



**City of Long Beach**  
*Working Together to Serve*

**Office of the City Attorney**

**DATE:** September 22, 2010  
**To:** Mayor and City Council Members  
**FROM:** Robert E. Shannon, City Attorney *RES*  
**SUBJECT:** Appeal from the Harbor Commission Certification of the Gerald Desmond Bridge Replacement Project Environmental Impact Report

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### **BACKGROUND**

On August 9, 2010, the Board of Harbor Commissioners (Board) certified that the Gerald Desmond Bridge Replacement Project Environmental Impact Report ("EIR") complies with the California Environmental Quality Act ("CEQA"). On August 23, the Coalition for a Safe Environment, together with the Long Beach Coalition for a Safe Environment and Jesse N. Marquez, in his individual capacity, appealed the certification. This appeal will be heard by the City Council on September 28.

### **PROCEDURES FOR APPEAL**

Section 21.21.507 of the Municipal Code governs this appeal. Essentially, persons or entities that participated in the proceedings before the Board had the opportunity through August 23 to appeal the certification of the EIR to the City Council. Appeals must list all grounds and specify in detail why the certification does not comply with CEQA, and these grounds must have been raised before the Board. An appellant also is required to submit with the appeal all documentation upon which the appellant relies.

The procedures for the September 28 hearing are as follows. The appellants and the Harbor Department will have the same total amount of time to present their respective positions. First, the Harbor Department will present a staff report. Then the appellants will present their appeal. The Harbor Department will then respond to the appeal and finally the appellants will have an opportunity for rebuttal. The appellants and the Harbor Department can divide their time as they choose within the total time allotted to them.

These presentations will be followed by an opportunity for public comment and City Council deliberations.

### **SCOPE OF THE APPEAL**

Since the Long Beach Charter provides that the Board has final decision-making authority over the project and related mitigation measures, the City Council does not

have the legal authority to approve or reject the project or to make any changes to the project or the mitigation measures. However, pursuant to CEQA, Section 21151(c), when a nonelected body such as the Board certifies an EIR, that certification may be appealed to the agency's elected decision-making body, which in this case is the City Council.

The only issue on appeal is whether the EIR complies with CEQA.

### **LEGAL STANDARD FOR CITY COUNCIL DETERMINATION**

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." CEQA, Section 21002.1(a).

The CEQA regulations, known as the Guidelines, further explain this purpose as follows:

"An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project." Guidelines, Section 15121(a).

"An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." Guidelines, Section 15151.

Thus, it will be the duty of the City Council on appeal to consider the adequacy of the EIR in light of its purpose as set forth in the law.

When the City Council considers the adequacy of the EIR, it does so "de novo," meaning that the Council must consider the EIR and make its own determination. It does not have to give deference to the determination made by the Board.

**OPTIONS AVAILABLE TO THE CITY COUNCIL**

The City Council has two options in considering this appeal:

1. Deny the appeal and approve the resolution affirming the certification of the EIR and making related findings; or
2. Grant the appeal and request the City Attorney to prepare a resolution identifying deficiencies in the EIR for the Harbor Department to correct before reconsidering the project.

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