



CITY ATTORNEY

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October 19, 2005

Via Facsimile (916) 653-1819 Only

Bradly S. Torgan, General Counsel
State of California
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

Re: *Lighthouse Field Beach Rescue v. City of Santa Cruz, et al.*

Dear Mr. Torgan:

Pursuant to our October 18, 2005, telephone conversation, the purpose of this letter is to provide you with some suggested text relative to the letter that the State of California Department of Parks and Recreation intends to send to the City of Santa Cruz directing the discontinuance of off-leash dog use at Lighthouse Field State Beach. The letter should be addressed to myself, as City Attorney, at the captioned address as well as to Darnette Shoemaker, City of Santa Cruz Parks and Recreation Director, 323 Church Street, Santa Cruz, CA 95060.

I would suggest the following text:

Dear Ms. Shoemaker and Mr. Barisone:

In consultation with California State Parks and Recreation Director Ruth Coleman and Supervising Deputy Attorney General John Davidson, I have now had the opportunity to review in detail the appellate court's August 10, 2005 published decision in the captioned matter. In addition, I have had the opportunity to review the Public Resource Code statutes and State Parks regulations which are the subject of the appellate court's discussion in a critical portion of the decision. As you are aware, I was appointed General Counsel for the State Department of Parks and Recreation shortly before the appellate court decision was issued.

For the reasons set forth in Mr. Davidson's January 18, 2005 supplemental letter brief to the appellate court, State Parks has historically taken the position that the City's 1993 administrative decision to permit limited off-leash dog use at Lighthouse Field State Beach was operational in nature and therefore permissible under both State Parks regulations and the

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November 15, 1977 operational agreement for Lighthouse Field State Beach between the City, the County of Santa Cruz and State Parks; accordingly, the City's limited off-leash dog use rules could be implemented without running afoul of the park's general plan. However, the appellate court ruled that the original general plan's on-leash directive represented a policy level determination that could not be altered absent a subsequent policy level determination to change the policy. Any such policy alteration, in turn, would require a level of CEQA analysis that the appellate court found lacking in this particular case.

*Spanish id issue -
not correct*

In addition, having reviewed Public Resources Code §5008.1, which constitutes legislative policy relative to the administration of state park units throughout the State of California and specifically the public's ability to bring pets into state parks, it is our determination that State Park's original 1993 concurrence with the City's implementation of limited off-leash dog use at Lighthouse Field State Beach was incorrect. In essence, as I read the statute, off-leash dog use in state park units cannot be reconciled with the statute's current mandate that any animal brought into a state park must "...be under the immediate control of the visitor or shall be confined..."

In light of the foregoing, this letter shall serve as notice to the City of Santa Cruz that, no later than November 15, 2007, the City will be required to prohibit members of the public from using Lighthouse Field State Beach, including Lighthouse Field, Lighthouse Point and Its Beach, for off-leash dogs. This notice is provided in recognition of the fact that the State Parks and Recreation Department owns Lighthouse Field State Beach and makes that park available to members of the public as part of its state parks system. While the City of Santa Cruz, pursuant to the afore-referenced November 15, 1977 operational agreement, operates the park on behalf of State Parks, Lighthouse Field State Beach remains a state park unit subject to all applicable statutes and regulations pertaining to the governance of state park units.

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State Parks acknowledges that it has historically concurred in the limited off-leash dog use of Lighthouse Field State Beach which has been authorized since 1993, and it further acknowledges that, in partial reliance upon this authorization, numerous City residents have grown accustomed to using the park for this purpose. In recognition of the fact that this notification therefore represents a significant departure from that historic use and in further recognition that the City may wish to consider alternatives pursuant to which dog owners might be able to use another City facility for off-leash dogs prior to making Lighthouse Field State Beach unavailable for that use, State Parks has agreed to provide the above-referenced grace period through which the park may continue to be used for off-leash dogs, subject to the current limitations on that use.

to allow dog owners

While it is also noted that the afore-referenced November 15, 1977 operational agreement's 30-year term expires on November 15, 2007, this letter is not to be construed as an

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indication by either State Parks, the City of Santa Cruz, or the County of Santa Cruz that the November 15, 1977 operational agreement will be renewed at the end of its term or that a new agreement for the operation and maintenance of the park will be entered into by the parties for a term beyond November 15, 2007. As we have discussed, this particular topic will be deferred for future discussion and negotiation among the parties.

Thank you for your attention to the foregoing.

Very truly yours,

Bradly S. Torgan
General Counsel
State of California Department of Parks and Recreation

Please feel free to revise or disregard the foregoing as you deem appropriate. I would appreciate receiving State Parks' letter, if at all possible, before noon on Tuesday, October 25, 2005 so that I might be able to share it with the City Council at its closed session that afternoon.

Thank you for your cooperation and courtesy with regard to the foregoing.

Very truly yours,

ATCHISON BARISONE, CONDOTTI &
KOVACEVICH



John G. Barisone
Santa Cruz City Attorney

JGB:wp