



CITY ATTORNEY'S OFFICE

M E M O R A N D U M

CONFIDENTIAL YES _____ NO X

TO: City Council

FROM: John G. Barisone, City Attorney

RE: Lighthouse Field Beach Rescue v. City of Santa Cruz/California Dept. of Parks and Recreation

DATE: November 20, 2007 [*Apparent date: originally supplied as Word document that prints with "today's date"*]

Pursuant to the City Council's November 20, 2007 request, this memorandum will summarize the sequence of events which culminated in the agreement between the City of Santa Cruz, the State of California and Lighthouse Field Beach Rescue to settle the attorney fees claim made by Lighthouse Field Beach Rescue's attorney Susan Brandt-Hawley in the wake of the appellate court's decision adverse to the City and State in the captioned litigation. That settlement agreement was finalized in October 2005. In addition to the City's agreement to pay \$45,000 and the State's agreement to pay \$35,000 for a total attorneys' fees payment to Ms. Brandt-Hawley in the sum of \$80,000, the City agreed to comply with a State directive to prohibit off-leash dog use at Lighthouse Field State Park no later than November 15, 2007 (i.e. 25 months post-settlement).

The sequence of events is as follows:

- August 10, 2005—adverse decision from the California 6th District Court of Appeal
- August 24, 2007—I had a telephone conversation with Ms. Brandt-Hawley in which she advised that she would be submitting a claim for attorneys' fees. Subsequently, I had a telephone conversation with John Davidson of the California Attorney General's Office who represented the State in the Lighthouse Field State Beach litigation, both at the trial and appellate court levels. I advised Mr. Davidson that in my opinion the indemnification language contained in the 1977 Operating Agreement between the City and State pertaining to the City's obligation to operate and maintain Lighthouse Field State Park for a 30-year term obligated the State to indemnify the City for any fees which the court might award to Ms. Brandt-Hawley pursuant to a motion for attorneys' fees.
- August 30, 2005—I wrote to Mr. Davidson, confirming oral my advice and opinion of August 24, 2005. That letter was forwarded to Bradly Torgan, General Counsel for the State Department of Parks and Recreation. Shortly after the issuance of the appellate court decision in August 2005 Mr. Torgan had succeeded long-time General Counsel

Timothy LaFranchi. In a telephone conversation with Mr. Torgan after his receipt of my letter to Mr. Davidson, Mr. Torgan advised me that he had carefully reviewed the appellate court's decision as well as the pertinent State Department of Parks and Recreation regulations, pursuant to which the State, in the early 1990's had authorized City Parks Director, Jim Lang, to permit off-leash dog use at Lighthouse Field State Beach. Mr. Torgan then advised me that his interpretation of the regulations was at variance with with the former State interpretation and that, in light of his understanding of the regulations in conjunction with the appellate court decision, the State could no longer permit off-leash dog use at Lighthouse Field State Beach.

- September 2, 2005—Ms. Brandt-Hawley submitted her written claim for attorneys' fees to the City and State. She claimed attorneys' fees to date in the sum of \$241,299.57 and advised that the claim would be augmented to include additional attorneys' fees that her client might incur in connection with the motion for attorneys' fees that would be made to the court. Accordingly, at this juncture, the City had been advised that the State would no longer permit off-leash dog use at Lighthouse Field State Beach and that the claim for attorneys' fees (payable from the City's general fund) would at a minimum total approximately \$250,000.00.
- September 28, 2005—Mr. Torgan wrote to the City rejecting the contention that the State has an indemnification obligation to the City under the 1977 Operating Agreement but advising that the State would contribute 20-25% towards any settlement of the attorneys' fees claim provided that the City comply with the State's directive and implement the State's no off-leash dog use directive.
- October 11, 2005—I presented Ms. Brandt-Hawley's attorneys fees claim and Mr. Torgan's contribution offer to the City Council in closed session. The Council directed me to attempt to negotiate a settlement of the attorneys' fees claim for a sum not to exceed \$90,000 and to attempt to negotiate a State contribution in excess of 25% as well as a State agreement to postpone implementation of its no off-leash dog use directive, preferably for the remaining 25 month life of the 30 year 1977 operating agreement between the City and State.
- October 12-October 19, 2005—Pursuant to a number of telephone conversations with Ms. Brandt-Hawley and Mr. Torgan, and in accordance with the City Council's October 11, 2005 direction, I negotiated a settlement pursuant to which the City would pay \$80,000 in attorneys' fees to Ms. Brandt-Hawley, the State would contribute \$35,000 towards that payment (approx. 40%) and the State would agree to provide the City with a 25-month "grace period" within which to implement the State's no off-leash dog use directive. Ms. Brandt-Hawley's agreement to accept \$80,000 in settlement of her \$241,299.57 attorneys' fees claim was contingent upon: (a) her receipt of the settlement funds no later than October 21, 2005; and (b) a State letter to the City confirming the State's directive that off-leash dog use at Lighthouse Field State Park will cease no later than November 15, 2007. In light of time constraints that other obligations were imposing upon Mr. Torgan and in light of the fact that the letter needed to be written and sent in the immediate future to culminate the settlement, I agreed, as an accommodation

to Mr. Torgan, to draft a letter in a form acceptable to the City for Mr. Torgan's signature. That draft letter was transmitted to Mr. Torgan on October 19, 2005 and served to summarize the State's then current position and direction as articulated by Mr. Torgan in pervious telephone conversations.

- October 24, 2005—The City's \$80,000 settlement check was transmitted to Ms. Brandt-Hawley three days late.
- October 26, 2005—Mr. Torgan sent the City his letter on behalf of the State Department of Parks and Recreation directing the cessation of off-leash dog use at Lighthouse Field State Park no later than November 15, 2007. While a portion of the letter corresponded to the draft forwarded in my October 19, 2005 correspondence to Mr. Torgan, Mr. Torgan's October 26, 2005 letter did not incorporate the suggested draft language verbatim.

In summary, as of October 11, 2005 when I discussed this matter in closed session with the City Council, the City was faced with an attorneys' fees claim that would ultimately exceed \$250,000, a State directive to cease off-leash dog use at the park in the immediately foreseeable future and a contingent offer from the State to pay up to 25% of any attorneys' fee settlement. Only after receiving clear direction from the City Council did I proceed to negotiate the settlement outlined above which, in summary, resulted in an attorneys' fees payment of \$80,000, \$45,000 of which was contributed by the City and \$35,000 of which was contributed by the State (approximately 40%). In addition, in contrast to the State's directive to immediately prohibit off-leash dog use at the park, the City obtained an additional 25 months of off-leash dog use. Accordingly, the settlement which we ultimately negotiated in the week following the Council's October 11, 2005 direction corresponded precisely to the direction we received at that meeting. Having received that direction, all actions taken by this office after the October 11, 2005 City Council meeting were taken with a single sole objective—to successfully implement what the City Council, in its discretion, concluded was the best possible outcome for the City given the appellate court's decision, the State's post-litigation position as articulated by Mr. Torgan, the fact that the State, not the City, owned the property and ultimately controlled its use, and the substantial general fund liability exposure the City faced in light of the attorneys' fees claim.

In response to the "political cover" remark made by Mr. Torgan in his November 19, 2007 court declaration, I do not recall using that term in my October 2005 negotiations; however to the extent that I referred to the City Council's political dilemma in those discussions, those remarks concerned the State's initial direction to implement the off-leash dog use prohibition immediately and were calculated to obtain the State's agreement to the 25-month grace period that was ultimately negotiated.

November 20, 2007
Page 4 of 4

I trust that the foregoing serves to respond to the Council's November 20, 2007 direction.
If Councilmembers have questions, please call.

Sincerely,

John G. Barisone
City Attorney

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Cc: Dannette Schumaker, Director, Parks & Rec.
Richard C. Wilson, City Manager