



September 29, 2010

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*Via First Class Mail &
Electronic Mail lafco@sblafco.org*

Robert Braitman, Executive Officer
Santa Barbara Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara, CA 93101

RE: City of Goleta Detachment from Goleta West Sanitary District

Dear Mr. Braitman:

The City has received copies of several letters provided directly to the Commissioners of the Local Agency Formation Commission (LAFCO) concerning the City of Goleta's (Goleta) application to detach from the Goleta West Sanitary District (GWSD.) These letters on behalf of GWSD, take a range of confusing and contradictory positions, ranging from urging LAFCO to take up and summarily terminate Goleta's application, to urging LAFCO that it is premature to take up the application, to urging LAFCO to create procedures which will delay action on the application. The only constant theme tying these letters together is that GWSD doesn't want LAFCO to afford Goleta and its residents a full and fair hearing on the merits of our application. It is telling that GWSD has maintained this campaign through lobbying and *ex parte* communications with the Commissioners themselves. The motivation for such a crusade from GWSD is transparent: desire to maintain the status quo, thwarting an independent evaluation of what is in the best interest of the public.

On June 29, 2010, GWSD used its outside attorney to urge the LAFCO Commissioners to unilaterally terminate the City's application proceedings. Incredibly, there isn't a single citation to legal authority or procedural basis for LAFCO to deny a legally entitled application from being processed. The only factual basis that the attorney cites is that GWSD was not being consulted and informed of the myriad of tasks being done by Goleta and LAFCO staff to assure that all

necessary application materials were prepared and submitted. GWSD is not a party to the application and does not have a right to be apprised of processing information. Moreover, much of the delay was necessitated in responding to those points in GWSD's detailed critique of Goleta's preliminary application which LAFCO Staff felt might be relevant. Both Goleta and GWSD engaged financial consultants to perform detailed analysis for LAFCO's consideration. GWSD's complaints of delay at this late date are disingenuous at best.

On August 16, 2010, GWSD's attorneys were called on to present a novel, albeit disingenuous, theory to LAFCO. GWSD argues, for the first time, some three weeks after the City's application was deemed complete, that the Goleta application "lapsed". This fatally flawed position is premised on an absent foundation: the lack of existence of a rule on timeliness for this LAFCO. GWSD wants to borrow and impose a rule from a LAFCO in another jurisdiction. The absurdity of this *non sequitur* argument is compounded by the fundamental unfairness and denial of due process that would result from the imposition of new rules which are not written and were never considered or adopted to reject and deny consideration of an application on the verge of a hearing. If LAFCO were to now adopt any such rules, due process would prevent their application to pending cases.

On August 17, 2010, GWSD's retained legal firm wrote to LAFCO arguing that Goleta's application was incomplete. Completeness for processing is a legal determination and as such is made by professional staff and not a policy board. LAFCO staff determined, in consultation with legal counsel and in a professional evaluation of the application materials as that the application is complete for processing. This determination was made on July 29, 2010. While it would be improper and a denial of Goleta's due process rights for the Commission at this point to overrule staff's determination and withdraw the completeness determination, Goleta desires to provide all of the factual information that the Commission feels would be necessary for a decision on the application. As such, should the Commission identify specific factual information or documentation which is necessary, the City would welcome the opportunity to supply such information.

On August 23, 2010, GWSD urged LAFCO schedule to a special meeting to address the procedural issues raised in the struggle to prevent a fair hearing on the substance of the application, in light of the scheduled October hearing on the merits of Goleta's application. LAFCO staff has accommodated this request by limiting the October LAFCO meeting to the challenges thrown out by GWSD. Goleta does not object to this approach, but urges that this accommodation to GWSD preclude any further attempts to thwart Goleta's application from being considered by LAFCO. Any discussion or consideration of the merits of Goleta's application at this procedural meeting would be unfair and deny Goleta due process. It is essential that this tactical maneuver by GWSD not be an opportunity to prematurely embroil the Commissioners in deliberation and debate on the substance of the application.

Robert Braitman, Executive Director
Re: City of Goleta Detachment from GWSD
September 20, 2010
Page 3 of 3

GWSD's positions are ironic. While arguing that too much time has passed from *application to hearing, the only remedy it suggests results in the hearing being further delayed.* There is no suggestion that any new or different information will be forthcoming to improve the decision making process. GWSD is choosing a battle based on economic attrition, demonstrating their willingness to spare no expense, whether legal or economic consultants, to protect the current district boundaries, regardless of the interests of the public.

Please share these comments and concerns with the LAFCO Commissioners in the context of the October 14, 2010 hearing. If you have any questions or desire further information, please do not hesitate to contact me at (805) 961-7534.

Sincerely,



Tim W. Giles
City Attorney

C: Dan Singer, City Manager
William Dillon, Deputy County Counsel
Steven Amerikaner, Esq.
Alexandra Barnhill, Esq.