THE CITY OF SAN DIEGO

December 29, 2004

Save Mission Bay Save Our Parks (ID # 1242956)
F. Laurence Scott, Jr., Treasurer
Scott & Cronin LLP
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024

Re: Ethics Commission Audit

Dear Mr. Scott:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was presented to the Ethics Commission at a special meeting held on December 28, 2004. The report reflects findings that are material as defined in the Ethics Commission Audit Manual. As a result, the Commission decided to initiate a formal investigation pursuant to the procedures outlined on page 16 of the Audit Manual.

You will be contacted by Senior Investigator Lauri Davis regarding this investigation. If you have any questions concerning the foregoing, please contact me at your convenience. Thank you for your assistance and cooperation during the course of the audit.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s

Enclosure

DIVERSITY
BRINGS US ALL TOGETHER

Ethics Commission
1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 Fax (619) 533-3448

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

December 28, 2004

Save Mission Bay Save Our Parks (ID # 1242956)
F. Laurence Scott, Jr., Treasurer
Scott & Cronin LLP
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:
Save Mission Bay Save Our Parks

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Save Mission Bay Save Our Parks, Identification Number 1242956 ("the Committee") for the period from July 1, 2001, through November 25, 2002. The Committee was selected for audit by the Ethics Commission at a random drawing conducted on October 9, 2003. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the Political Reform Act (Government Code sections 81000 *et seq.*) and San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of $99,287.24 and total expenditures of $99,302.24[1]. Both totals include $52,867.24 of unpaid bills converted to non-monetary contributions upon Committee termination. **The audit revealed five material findings: (1) the Committee violated San Diego Municipal Code section 27.2903 by failing to disclose that it was candidate controlled; (2) the Committee violated San Diego Municipal Code section 27.2947 by making an organizational contribution to a candidate controlled committee when Committee funds were used to pay a debt for a candidate controlled committee; (3) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay two vendors within ninety calendar days; (4) the Committee violated San Diego**

[1] The $15 difference between contributions and expenditures is a bank fee reported as an expenditure that was subsequently reversed and reported as a miscellaneous increase to cash.

Municipal Code section 27.2944 by failing to disclose all accrued expenses; and (5) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to disclose all payments made by Independent Contractors.

II. Committee Information

On February 19, 2002, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the proposed City Charter amendment "Mission Bay and Regional Parks Improvement Act" in the November 5, 2002, election. The Committee did not obtain the necessary petition signatures, and therefore the measure did not appear on the ballot. On November 25, 2002, the Committee filed a Recipient Committee Statement of Termination indicating that its filing obligations were completed on November 21, 2002. The Committee's treasurer was F. Laurence Scott, Jr.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards and the Ethics Commission Audit Manual. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with restrictions on contributions, loans, and expenditures;
3. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records; and
4. Compliance with all record-keeping requirements.

V. Summary of Applicable Law

San Diego Municipal Code Section 27.2903 – Definitions

"Controlled committee" means any committee controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if the candidate, the candidate's agent or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee.

San Diego Municipal Code Section 27.2947 (b) – Prohibitions and Limits on Contributions From Organizations

(b) It is unlawful for a person other than an individual to make a contribution to any candidate or committee, except to a committee that is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

San Diego Municipal Code Section 27.2945(a) and (d) – Vendor Credit

(a) Vendors may extend credit to candidates or committees in the ordinary course of business in the same manner as extended to persons for other than political purposes.

(d) A candidate or committee that accepts goods or services for political purposes on credit under Section 27.2945(a), shall pay for those goods or services in full no later than ninety calendar days after receipt of a bill or invoice and in no event later than ninety calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered.

San Diego Municipal Code Section 27.2946 – Continuing Violations

A candidate or committee treasurer violates Section 27.2945(b), (c) or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every calendar day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

San Diego Municipal Code Section 27.2944(b) – Payment and Disclosures of Payment for Goods and Services

(b) Every candidate and committee shall disclose expenditures in the same time and manner required by California Government Code Section 84211. An expenditure which has been incurred but not paid during a reporting period shall be disclosed as an accrued expense.

San Diego Municipal Code Section 27.2931 - Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq*. Compliance with the disclosure requirements of California Government Code sections 81000 *et seq*. is deemed to be compliance with this section.

Government Code Section 84303 – Expenditures by Agent or Independent Contractor

No expenditure of five hundred dollars ($500) or more shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section.

VI. Material Findings

A. Violation of San Diego Municipal Code Section 27.2903

The Committee filed a Statement of Organization indicating that it was a "Primarily Formed Committee" organized to support the Mission Bay and Regional Parks Improvement Act. The audit revealed that then Councilmember Byron Wear had significant influence and control over the activities of the Committee. He negotiated with vendors, approved payments, and signed contracts and fundraising solicitations. The Committee should have disclosed this relationship by filing as a "Controlled Committee" as well as a "Primarily Formed Committee".

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer claimed that at the time the Committee was formed, it was not apparent that Mr. Wear would exert control over Committee activity. Once it became apparent, it was an unintentional oversight that an amendment was not filed.

B. Violation of San Diego Municipal Code Section 27.2947

On August 22, 2002, the Committee paid a Scott & Cronin invoice that was billed to "Wear for Mayor." The $335.66 invoice was for professional accounting services performed from October 2001 to January 2002, prior to the existence of this Committee. At the time the Committee made this payment, "Wear for Mayor" was an active candidate-controlled committee organized to support then Councilmember Byron Wear's candidacy for Mayor in the March 2000 primary election. Payment of this invoice by the Committee constitutes an unlawful organizational contribution to the "Wear for Mayor" committee.

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer claimed he received legal advice indicating that multiple committees controlled by a candidate may pay accounting and legal bills from any controlled committee. However, the Treasurer did not provide any documentation reflecting this advice.

C. Violation of San Diego Municipal Code Section 27.2945

The Committee failed to pay two vendors within ninety calendar days after receipt of a bill as follows:

(1) Freelove Consulting submitted an invoice dated June 24, 2002, reflecting a balance due of $1,299.09. This amount was never paid, and the Treasurer wrote to the vendor on November 21, 2002, asking the vendor to convert the debt to a non-monetary contribution. The vendor agreed to the conversion on November 25, 2002, 154 days after the invoice date.

(2) The La Jolla Group submitted an invoice dated June 30, 2002, reflecting a balance due of $51,568.15. This amount was never paid, and the Treasurer wrote to the vendor on November 21, 2002, asking the vendor to convert the debt to a non-monetary contribution. The vendor did not agree to the conversion. Regardless, it was converted on November 25, 2002, 148 days after the

invoice date and improperly reported as a non-monetary contribution.

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer claimed that the vendor debt provision was not enforced prior to the establishment of the Ethics Commission, but admitted it was no excuse. The Treasurer also explained that he has no control over the fundraising activities of his clients.

D. Violation of San Diego Municipal Code Section 27.2944

The Committee failed to disclose all Accrued Expenses (Unpaid Bills) on Schedule F of their Campaign Statements as follows:

(1) As mentioned in finding "C" above, a balance due of $51,568.15 to The La Jolla Group has remained unpaid since June 30, 2002. The Committee converted the unpaid bill to a non-monetary contribution on their Termination Campaign Statement filed November 25, 2002. However, since the vendor did not agree to forgive this debt, it remains an unpaid bill and should be reported as an accrued expense until paid.

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer pointed out that, even though the amount was reported as a non-monetary contribution, it was disclosed as an unpaid bill in the description on Schedule C of the Termination Statement.

(2) Scott & Cronin invoice #5352 dated July 31, 2002, for $601.25 was not disclosed as unpaid on the campaign statement covering the period from July 1, 2002, through September 30, 2002. A partial payment (due to insolvency) of $16.51 was made on November 21, 2002, and disclosed on the November 25, 2002, Termination Campaign Statement. The balance due of $584.74 was not reported as unpaid, nor was it converted and disclosed as a non-monetary contribution.

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer claimed that this was an unintentional oversight.

E. Violation of San Diego Municipal Code section 27.2931 and Government Code section 84303

The Committee failed to disclose all payments of $500 or more made by an Agent or Independent Contractor pursuant to Government Code section 84303. Vendor invoices from The La Jolla Group reflect an expenditure of $2,143.15 for "2nd Printing of Petition." The Committee did not disclose this sub-vendor expenditure on Schedule G of their Campaign Statements.

At the post-audit conference, and in a written response dated November 23, 2004, the Treasurer claimed that this was an unintentional oversight.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely reported and generally disclosed all contributions

received and expenditures made, and maintained all necessary documentation. **However, the audit revealed five material findings: (1) the Committee violated San Diego Municipal Code section 27.2903 by failing to disclose that it was candidate controlled; (2) the Committee violated San Diego Municipal Code section 27.2947 by making an organizational contribution to a candidate controlled committee when Committee funds were used to pay a debt for a candidate controlled committee; (3) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay two vendors within ninety calendar days; (4) the Committee violated San Diego Municipal Code section 27.2944 by failing to disclose all accrued expenses; and (5) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to disclose all payments made by Independent Contractors.**

_____ _____

DeeDee Alari, CPA — Date
Financial Investigator

_____ _____

Lauri Davis — Date
Senior Investigator