

May 15, 2019

**Via E-mail**

City Council  
Successor Agency to the Redevelopment Agency  
City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955  
ioglesby@ci.seaside.ca.us  
dpacheco@ci.seaside.ca.us  
jcampbell@ci.seaside.ca.us  
jwizard@ci.seaside.ca.us  
akispersky@ci.seaside.ca.us

Re: Resolution re Monterey Family Justice Center

Dear Members of the City Council and Successor Agency to the Redevelopment Agency:

I write on behalf of LandWatch Monterey County (“LandWatch”) regarding the Resolution of the City Council of the City of Seaside Supporting a Monterey Family Justice Center (“Resolution”) proposed for adoption in the Agenda and board packet for the May 16, 2019 meeting of the City Council/Successor Agency To Redevelopment Agency Of The City Of Seaside.

The City cannot legally adopt the proposed Resolution at the May 16, 2019 meeting. The City must first comply with the California Environmental Quality Act (“CEQA”) *before* adopting the proposed Resolution because the adoption is a project with foreseeable environmental impacts.

Under CEQA, a "project" requiring environmental review includes "discretionary projects proposed to be carried out or approved by public agencies, that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," including "activities directly undertaken by a governmental agency" or "activities financed in whole or in part by a governmental agency." (CEQA, §§ 21080, 21065; 14 CCR § 15002(b)(1).) Clearly the construction and use of a Monterey Family Justice Center would cause foreseeable direct and indirect physical changes to the environment such as traffic, noise, air quality impacts, biological resource impacts, and growth inducement.

CEQA review is required when a public agency proposes to “approve” a project. (Public Resources Code, §21080(a); 14 CCR § 15004.) Approval refers to a public agency decision that "commits an agency to a definite course of action in regard to a project." (14 CCR § 15352(a).) "[A]pproval occurs upon the *earliest* commitment to

issue or the issuance by the public agency of a discretionary contract, grant, *subsidy*, loan, or *other form of financial assistance*, lease, permit, license, certificate, or other entitlement for use of the project." (14 CCR § 15352(b) [emphasis added].)

Critically, a city's commitment to convey property for a particular development plan is a project approval subject to CEQA compliance. In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, the California Supreme Court held that the City's commitment to convey property for proposed senior center required CEQA review. (*See also, Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College District* (2012) 206 Cal.App.4th 1036, 1047 [resolution authorizing agency to make property available for rental and to negotiate lease terms was project approval subject to CEQA].) Thus, CEQA provides that an agency may not acquire a site or "formally make a decision to proceed with the use of a site for facilities which would require CEQA review" before it completes CEQA review. (14 CCR § 15004(b)(2).)

Here, the proposed Resolution would commit the City to the Monterey Family Justice Center project and to providing a subsidy or financial assistance to the project through a mandated conveyance of necessary land at a price of \$1. The Resolution recites that the City "*commits* to support, promote, and creatively participate in the development of a Family Justice Center in the vicinity of General Jim Moore Boulevard and Broadway Avenue." Commitment to the project is further evidenced by the language in the Resolution providing that the City "*shall reserve*" land for the project and then "*shall convey* property necessary for construction." Under *Save Tara*, the proposed resolution and the commitment to convey property "commits the public agency as a practical matter to the project" and therefore CEQA review is required before the City adopts the resolution. (*Save Tara, supra*, 45 Cal.4th at 132.)

The City has already defined a proposed project in substantial detail in the Seaside Civic Campus Concept Feasibility Study.<sup>1</sup> The fact that the City would still need to issue various approvals for the project in the future does not excuse it from CEQA compliance *before* it adopts the proposed Resolution.

A public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project. When an agency has not only expressed its inclination to favor a project, but has increased the political stakes by publicly defending it over objections, putting its official weight behind it, devoting substantial public resources to it, and announcing a detailed agreement to go forward with the project, the agency will not be easily deterred from taking whatever steps remain toward the project's final approval.

(*Save Tara, supra*, 45 Cal.4th at 135.)

---

<sup>1</sup> Studio Gang, Seaside Civic Campus Concept Feasibility Study, may 2019, available at <https://we.tl/t-6fFj7dhDoe>.

Environmental review would not be speculative at this point because there is a definite project proposal in the form of the Seaside Civic Campus Concept Feasibility Study. And regardless of the specific buildings that might be constructed, construction of any project at this site would cause biological resource impacts to sensitive habitat and special status species. (Feasibility Study, pp. 72-79 [Denise Duffy, Biological Resources Feasibility Study for Seaside Civic Campus, April 8, 2019].) As the Feasibility Study acknowledges, ecological surveys and evaluation of alternate sites are required as “next steps” in going forward with the project. (Feasibility Study, p. 60.) Consideration of biological resource impacts and alternative sites requires CEQA review *before* the City commits itself to this project or this site through the proposed Resolution:

. . . before conducting CEQA review, agencies must not “take any action” that significantly furthers a project “in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.”

(*Save Tara, supra*, 45 Cal.4th at 138.)

Under the circumstances, the mere recital in the Resolution that “further exploration of siting any public facility at the location will require adherence to CEQA processes” is not sufficient. In *Save Tara*, the fact that the City’s agreement with the developer was expressly conditioned on future CEQA compliance did not absolve the agency from CEQA compliance *before* making the commitment to convey land. (*Save Tara, supra*, 45 Cal.4th at 139.)

A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, *commits the public agency as a practical matter to the project*, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review.

(*Save Tara, supra*, 45 Cal.4th at 132 [emphasis added].) Here, the proposed Resolution would “as a practical matter” commit the City to the project at this site, “so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.” (*Save Tara, supra*, 45 Cal.4th at 139.) In particular, the Resolution commits the City to dedicate the land for the proposed project (“the City of Seaside shall convey property necessary. . .”). Thus, the Resolution falls squarely within the prohibition in 14 CCR § 15004(b)(2) on “a decision to proceed with the use of a site for facilities which would require CEQA review” before conducting such review.” (*Save Tara, supra*, 45 Cal.4th at 134.)

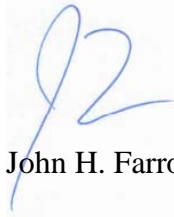
May 15, 2019

Page 4

LandWatch respectfully submits that the City cannot legally adopt the proposed resolution before evaluating the environmental impacts of developing the proposed site for the Monterey Family Justice Center and considering alternative sites. Accordingly, LandWatch asks that the Council members decline to adopt the Resolution.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to read 'JH Farrow', is centered below the company name.

John H. Farrow

JHF:hs  
Cc: Craig Malin ([cmalin@ci.seaside.ca.us](mailto:cmalin@ci.seaside.ca.us))  
Michael Delapa