



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

June 8, 2010

Mayor Dan Dalager
Members of City Council
City of Encinitas
505 South Vulcan Avenue
Encinitas, Ca 92024

Via Electronic Mail
clerk@ci.encinitas.ca.us

**RE: Encinitas Ranch Golf Course Development Agreement Amendment
Opposition to ERGA Request for Suspension of Sales Tax Repayment
Community Concerns and General Objection**

Dear Honorable Mayor and City Council Members:

Coast Law Group LLP represents numerous individuals and business interests throughout the City of Encinitas. In addition, numerous attorneys and staff at Coast Law Group LLP are citizens of the City and are concerned with City governance issues. On behalf of these represented entities, we would like to register our opposition to staff's proposed recommendations on the June 9, 2010 Agenda Item No. 7.

The subject agenda item is a requested temporary suspension of required payments due the City of Encinitas under the Sales Tax Repayment section of the Encinitas Ranch Development Agreement (section 3.2.13.2.4) and development of an amendment to the Agreement to allow Encinitas Ranch Golf Authority (ERGA) to fund a Contingency Reserve Fund. Because ERGA has managed to stay profitable despite tough economic times, and because ERGA has failed to provide reasonable detail of the likely future use of the Contingency Reserve Fund, **we urge you to reject staff's recommendation and deny the proposed changes to the City's existing financial relationship with ERGA.**

After review of the last four years of financial documents for ERGA, we believe a temporary suspension of required repayments is unnecessary for continued operation of the golf course, and would constitute bad public policy and precedent. In essence, the request would serve solely to benefit the developer of Encinitas Ranch, Carltras Company, and would do so to the detriment of other Encinitas residents. Authorization of an amendment to the Development Agreement without providing the public significantly more information regarding the scope of, and Council expectations for, such an amendment invites future discord.

To the credit of ERGA, despite recent economic conditions negatively affecting other local golf courses, the Authority's financial reports clearly indicate it remains, and is forecasted to remain, operationally successful. Indeed, it is evident these sales tax repayments for this year and next could be made with only minor capital expenditure adjustments.

Thus, without sufficient justification, the City has been asked to postpone tax repayments totaling \$250,000 over the next two years, allegedly to assist ERGA in establishing a \$500,000 contingency reserve fund. As noted, these funds would be available for projects that are, as of yet, unidentified. It seems ERGA would have the Council believe it needs a contingency fund for unknown needs that may arise, when in fact, the purpose of such a fund should be to address

known needs when revenues are not as expected. The critical difference is the ability to evaluate the proposed expenditure when being asked to take an extraordinary step, such as is the case here. But we need not necessarily resolve the difference, because in either circumstance, the nature of the relationship between the City and ERGA is such that there is no reason why the Authority cannot come to the City to request a tax payment abatement, a loan, or some sort of grant from the general fund should an unexpected need or drop in revenues arise. Without further justification, the proposed action is merely a municipal handout to a developer and City insiders.

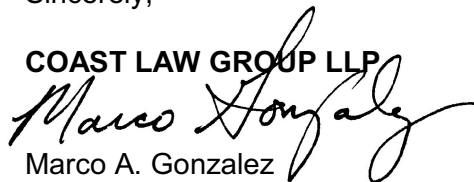
And it's not as if the City is particularly flush with cash. Encinitas continues to expect decreased tax revenues from all sources. Accordingly, the City has reassigned staff, left positions vacant, reduced contract services and implemented other measures to reduce costs. Yet, ERGA is asking you to forgo owed payments which could be used to fund these items.

The motive underlying the requests must also be considered suspect. Rather than adhering to the schedule set forth by section 3.2.13.2.4 of the Agreement, the developer, Carlta Company, may become the primary beneficiary from the postponement of the sales tax repayment. Currently Carlta receives a credit against the earlier sales tax advance of half of any revenue surplus from ERGA operations. By pushing back the repayment schedule (from its current date of 2014), the result may be that Carlta will continue to receive a credit of half of the surplus (currently being credited against the sales tax advance) for the period of time of the postponement. Because after the sales tax repayment has been made, no further payment or credit will be made or given to Carlta until all bond debt is retired, by extending the sales tax repayment date Carlta will continue to receive credit for half of the surplus for the years beyond 2014. While perhaps not an intended consequence of the proposed actions, the Council should nonetheless be concerned.

For these noted herein, we respectfully request the City Council decline to temporarily suspend the sales tax repayments and decline to amend the Encinitas Ranch Development Agreement.

Sincerely,

COAST LAW GROUP LLP



Marco A. Gonzalez

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