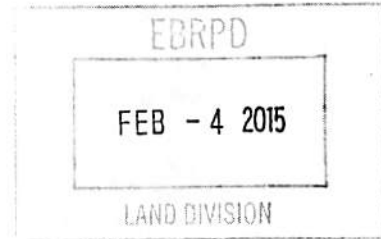




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February 2, 2015

Chris Barton
East Bay Regional Park District
Box 5381
Oakland, CA 94605

Re: Albany Beach SEIR, Sierra Club Comments on Draft SEIR

Dear Mr. Barton:

The Sierra Club has the following comments on the Draft SEIR.

The DSEIR is internally inconsistent and contradictory. As a result it fails to address a key environmental impact and fails to offer a reasonable range of alternatives in regard to a clear impact. The inconsistency is that the Beach Restoration project's purpose is to restore the entire beach as a biological and recreational resource. Yet, the DSEIR admits that off leash dog use is in violation of State Park regulations, and thus illegal, and that this illegal use does have significant adverse environmental impacts. But the DSEIR fails to analyze those impacts and to offer a range of reasonable alternatives. The DSEIR states that it will fence off a portion of the beach to protect that small portion of the site but fails to include or discuss an alternative that would fence off or provide the necessary enforcement action to keep off leash dog use off the majority or all of the beach area.

SC2-1

The DSEIR cannot state that, on the one hand, the beach area is in its entirety a sensitive environmental site and that to protect that site, the Park District will fence off only a small portion of the site from off leash dog use while, on the other hand, maintain that the entire site is a sensitive habitat and recreational area that requires protection.

Furthermore, the DSEIR does not provide any analysis that fencing off a small portion of the site results in protecting the entire site's habitat or will result in protecting the other portions of the beach from the impact of off leash dog use. Nor is there any

SC2-2

Sierra Club to Park District
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analysis that fencing off the small portion of the site will avoid significant negative impacts on the other unfenced areas. The DSEIR is devoid of any analysis on this impact.

SC2-2
(cont.)

Moreover, the DSEIR admits that the Park District police do not enforce the off leash dog regulations on the Albany Beach, hence, the Park District admits in the document that it will not enforce off leash dogs entering into the fenced off area. But nowhere does the DSEIR analyze alternatives that include stiffer and actual enforcement of the off leash dog regulation and how that enforcement either will significantly reduce the environmental impact of off leash dog use.

In regard to police activity, the DSEIR does not provide adequate information as to what patrols actually occur in the project area. In one section of the DSEIR the Park District states that its police patrol an area from Point Pinole down to Emeryville, presumably in cars. This means that enforcement is done from the vehicle and not on foot into and along the Albany Beach. Moreover, this statement also means that the Park District claim that it comes down to the Albany beach area is probably a drive by of only a brief period of time. There is no analysis or information as to how long officers actually are at the Albany Beach site, times of day, and where they actually patrol on foot.

SC2-3

Moreover, the DSEIR is contradictory because, on the one hand, the Park District admits that off leash dog use is a major use of the site, but, on the other hand, admits that it has not cited or enforced the off leash dog regulation in four years. The explanation that the Park District lacks the financial resources to engage in enforcement is not a basis for analyzing why an environmental impact is not analyzed or addressed. Instead, it is an admission that the environmental impact exists, but will be ignored. Indeed, the DSEIR fails to identify alternatives to the Park District's admitted failure to enforce the off leash dog regulations on the Albany Beach and thus the DSEIR is inadequate.

The DSEIR also fails to address the impacts among different recreational uses at the beach area. The DSEIR assumes no impact from this conflict of recreational use. It is well documented that this conflict has driven users away from the Albany Beach. Yet, there is no analysis of this impact and alternatives.

SC2-4

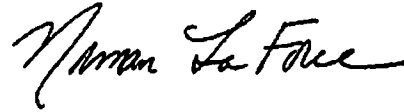
The DSEIR is flawed because it assumes as the baseline an illegal use as the baseline. It also admits that the Park District does not and will not enforce the regulations. There is no legal authority for the Park District to assume as a baseline an illegal use after the area became a State Park and State Park regulations applied. The DSEIR must analyze impacts from a baseline that assumes no off leash dog use and then what the impacts are from the continued willful refusal of the Park District to require compliance with a State Park regulation.

SC2-5

It is disappointing that the DSEIR still fails to adequately address the issues that the court ordered the Park District to analyze.

SC2-6

Sincerely yours,



Norman La Force, Chair
East Bay Public Lands Committee

Response to Comments SC2-1 through SC2-6

Response SC2-1

The SEIR analyzes the impacts of off-leash dog use on the entire Project site. Mitigation measures are required only where needed to reduce significant impacts identified in the SEIR. As discussed in the SEIR, the only significant impacts are on biological resources and geology and soils (see pages 24-30 and 32-33). The project will enhance and restore sensitive dune and wetland habitat from baseline disturbed marginal habitat values. Mitigation measures consisting of fences around planned sensitive biological and geological resources identified in the SEIR would mitigate the impacts of park visitors and on and off-leash dogs on these resources. Enforcement of dog leash requirements, and signage, is not needed to mitigate impacts on sensitive biological and geological resources, nor is enforcement or signage required to reduce the number of unleashed dogs in order to protect these resources. Although signage is expected to reduce dog-related impacts, as discussed on pages 26, 29, and 35 of the SEIR, it is not required to reduce impacts to a less-than-significant level.

The fences required in the mitigation measures discussed above would contain and protect the sensitive biological habitat identified in the SEIR. The remainder of the Project site, which has been disturbed and altered from its natural state, is not an environmentally sensitive resource, for reasons discussed in the SEIR.

The 2012 EIR analyzed a reasonable range of alternatives to the Proposed Project. Analysis of additional alternatives involving fencing or enforcement is not required to comply with CEQA.

Response SC2-2

The SEIR considers the impact of off-leash dog use on the entire site's habitat. Existing biological resources on the Project site are discussed on pages 11-24 of the Draft SEIR. Potential impacts to biological resources, and mitigation measures required to reduce impacts to a less-than-significant level, are discussed on pages 24-30. Existing geological resources on the Project site are discussed on pages 30-31 of the Draft SEIR. Potential impacts to biological resources, and mitigation measures required to reduce impacts to a less-than-significant level, are discussed on pages 31-33. The fences required in the mitigation measures would contain and protect the sensitive biological habitat identified in the SEIR. The remainder of the Project site, which has been disturbed and altered from its natural state, is not an environmentally sensitive resource, for reasons discussed in the SEIR. The analysis in the Draft SEIR is at a level of detail that is sufficient to allow decision-makers to make informed decisions about the environmental impacts of the Project, and is sufficient for this SEIR to comply with CEQA. Additional analysis is not required.

Response SC2-3

The mitigation measures identified in the SEIR to protect sensitive biological and geological resources from park visitors and on and off-leash dogs consist of fences around those resources (see pages 24-30 and 32-33). Enforcement of dog leash requirements is not relied on or needed to reduce impacts on sensitive biological and geological resources to a less-than-significant level. Thus, the SEIR does not and legally need not analyze enforcement as a mitigation measure.

The 2012 EIR analyzed a reasonable range of alternatives to the Proposed Project. Analysis of alternative levels of enforcement is not required to comply with CEQA.

District enforcement policy, including patrols of the Project site, is discussed on pages 9-10 of the Draft SEIR, at a level of detail that is sufficient to allow decision-makers to make informed decisions about the environmental impacts of the Project, and that is sufficient for this SEIR to comply with CEQA. The SEIR described how the Park District currently enforces Ordinance 38 and how it expects to enforce the ordinance once the Project is completed. This complies with the Alameda County Superior Court's May 14, 2014 Final Statement of Decision requiring any SEIR to discuss the Park District's current and planned enforcement policy regarding off-leash dogs. Like all public agencies, the Park District must determine how it will allocate its limited resources for enforcement of its rules and regulations, including Ordinance 38. Because the District could not commit to increased enforcement of Ordinance 38, it analyzed the environmental impacts associated with dogs assuming that enforcement would not occur and provides mitigation for all significant impacts that result.

The comments states that an impact exists due to off-leash dogs at the beach in violation of law. This is an existing condition, not an impact of the Proposed Project.

Response SC2-4

Section 3.4, Land Use and Planning, p. 39-42, of the Draft SEIR discussed the existing conflicts between unleashed dogs and park users. The Draft SEIR did not identify any significant impacts due to conflicts between unleashed dogs and other park users. Thus, CEQA does not require that the SEIR identify mitigation.

The 2012 EIR analyzed a reasonable range of alternatives to the Proposed Project. Analysis of additional alternatives is not required to comply with CEQA.

Response SC2-5

The baseline (Existing Conditions) used in the SEIR's analysis properly includes existing unlawful activity (off-leash dogs); the SEIR then compares the environmental impacts occurring with implementation of the Project to that baseline to evaluate the Project's environmental impacts. (See *Center for Biological Diversity v. Dept of Fish and Wildlife* (2014) 224 Cal. App. 4th 1105, *Citizens for East Shore Park v. California State Lands Com.* (2011) 202 Cal. App. 4th 549, 561; CEQA Guidelines sec. 15125(a).)

Response SC2-6

The SEIR provides the information and analysis required by the Court's decision. See Responses SC2-1 through SC2-5.