



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

FOR IMMEDIATE RELEASE: August 3, 2011

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CITY ATTORNEY'S OFFICE FILES MOTION TO DISMISS BALBOA PARK LAWSUIT

San Diego, CA: Within hours after receiving a copy of Save Our Heritage Organisation (SOHO) Petition seeking a restraining order against the City proceeding under a Memorandum of Understanding with the Plaza de Panama Committee (the "MOU"), the City Attorney's office has submitted a 12 page motion to dismiss and sent a demand on SOHO's lawyer to voluntarily dismiss the case.

"To be clear," wrote City Attorney Jan Goldsmith in a letter to SOHO's attorney Susan Brandt-Hawley, "I have no opinion on the proposed project. The only purpose of this request is to avoid the expense of litigating this meritless case and to allow public discourse to continue."

Goldsmith stated that a copy of the actual MOU or Resolution approving the MOU was not attached to the Petition, but those documents are dispositive of the legal issues. "The MOU is very clear that it's a 'preliminary expression of cooperation and intent.' The MOU does not commit the City to any decision and reserves to the City the right and obligation to fully consider environmental analysis, including all project alternatives and mitigation measures, even the alternative of not proceeding with the proposed project. It is precisely the type of preliminary document explicitly discussed in the CEQA Guidelines and by the California Supreme Court in *Save Tara* as needed so that a 'proposal may be further explored, developed, or evaluated,' for example, "to gather financial resources for environmental and technical studies," or 'to seek needed grants or permits.'"

In preparing a 12 page motion to dismiss, Goldsmith noted that his office was fully aware of the law and was ready to defend the City. "Our office would not have signed off on any documentation that committed the City in any way to any portion of the proposed project."

Goldsmith said the Petition is being used to stifle public discourse and delay progress on the project and consideration of alternatives. The lawsuit is far too premature, he said. "Rather than file meritless lawsuits, why not express your views to your representatives, grill candidates and convince the public to support your point of view? Why sue the taxpayers when you should be trying to convince them of your point of view?"

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Goldsmith's letter concludes:

"Again, we ask that you reconsider your position. It is so clear from the Resolution and MOU that there was no approval under CEQA of the proposed project, that we thought it appropriate to request that this case be voluntarily dismissed. The MOU commits the City to work with the Plaza de Panama Committee to further explore, analyze, and develop the proposed project, but does not create binding obligations for the City and can be cancelled by the City at any time. The MOU clearly states the City's intention to give full consideration to the environmental studies currently underway, including alternatives and mitigation measures presented by those studies, and the alternative of not proceeding with the proposed project.

If the Petition is voluntarily dismissed at this point, the City would waive recovery of its nominal costs. If it is not dismissed at this point, the City will vigorously defend the case and seek all remedies available to it under law, including sanctions under Public Resource Code section 21169.11.

Thank you for considering our request."

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