflicts and mitigation including but not limited to enforcement improvements. Following are specific defects.

SPRAWLDEF-1

SPRAWLDEF-2

Discussion of project conditions

The SEIR acknowledges that 82 percent of dog users, who comprise more than half of total users at the Beach, unleash their dogs. The SEIR also breaks down where at the three main project areas unleashed dogs are found.

SPRAWLDEF-3

However, as the SEIR states, unleashed dogs are not accounted in the project area where the Bay Trail will be improved. This is an important omission, as the trail will link the improvements at Albany Beach with trail users far beyond. At the same time, the trail improvements will open the trail to the unleashed dogs brought to the Beach and Neck areas.

The SEIR states that the project will result in more dog users, and more unleashed dog users. The SEIR rather simplistically makes this conclusion by extrapolating the proportions of current users. SEIR, page 8, bottom.

The SEIR states “there is still an implicit understanding by park staff that people who are afraid of dogs do not visit Albany Beach or Neck.” SEIR, page 7, top.

The SEIR retains the EIR’s frequent resort to dog “concentration” as changing under the project. According to the SEIR, the number of unleashed dogs will increase with the project, but the increase in project acres from nine to 13 will translate into a decrease from 28 to 20 dogs per acre. See Table 3.4-1.

SPRAWLDEF-4

The fallacy of this presentation is that it assumes that somehow unleashed dogs will spread out according to a statistical method. This belies the simplest common sense regarding unleashed dog. Rather, the reality is that unleashed dogs will roam anywhere in the project area, and will join each other in packs.

This is important, because the SEIR once again uses this “concentration of dogs/acre” to conclude: “With decreased dog concentration, the potential for conflicts between dogs and dogs and dogs and people will also decrease.” See paragraph directly below Table 3.4-1.

As a result of this doggy dilution such land use conflicts “would not be significant,” according to the SEIR.

There is no rational connection between doggy dilution and the SEIR’s conclusion that unleashed dog impacts would be insignificant. Although it is clear that the SEIR finding of insignificance is supported chiefly by its dilution principle, the SEIR cites “additional following reasons.” Remarkably these additional reasons indicate the significance of the land use conflicts rather than their insignificance.

SPRAWLDEF-5

For example, the SEIR cites its objective—its primary objective in fact—to attract more people to the park. And it claims that the new amenities “would likely increase the number of users that (sic) do not bring dogs.”

More non-dog users “may discourage dog-users from frequenting the site,” according to the SEIR. No factual basis is given for this conclusion. Elsewhere the SEIR states that unleashed dogs keep people away. The District’s underground “non-enforcement” policy will sustain that behavior. Off-leash dogs “potentially have a more severe impact on the safety of children and elderly park visitors versus on-leash dogs.” SEIR, page 40.

SPRAWLDEF-6

Thus there is substantial evidence of a significant impact to land use between these opposing uses. There is a paucity of substantial evidence to the contrary.

SPRAWLDEF-7

The failure to acknowledge significant land use conflicts.

Again, the purpose of the project is to promote park use. And clearly it is to promote park use by those other than unleashed dog users. Unleashed-dog users are not supposed to be there.

But instead of recognizing the conflict between legitimate park users and irresponsible off-leash dog owners, the SEIR concludes that impact is insignificant.

SPRAWLDEF-8

The SEIR acknowledges that more off-leash dogs mean more conflicts between people and dogs. SEIR, page 39, under “b. Create or exacerbate a conflict between land uses on the project site and in the surrounding area.”

Yet once again this impact is offset, according to the SEIR, by a false distribution of the dogs evenly over the project area.

The discussion of specific impacts and mitigation should detail unleashed dog impacts on recreational use by especially children, the elderly and the handicapped. Such discussion should not be limited to only the behavior of unleashed dogs, but also that of unleashed dog owners.

SPRAWLDEF-9

It is well established in the record that the behavior of unleashed dog owners toward other park users is a significant impact in itself—destroying signage, discouraging use by others and making express their intentions to displace other uses.

Apparently, only last August (2014) did the District amend its Ordinance 38¹ to require leashes at its park areas. Even so, the amendments fail to clearly spell out that Albany Beach dog users are required to leash their dogs. Section 801.2 of Ordinance 38 requires leashes in “developed” areas; yet under section 801.3, dogs “may run at large” in “undeveloped” areas. The ordinance language leaves it very ambiguous whether the District defines the entire project here as “developed” or “undeveloped.”

SPRAWLDEF-10

Some simple, straightforward, i.e. good-faith, discussion of the District’s actual leash ordinance as it applies to the Albany Beach access project, including the currently “undeveloped” Bay Trail area, is required.

SPRAWLDEF-11

¹ Ordinance 38 encompasses all of the Districts “Rules and Regulations.” Leases, dogs and so forth are only a part, and apparently even that part was only recently added. SPRAWLDEF incorporates Ordinance 38 here by reference.

The SEIR also fails to address the status of park use by leashed and unleashed dogs in light of the East Shore State Park General Plan's requirement that Albany Beach be maintained free of unleashed dogs. In particular, full disclosure should be provided of whether or not the current management of the Albany Beach site conforms or conflicts with the Eastshore State Park General Plan.

As recognized by the Court, this project EIR and therefore the instant SEIR, are "tiered" from the "program" EIR adopted for the state General Plan. That General Plan, after extensive public involvement and controversy, and extensive analysis and mitigation on the leash issue, determined that Point Isabel would be turned over to unleashed dogs and Albany Beach would be protected.

SPRAWLDEF-12

The SEIR fails entirely to present that General Plan analysis, although the General Plan specifically required that projects such as the Albany Beach access project present such a discussion, including a discussion of leash requirement enforcement.

The SEIR once again attempts to shuck such discussion with its hypothetical even distribution of unleashed dogs across the large project. But this does not substitute for the very simple CEQA directive that this project identify its discrepancy with the General Plan leash requirements.

Mitigation measures

The Court in its statement of decision called for discussion of a reasonable range of mitigation measures to the problem of unleashed dogs. The SEIR fails to provide such a good-faith discussion.

The SEIR notes, page 9, that officers patrol 3-4 times a day at the park, but that for the last four years they have issued no citations whatsoever for "dog-related issues."

Thus, bearing in mind the obvious daily violations taking place at the Beach, the officers are clearly turning a blind eye to the leash violations. Furthermore, the SEIR declares that this acquiescence is a District policy.

SPRAWLDEF-13

Yet the SEIR fails to discuss this policy other than to state that "The District expects that it will continue to enforce the policy at its current level." SEIR, page 10. Aside from being a clear message to leash-law scofflaws to come on down to Albany Beach, this statement fails CEQA's mandate to disclose policies and changes in policies under the project.

It fails for two reasons: First, the policy is never disclosed. The SEIR provides no substantiation that the District has formally or even informally decided that leash law non-enforcement is the policy at Albany Beach. As the SEIR notes, it adopted language in its Ordinance 38 "Rules and Regulations" only last August. So, how is the District "continuing to

enforce that policy at the current level?" It wasn't citing violators before and still won't be, even given its August ordinance amendments?

The SEIR blithely states that its unwritten, undisclosed, *ad hoc* non-enforcement policy arises given "the District's limited resources, other higher-priority issues and minimal number of complaints." Yet, the SEIR provides no disclosure supporting the conclusion that the District has "limited resources" or even what resources it is talking about. Financial? Intellectual? Staff hours? Apparently it can hire its own 60-person-plus police force. Yet that police force is incapable of issuing citations?

SPRAWLDEF-13
(cont.)

And where was it decided that turning over a high-value recreational resource like Albany Beach to roaming dogs was lower than undisclosed "higher-priority issues?" Certainly the SEIR offers no discussion of these "higher" priorities. Which priorities are higher?

But more important, the District's ersatz no-enforcement policy runs counter to a very clear dictate in the state Eastshore Park Master Plan that unleashed dogs are strictly prohibited at Albany Beach.

SPRAWLDEF-14

The SEIR clearly fails as a good-faith disclosure of mitigation measures. Indeed, it is a faint attempt to comply with the Court's order to deal head-on with a politically sensitive issue.

SPRAWLDEF-15

The Court already found in its statement of decision that reliance on signage as mitigation was deficient, in light of the evidence that signs are disregarded and torn down by unleashed dog owners.

SPRAWLDEF-16

A minimum good-faith mitigation discussion must describe the citations which would be issued (if they ever were to be). This should include a discussion of fines and their effectiveness—at various levels—and all agencies or individuals potentially responsible for enforcement, such as the state Parks Department and local police departments, in addition to the District's own police force.

A park user call-in for violations should also be described and considered, with its availability promoted and response detailed. The SEIR provides no discussion of how complaints can be made. Currently there are no posted means for park users to call for leash enforcement. The SEIR does not discuss how it responds to complaints.

SPRAWLDEF-17

The SEIR should detail clearly not only existing ordinances in place to stop unleashed dog use at Albany Beach and the project area, it should also discuss changes to District ordinances which will improve the viability of enforcement, such as higher fines for violators.

The SEIR performs none of this reasonable mitigation analysis. It fails utterly to even consider possible mitigation by enforcement.

Instead, it concludes, at section 2.2 "Enforcement Policy," that "the EIR assumes current enforcement of leash requirements by District police officers will remain the same and does not rely on enforcement to reduce the number of off-leash dogs."

Nor does the SEIR include any discussion of other possible mitigation measures besides enforcement, such as education.

In other words, the District intends to do nothing about this obvious park use conflict. It will invest significant money to make improvements to access, but leave in place the greatest deterrent to park use—the domination by off-leash dog users intent on driving out legitimate users.

Thank you for the opportunity to provide these comments.

Sincerely,



KELLY T. SMITH

cc: Client

SPRAWLDEF-17
(cont.)