

October 14 2008 City Council Appeal- Colorado Lagoon & Marina Vista Park Project

My name is Kerrie Aley and I will need approximately 15 minutes of your time today.

I am here today to appeal the Planning Commission's decision to approve the Local Coastal Development Permit and Environmental Impact Report for the Colorado Lagoon & Marina Vista Park Project. I support the restoration of the Colorado Lagoon but have serious concerns about the City's failure to follow process and the inadequacy of the Environmental Impact Report to identify and mitigate serious construction impacts my neighborhood.

For this project, the City functions as both the lead approval agency and the project applicant and it is on this failure to follow its own planning process and protect the public it is supposed to serve that I am making this appeal to the Council today.

This project is an environmental clean up not a restoration. How did the Colorado Lagoon deteriorate to the sad condition it is in today? In the 1950's the City filled an existing channel between the lagoon and Marine Stadium for a proposed but not built cross-town Pacific freeway in the 1950's. They constructed a culvert but for 50+ years failed to maintain the culvert and it filled up with silt blocking tidal flushing which could have helped keep the lagoon's water clean. Then the City allowed more development around the neighborhood without proper drainage and allowed additional street run-off drainage into the lagoon. These drains poured storm water run-off containing DDT, PCP, lead and other hazardous contaminants into the lagoon. Last Saturday the City poured 1200 gallons of raw sewage into the lagoon because the City's sewers are undersized and poorly maintained. Today the City is asking residents to 'trust them' with no construction plan or adequate mitigation while they clean up an environmental disaster of their own making.

**Process & Municipal Code Violations:**

The following is a summary of the areas in which I believe the City has failed to follow the Municipal Code and its own processes:

Section 21.21.304 of the Municipal Code requires that ALL notices shall contain, as a minimum, the following information:

- Section A requires the applicant's name.  
**No project applicant is named on the notice of this public hearing.**
- Section D requires the location of the project, including an indication of whether it is in the coastal zone;  
**No mention on the notice for this public hearing whether the project is in the coastal zone.**
- Section E *requires* an indication of whether the project is appealable to the Coastal Commission;  
**Not on this notice. Not only is this project appealable to the Coastal Commission but because the City charged me \$50 to appear here today, the City has opened the door for an unlimited number of people to appeal this project to the Coastal Commission, thus bypassing a need to appeal this project today. The City might want to reconsider eliminating this fee because I do not think that the Coastal Commission should be the one determining land use in our City without a full vetting of issues by our city government and citizens.**
- Section G requires the reason for the public hearing;  
**The notice is incorrect, misleading and has no description or explanation of why I have submitted this appeal... which is the approval of the Environmental Impact Report and the proposed construction impact mitigation. The notice states incorrectly that I am appealing the General Plan Text Amendment to the Local Coastal Program and a change to the municipal code definition of passive parks. I have made no such complaint.**

**Both the Planning Commission and Appeal hearing notices are wholly deficient because without digging through volumes of EIR documents could residents determine that the City planned to use their residential street as a haul route for thousands of diesel trucks, dredging of hazardous soil or would spend years living next to stockpiles of dirt, trucks, heavy equipment and construction materials storage for many years to come .**

- Section H requires the general procedures for the hearing and the receipt of public comments; **No procedures on the notice for this hearing.**
- Section J requires the means for appeal, including an appeal to the Coastal Commission when applicable; **No means of appeal is stated on the notice for this hearing.**

21.21.402 Action by hearing body.

*Conditions. Reasonable and necessary conditions on development may be attached to all decisions to ensure their consistency with the Zoning Regulations.*

***This section does not state that conditions may be used to add mitigation or defer mitigation to unwritten construction plans to comply with CEQA. In the project's conditions of approval there are over 53 mitigation measures which have been added to supplement the EIR and more is needed.***

Note (unread) 21.21.505 Findings on appeal.

All decisions on appeal shall address and be based upon the same conclusionary findings, if any, required to be made in the original decision from which the appeal is taken.

Section C. Local Coastal Development. Decisions on local coastal development permits seaward of the appealable area shall not be final until the procedures specified in Chapter 21.25 (Coastal Permit) are completed.

***Section 2. C. 21.25.904 requires that the proposed development conforms to the certified local coastal program. This project does not meet this requirement without a prior Council and Coastal Commission amendment to the Local Coastal Plan and Resource Management Plan and this has not happened.***

Section 2. Council Action.

b. Effect In Coastal Zone. When an approved change in the text of the Zoning Regulations or a rezoning affects properties in the Coastal Zone, the change or rezoning shall be transmitted to the Coastal Commission for a determination of consistency with the certified local coastal program or an amendment thereto. The change in the text or rezoning shall not be effective in the Coastal Zone until after Coastal Commission approval.

***The City does not have approval from the Coastal Commission for the needed changes to the General Plan Local Coastal Program or Resource Management Plan for this project.***

Section 21.25.206 Required findings

The following findings must be analyzed, made and adopted before any action is taken to approve or deny the subject permit and must be incorporated into the record of the proceedings relating to such approval or denial:

B. The proposed use will not be detrimental to the surrounding community including public health, safety or general welfare, environmental quality or quality of life;

***No such findings are included in the record of the proceedings.***

Section 21.25.1113 Findings required.

The planning commission, and the city council on appeal, may grant a determination of applicable law if, and only if, it first makes, after public hearing, each of the following findings:

Section B requires that project complies with all applicable provisions of law, including, but not limited to, all applicable zoning regulations;

***The noticing for this appeal violates the municipal code requirements.***

***The City has itself admitted that the project does not comply with existing zoning regulations including the Local Coastal Program, Waterlands Resource Management Plan, or the Municipal Code. The City's finding for this project are invalid because the Planning Commission only has advisory powers in these areas. I wonder whether this hearing is even legal. Approval of this permit requires prior Council approval of changes to the General Plan Local Coastal Program, Resource Management Plan, and the Municipal Code. No Council hearing has been scheduled or action taken on these changes. That means that the Commission's approval of the Local Coastal Development permit is contingent on Council and Coastal Commission action that has not yet happened.***

Section C requires that the project has complied, or will comply, with all applicable environmental requirements.

***The City has failed to meet the requirements of the California Environmental Quality Act and the City's Environmental Impact Report and mitigation fails to protect the public from the project's negative impact.***

Section D requires that the project is consistent with the provisions of the zoning district in which it is proposed to be located;

***The City admits that the project does not comply with current zoning.***

Section F requirements that "no amendments to the general plan, the zoning regulations or the applicable zoning district have been initiated at the time of or prior to the grant of determination which would affect the use, design or lawfulness of the project."

***Clearly a violation. This project requires a prior amendment to the general plan and zoning regulations.***

### **CEQA , Environmental Impact Report, Mitigation of Construction Impacts**

This project's environmental impact report was written to comply with the requirements of the California Environmental Quality Act. The basic purpose of CEQA are to:

- (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

An Environmental Impact Report (EIR) is a public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage. If the City's EIR identifies significant effect on the environment, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. The City must also protect the environment by either changing the project, imposing conditions of the project to mitigate negative impacts, or make a finding that unavoidable significant environmental damage is acceptable.

I am appealing this EIR, Statement of Overriding Conditions, and Local Coastal Permit because I believe that the EIR must be revised to consider all significant environmental impacts to residential home/schools/streets.

Upon further study, new mitigation measures can be added which will reduce the construction impact of the Colorado Lagoon and Marina Vista Park on residents and schoolchildren. The public must be given an opportunity to review the construction plan prior to approval of the EIR, to assess whether adequate mitigation has been made for over 5,000 semi-trailer truck trips down one residential street (Park Avenue), loss of parking, construction noise exceeding 85 db, hazardous soil, and air quality impacts of the project.

**The basis of my appeal:**

- The California Environmental Quality Act (CEQA) requires that mitigation measures timely be set forth, that environmental information

be complete and relevant, and that environmental decisions be made in an accountable arena and open to public review.

The EIR is

inadequate.

- CEQA requires that information must be provided in the EIR for a specific plan, which demonstrates that impacts of the specific plan will be mitigated below level of significance. The City has deferred defining specific mitigation measures to unwritten construction plans. The City has failed to consider all feasible mitigations measures.
- The City has failed to consider the existing serious traffic congestion and accident problems on Park Avenue between 7<sup>th</sup> and 4<sup>th</sup> avenue. No traffic studies have been made to determine impact on residential streets & no mitigation has been proposed.
- The City has failed to provide details as to how these trucks trips and road closures will affect traffic & parking on other residential streets and schools.
- The City has deferred many details of how the over 8,000 semi-trailer equivalent truck trips, traffic diversion, air quality, and noise issues will be mitigated.
- The City considers the impact of daily diesel truck trips hauling building material, debris, excavated soil/hazardous waste within a few feet homes over a period of 30 months 11 hours per day as a "short term" issue not requiring a complete study and plan in the EIR.
- The current mitigation proposed for air quality, noise, and traffic issues is inadequate and unacceptable for a project so close to residential homes.
- The EIR states that the Termino Avenue Drain Project may happen concurrently with this project. The City does not consider the cumulative impact of other planned construction such as repair of 2<sup>nd</sup> street alleys and rebuilding of the Belmont Pier Pool.
- The EIR fails to consider the impact of roadway closures and the significant cumulative traffic impact of the areas special events at Marine Stadium and on 2<sup>nd</sup> street which now draw between 3,000 and 50,000 people into my neighborhood with no event traffic mitigation. None! I spent over seven hours in the City Attorney's office reviewing past and present Special Events documents and was unable to find one traffic or parking plan even though this is required by City policy.
- The EIR attempts to take mitigation credit for both the City of Long Beach and the Termino Avenue Drain project EIR construction staging and traffic control plans. Neither plan exists nor have mitigation measures been determined.

In summary I think the Council should approve my appeal and reject the Local Coastal Development Permit, relocate the truck haul route, define the construction plan, revise the EIR, and require additional mitigation measures to protect resident's health and safety.

In the mean time, the General Plan revision of the Local Coastal Program, Resource Management Plan, and Muncipal Code Zoning definition for passive park revisions can be publically noticed and be put before the Council for a vote.

Thanks very much for your time and consideration of this matter.

Kerrie Aley