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CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE

HENRY A. WAXMAN

33RD DISTRICT OF CALIFORNIA

FACSIMILE TRANSMISSION

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TO:	Laura Vaught
FAX:	202-501-1519
FROM:	Rachel Zaiden
DATE:	August 6, 2014
PAGES (INCLUDING COVER): 13	

COMMENTS: INQUIRY FOR CONGRESSMAN WAXMAN: WALTER LAMB

Thank you for your time and attention to the attached inquiry. I look forward to hearing from you soon.

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RANKING MEMBER
COMMITTEE ON
ENERGY AND COMMERCE

Congress of the United States
House of Representatives
Washington, DC 20515–0533

HENRY A. WAXMAN
33RD DISTRICT, CALIFORNIA

August 5, 2014

Ms. Laura Vaught
Associate Administrator of Congressional and Intergovernmental Affairs
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3428 ARN
Washington, D.C. 20460-0003

Dear Ms. Vaught:

I am writing on behalf of my constituent, Walter Lamb, who resides at 4201 Duquesne Avenue, Apartment 4, Culver City, California 90232.

Mr. Lamb contacted my office regarding his concerns about the Ballona Wetlands Restoration project and its request for transparency and accountability moving forward.

I have enclosed Mr. Lamb's correspondence related to this matter and would appreciate it if you would review his concerns. Please direct your response to Rachel Zaiden in my Los Angeles office at the above address.

Thank you very much for your time and attention to this matter. I look forward to hearing from you soon.

With kind regards, I am

Sincerely,

Henry A Waxman

HENRY A. WAXMAN
Member of Congress

HAW:rz
Enclosure

Ballona Wetlands Land Trust

July 17th, 2014

Lisa Pinto
Rachel Zaiden
Office of Congressman Henry Waxman
5055 Wilshire Boulevard, Suite 310
Los Angeles, CA 90036

[Via email to lisa.pinto@mail.house.gov and rachel.zaiden@mail.house.gov]

Dear Ms. Pinto and Ms. Zaiden:

On behalf of the Ballona Wetlands Land Trust, I want to thank you again for taking the time to meet with me on July 14th to discuss a proposal by the Annenberg Foundation to construct a large facility in the Ballona Wetlands Ecological Reserve, a project that is primarily motivated by Wallis Annenberg's desire for pet adoption facilities surrounded by a campus of open space. As I mentioned, the Land Trust, a 501 (c)(3) non-profit organization, was formed in 1994 to protect this critical ecosystem from the ongoing threat of urban encroachment and has spent thousands of volunteer hours and hundreds of thousands of dollars towards that purpose.

Our request of Congressman Waxman relates to the involvement of two entities comprising the Santa Monica Bay National Estuary Program: the Santa Monica Bay Restoration Commission (SMBRC), a non-regulatory state agency; and The Bay Foundation (TBF), a private non-profit entity. The National Estuary Program (NEP) stems from the federal Clean Water Act and is overseen and partially funded by the US Environmental Protection Agency (EPA). The Land Trust believes that NEP resources have been used in the furtherance of the Annenberg Foundation's proposal, and we are seeking information that will help us better understand that connection. We also seek to facilitate a constructive dialogue regarding the SMBRC's relationship with the Annenberg Foundation to help determine how that partnership is impacting the SMBRC's important mission.

As such, we respectfully submit three requests for the Congressman's consideration, with supporting points, documentation and relevant contact information attached separately.

1) To encourage The Bay Foundation to rise to the general standard of accountability and transparency exhibited by the majority of other National Estuary Program management entities.

This includes making Board meetings open to the public and posting meeting schedules, agendas, and minutes on their web site.

2) To ask The Bay Foundation to clarify whether any NEP resources have been used in connection with the Annenberg Foundation's proposal for the Ballona Wetlands Ecological Reserve.

3) To encourage the SMBRC Governing Board to fulfill its duties as the decision making authority of the SMBRC, and to facilitate, rather than suppress, a constructive discussion of the SMBRC's partnership with the Annenberg Foundation and its potential impact on the larger Ballona Restoration Project, into which the public has already invested substantial resources.

It is important to stress that our desire for more transparency and accountability should not be construed as a lack of trust in The Bay Foundation, the SMBRC or its leaders and staff. These are good organizations doing generally good work. We seek transparency because we believe that transparent processes that encourage public participation tend to produce better public policy outcomes.

Specifically, we believe that the convoluted structure and semi-closed nature of the Santa Monica NEP has made it vulnerable to undue outside influence from the Annenberg Foundation, another good organization that is nonetheless trying to bypass public process in pursuit of its own goals. Early in their discussions, Annenberg Foundation Executive Director Leonard Aube, stated to then SMBRC Executive Director Shelley Luce that **"sometimes public process can be foreboding to the point of stifling opportunity."** However, that "foreboding" public process is designed to ensure that one wealthy entity can't impose what it sees as "opportunity" onto a public resource that was acquired at great effort and public expense to fulfill an entirely different set of opportunities.

Thank you for your consideration of our requests and we look forward to seeing the Congressman's response.

Sincerely,

Walter Lamb
President, Ballona Wetlands Land Trust
310-384-1042
landtrust@ballona.org
www.ballona.org

Attachment: Outline of Supporting Information

Supporting Information Regarding the Annenberg Foundation's Proposal for the Ballona Wetlands Ecological Reserve

Prepared for the Office of Congressman Henry Waxman by the Ballona Wetlands Land Trust

July 17th, 2014

Contents

1) Executive Summary

2) Request #1 Supporting Information

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1) Executive Summary

The Annenberg Foundation expressed its desire to construct a companion animal center on public land in the City of Rancho Palos Verdes (RPV) sometime prior to March 6, 2006 (first public record). The Foundation spent five years and $6.1 million dollars on that effort, but was blocked by a deed restriction enforced by the National Park Service. They withdrew the project from RPV in August of 2011 and immediately began seeking a new location.

The Foundation began discussions with then SMBRC Executive Director Shelley Luce in early September of 2011 about relocating their project to the Ballona Wetlands Ecological Reserve. Upon seeing an early draft of the Annenberg MOU, Dr. Luce called the inclusion of pet-adoption facilities in the ecological reserve a "dealbreaker." However, she noted that CDFW "may be under pressure from on high to continue" and she proceeded to sign the MOU, which specifically included pet adoption facilities, without any consultation with, or approval from, the SMBRC Governing Board or other advisory bodies.

Reaction to the proposal has been overwhelmingly negative, with multiple editorials noting the incompatibility of a pet adoption center in an ecological reserve, opposition from numerous conservation organizations, and a letter from State Senator Ted Lieu praising the Foundation but encouraging them to construct their desired facility outside of the ecological reserve. However, the SMBRC Governing Board has never formally discussed the partnership or its potential impact on the overall restoration project, into which it has already invested substantial public resources over the past decade. To the contrary, it has vigorously resisted attempts to facilitate such discussion within the framework of the SMBRC

The SMBRC and its private non-profit partner The Bay Foundation comprise the Santa Monica Bay National Estuary Program, one of 28 such programs across the country. These programs are overseen and partially funded by the US Environmental Protection Agency via authority granted in the Clean Water Act. Each National Estuary Program (NEP) has its own structure, with the majority being managed by non-profit entities similar to The Bay Foundation and others managed by state agencies or partnerships of multiple organizations. However, the dual management structure of the Santa Monica Bay NEP is uncommon, if not unique. While the public SMBRC adheres to open meeting laws, the private Bay Foundation is a closed

entity, unlike the majority of its counter-parts at other NEPs. The Bay Foundation's Board meetings are not open to the public, nor are meeting schedules, agendas or minutes open to the public. Given the heavy reliance of The Bay Foundation on public funds and given its obvious influence over public policy concerning the Santa Monica Bay and its related watersheds, its closed nature greatly impedes the public's fundamental right to understand how such funds are being used and how such policy is being formulated.

The Ballona Wetlands Land Trust is a small, all volunteer organization that has worked on behalf this unique ecosystem for 20 years. The Land Trust is a member of the SMBRC Watershed Advisory Council and seeks to facilitate a constructive dialogue within the SMBRC regarding its partnership with the Annenberg Foundation. Seven months of good faith efforts in pursuit of that goal have met with strong resistance.

As such, the Land Trust has respectfully made three requests of Congressman Henry Waxman.

1) To encourage The Bay Foundation to rise to the general standard of accountability and transparency exhibited by the majority of other National Estuary Program management entities. This includes making Board meetings open to the public and posting meeting schedules, agendas, and minutes on their web site.

2) To ask The Bay Foundation to clarify whether any NEP resources have been used in connection with the Annenberg Foundation's proposal for the Ballona Wetlands Ecological Reserve.

3) To encourage the SMBRC Governing Board to fulfill its duties as the decision making authority of the SMBRC, and to facilitate, rather than suppress, a constructive discussion of the SMBRC's partnership with the Annenberg Foundation and its potential impact on the larger Ballona Restoration Project, into which the public has already invested substantial resources.

The following sections provide supporting points and information for each request.

2) Request #1

Attempts by the Land Trust to obtain schedules, agenda or minutes of The Bay Foundation's Board of Directors meetings have not been successful. While Bay Foundation staff have attempted to justify this lack of transparency and accountability by noting the private nature of TBF, similar non-profit NEP management entities across the country do provide public access to meetings and related documents. TBF relies heavily on federal and other public funds. It acts as the fiscal entity for the public SMBRC, provides and pays for most SMBRC staff, chooses the SMBRC's executive director, and performs other functions that strongly influence public policy with regard to our natural resources. As such, there is no reason why their activities should be obscured from the public.

Below are just some examples of web sites in which NEP management entities have published meeting minutes, agendas, schedules or other information for the public's benefit. It is not sufficient for only half of the NEP's dual management structure to be transparent to the public, and TBF should follow the examples of these other programs.

http://www.peconicestuary.org/committee.php (expand committee info to see minutes)

http://www.tbnep.org/tep-operating-docs.php

http://www.mbnep.org/About_Us/structure.html (indicates open meetings by private Morro Bay Foundation)

http://www.cbbep.org/board-of-directors-meeting-information

http://www.apnep.org/web/apnep/pbmeetings

http://www.inlandbays.org/about/board (minutes posted, by-laws published, "meetings shall be open and noticed to the public as required by the Freedom of Information Act")

http://longislandsoundstudy.net/about/committees (drill into committees for more info - note formal Work Groups)

http://www.mobilebaynep.com/what_we_do/meeting_minutes_and_presentations

http://www.harborestuary.org/policycomm.htm

http://www.tbep.org/tbep/meetings.html

3) Request #2

There is no doubt that Bay Foundation staff, acting on behalf of the SMBRC, have spent considerable time advancing the Annenberg Foundation's desire for to construct pet adoption facilities within the Ballona Wetlands Ecological Reserve, whether that was their direct intent or not. In June of 2012, seven months before the Annenberg MOU was executed, then SMBRC Executive Director Shelley Luce lamented that she had "spent many, many unbudgeted hours on this potential partnership since Annenberg contacted us last fall" and that "It's probably cost us all a couple hundred thousand in staff and consultant time already."

More recently, TBF staff have worked closely with the Annenberg Foundation to transfer the BallonaRestoration.org web site to the Annenberg Foundation's control and to redesign and re-introduce the website to the public. The website contains numerous factual errors, filters out media coverage that is unflattering to the proposed project, and only provides artist's renderings of on-site pet adoption facilities.

Based on The Bay Foundation's tax documents, and with TBF refusing to provide any additional information, the Land Trust believes that federal NEP funds were used to enable TBF staff to work with the Annenberg Foundation toward an objective that the SMBRC Governing Body has never discussed or approved, and which is clearly incompatible with the purposes of NEP funds. U.S. taxpayers have a right to understand if federal NEP funds were used in this way. Whether such use of federal funds can be justified is another question that does not justify keeping this information from the public domain.

4) Request #3

Because the SMBRC Governing Board, which is the decision making authority of the SMBRC, has never discussed this major, controversial partnership, the Land Trust requested the formation of a Work Group to facilitate discussion of the matter and to provide non-binding recommendations back to the Governing Board. Work Groups are clearly defined in the SMBRC MOU, and are in fact described as "the primary means for members of the Watershed Advisory Council to collaborate on issues of importance." TBF staff, acting on behalf of the SMBRC, rejected the Land Trust's request by incorrectly interpreting Work Groups as break-out sessions.

The Land Trust subsequently submitted a request for Dispute Resolution to SMBRC Chair Mehaul O'Leary. After consultation with legal counsel, Mr. O'Leary unilaterally denied the Land Trust's request for dispute resolution and its initial request to convene a Work Group. Chair O'Leary's letter provided no legal rational for his decision to circumvent the SMBRC MOU, and the rationale in general was not supported by the facts at hand.

When public bodies are involved in controversial matters of public policy, they should always err on the side of more public discussion, and not less. Yet the SMBRC has never scheduled a single minute of discussion of this matter. Numerous groups, with no direct responsibility for the proposal, have nonetheless requested and received presentations on the project from the Annenberg Foundation, and the Land Trust has often followed up with presentations of our own. The SMBRC, which bears a strong responsibility for the proposal, and whose staff are actively engaged on the proposal, have shown no such interest in the project, and have instead vigorously fought to suppress discussion of the project within the framework of the SMBRC.

This suppression of discussion is often justified by arguing that we need to let the CEQA process play out and with for the draft EIR to be released. However, driving to the end of a long road without ever considering whether it is the right road, or how we found ourselves on that road, is a bad way to navigate the process of forming public policy, especially when it comes at great expense to the taxpayer.

5) Contact Information

Given the overlap between the SMBRC and TBF, I would suggest that all three requests be sent in one letter to the individuals below:

To:

Tom Ford
Executive Director
The Bay Foundation
1 LMU Drive, Pereira Annex MS:8160
Los Angeles, CA 90045
tford@santamonicabay.org

CC:

Laurie Newman
President of the Board of Directors
The Bay Foundation
1 LMU Drive, Pereira Annex MS:8160
Los Angeles, CA 90045
laurienewm@gmail.com

Scott Valor
Director of Government Affairs
The Bay Foundation
1 LMU Drive, Pereira Annex MS:8160
Los Angeles, CA 90045
svalor@santamonicabay.org

Mehaul O'Leary
Chair, Santa Monica Bay Restoration Commission
320 West 4th street, Suite 200
Los Angeles, California 90013
mehaul007@yahoo.com

Jane Diamond
Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901
Diamond.Jane@epa.gov

6) Links to Relevant Materials

1) Memorandum of Understanding between Annenberg Foundation, California Department of Fish and Wildlife (CDFW), State Coastal Conservancy (SCC) and the Santa Monica Bay Restoration Commission (SMBRC), i.e. "Annenberg MOU"

   http://tinyurl.com/AnnenbergMOU

2) Memorandum of Understanding governing the SMBRC, i.e. "SMBRC MOU"

   http://www.smbrc.ca.gov/about_us/docs/mou.pdf

3) Memorandum of Agreement between SMBRC and The Bay Foundation (TBF)

   http://www.santamonicabay.org/wp-content/uploads/2014/04/MOA-for-SMBRC-SMBRF-SIGNED.pdf

3) Annenberg Foundation 2011 990 PF

4) Annenberg pulls $50M project from Rancho Palos Verdes (Daily Breeze, 8/9/2011)