

Re: LA City File No. 10-0173 and File No. 10-0245

March 26, 2010

To the LA City Council:

I oppose and object to any and all approvals by the City of Los Angeles, and the Los Angeles City Council, of the Playa Vista Phase 2 EIR, R-EIR, general plan amendments, specific plan amendments, zoning change, proposed ordinance, development agreement, Vesting Tentative Tract Map, and to the Playa Vista Phase 2 project itself.

The Court of Appeals directed “the City to (1) vacate its approvals of the project and its certification of the EIR; (2) revise the analysis of land use impacts in the EIR; (3) revise the EIR to discuss preservation in place in accordance with Guidelines section 15126.4, subdivisions (a)(1)(B) and (b)(3); and (4) revise the EIR to identify the intended and likely measures to dispose of the project's wastewater and analyze the environmental impacts of employing those measures to dispose of the wastewater generated by the project, including any cumulative impacts to the Santa Monica Bay”. *City of Santa Monica, et al. v. City of Los Angeles*, 2007 WL 2677035 (Cal.App. 2 Dist.).

The Court further instituted a stay of construction activities: “The superior court is directed to issue an order enjoining all project activities that it finds would prejudice the City's consideration or implementation of mitigation measures or alternatives and that could result in an adverse change to the physical environment, until the City fully complies with CEQA.”

Playa Capital and the City did not comply with the Appellate Court Order.

According to the Ballona Freshwater Wetlands Annual Report: 2009, “Construction of the (Riparian) Corridor was completed in 2007,” indicating that Playa Capital may not have complied with the stay of construction activities per the Appellate Court order, issued Sept. 13, 2007. Playa Capital and its archaeologist, SRI, continued work during the litigation process, while these matters were being litigated. As stated in the RS-DEIR, “as of 2008, all data recovery work at the Proposed Project had been completed”.

These project activities could have prejudiced the consideration or implementation of alternatives and certainly did result in an adverse change to the physical environment, as the construction of the Corridor resulted in removal of burials, instead of the preferred alternative, preservation in place.

Other grading and related construction activities have also apparently taken place in the intervening time period, which may be prejudicial to consideration of other alternatives.

The City failed in its duty, as stated in the General Plan, in its “primary responsibility to protect significant archaeological resources” and in “identifying and protecting its cultural heritage”.

CULTURAL RESOURCES

Playa Capital and its archaeologist, SRI, have been operating with an out-of-date Programmatic Agreement (PA) from 1991, never properly renewed or renegotiated with appropriate tribal groups. The letter from the Army Corps of Engineers (ACOE) alleges that it was extended; however, two of the original signers of the PA were deceased at the time ACOE purported to have acquired consent to the extension. ACOE sending out letters, without a reply, and with no further consultation, is not obtaining consent. Both the City and Playa Capital were aware of these deficiencies as objections were made by tribal members, the NAHC, and the public as to the validity of this document. In fact, the PA was not extended, it was expired, and the activities based upon it were, and are, arguably illegal under state and federal law.

Further, the SWANCC case of 2001 (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159) changed the jurisdiction and authority of ACOE in regard to Programmatic Agreements for wetlands, and associated cultural resources, giving more authority to the EPA in such jurisdictional situations. This change was not reflected in the actions of ACOE or the City in regard to the Playa Vista PA, and should have been applicable to Phase 2.

Despite its assertions, SRI did not proceed according to law in its excavation of burials, either in Phase 1 or 2. The NAHC, as the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources, repeatedly asked SRI and Playa Capital to cease and desist in its activities. Most NAHC letters and requests have been denied or have had no response. The NAHC did write letters to Playa Capital and the City before and during the Phase 2 approval process, contrary to what is stated in the RES-DEIR.

Cumulative impacts to the Tongva have not been addressed in the RS-DEIR. There is an inadequate assessment of the project's cumulative effects on the known ancient village site, Sa'anga, and on the cultural landscape of the South Coast region. Cumulative impacts to religious, ceremonial and cultural sites of the Tongva, including Sa'anga at the Playa Vista site--impacts to the whole region from the Playa Del Rey/Westchester area, including the Ballona Creek watershed to the coastal watersheds of the Los Angeles, San Gabriel, and Santa Ana rivers have not been properly assessed. As development continues throughout the greater Los Angeles region, and including Seal Beach, Bolsa Chica and Newport Beach areas, which have numerous recorded archaeological sites--cumulative impacts to the historic and cultural landscape of the Tongva should be addressed..

There are large discrepancies between Indian tribal members, including the MLD, and SRI as to the numbers of burials (SRI approximately 350, tribal estimates over 1000 to 1400 burials) that were discovered. Unresolved issues remain as to items found with the burials, which according to law were not supposed to be separated from the attendant burials. There remain questions as to the implementation of data recovery.

THE PROJECT IS NOT EXEMPT FROM SB 18 CONSULTATION REQUIREMENTS

The City and Playa Capital argue that this project is exempt from SB 18 requirements for consultation with tribal members as to cultural and sacred site designation and preservation, as it was initially proposed in

2002, prior to the enactment of SB 18 into law. However, the Court order vacated the project approvals and the certification of the EIR, including “the approvals of a vesting tentative map, general plan amendments, specific plan amendments, and a development agreement”. SB 18 consultation is triggered by the current general plan amendment process, taking place now after the enactment of SB 18, and giving the City the opportunity to consult with tribal entities as required by SB 18. Such a consultation as to cultural and sacred site designation and preservation in place would help to address the Court’s concerns as to the prior omission of in situ alternatives.

Senate Bill 18 (Chapter 905, Statutes of 2004) requires cities and counties to consult with Native American tribes when adopting and amending their general plans or specific plans. (Governor’s Office of Planning and Research (OPR), Tribal Consultation Guidelines, Nov. 2005).

Under SB 18, a general plan amendment, and a specific plan amendment as well, requires consultation with appropriate tribal members and tribal groups identified by the State Native American Heritage Commission (NAHC), in order to protect cultural and sacred sites. In situ preservation, the granting of a conservation easement to the tribe or open space designation to protect such areas, should be considered as an alternative to burial removal or destruction of a cultural or sacred site. This consultation and consideration of alternatives was not adequately performed by the City or Playa Capital.

“The principal objective of SB 18 is to preserve and protect cultural places of California Native Americans. SB 18 is unique in that it requires local governments to involve California Native Americans in early stages of land use planning, extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes.” (OPR Tribal Consultation Guidelines).

Governor’s Office of Planning and Research (OPR), Tribal consultation Guidelines, Nov. 2005, herein incorporated by reference.

[http://www.opr.ca.gov/programs/docs/09_14_05%20Updated%20Guidelines%20\(922\).pdf](http://www.opr.ca.gov/programs/docs/09_14_05%20Updated%20Guidelines%20(922).pdf)

Although the original application was made in 2002, prior to SB 18 provisions being enacted, the approvals were vacated by the Court decision in 2007.

If the City approves these general plan and specific plan amendments without appropriate and required consultation and consideration of alternatives it will have failed to proceed in a manner required by law, which is an abuse of discretion. ([Pub. Resources Code, §§ 21168](#); [County of Amador v. El Dorado County Water Agency \(1999\) 76 Cal.App.4th 931, 945.](#)); whether the agency complied with CEQA’s procedural requirements, “ ‘scrupulously enforc[ing] all legislatively mandated CEQA requirements’ ([Citizens of Goleta Valley v. Board of Supervisors \(1990\)](#))

As of March 25, 2010, no notice or consultation has been held with John Tommy Rosas, Tongva Ancestral Territorial Tribal Nation (TATTN), who is on the NAHC list of designated tribal contacts.

I object to the illegal process —involving federal, state, and city agencies—by which the city allowed a registered sacred site and known burial area to be destroyed, and which was ultimately paid for by Mello-Roos bonds with the city’s compliance, in contravention to the intent of the Mello-Roos Act.

I question whether, and believe that, the agencies are not in compliance with federal NEPA, (42 U.S.C. 4321-43351) Section 106 and 4(f) of the federal guidelines, NHPA (16 U.S.C. 470 (f) *et seq.*), 36 CFR Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq.*) and/or NAGPRA (25 U.S.C. 3001-3013), as well as CEQA, SB 18, and Cal NAGPRA.

WATER QUALITY

The City is mandated to upgrade its water quality and treat stormwater run-off. Ballona Creek is an impaired waterway, under the Clean Water Act. A development of this large scale, with its associated paving and hard surfaces contributing to run-off, as well as additional chemical pollutants from landscaping, residential uses (including soaps, detergents, personal care products, prescription drug residues, etc.) as well as greatly increased traffic with associated oil, gas, and rubber pollutants will increase pollution into adjacent waterways and ultimately into the Santa Monica Bay.

Plants such as Hyperion (where PV Phase 2 will send used and run-off water) release treated water into the Bay that still contains pharmaceuticals and other additives, thus contributing to water pollution. In the State of the Bay 2010 report, a study funded in part by SMBRC and conducted by the Ocean Conservation Society from 1997-2007, found increasing lesions and deformities in common and bottlenose dolphins resident to the Santa Monica Bay, raising concerns about the increasing health effects of pollution in the near shore coastal waters. 67% of the coastal and offshore dolphins had at least one skin lesion, raising concerns over their health. Skin lesions can be induced by urban pollution. This pollution would be increased by adding thousands of new residents and their medicines, use of chemical products, and cars. Cumulative impacts to water quality and marine mammal health such as these have not been properly addressed.

WILDLIFE CONCERNS

In Vesting Tentative Tract Map 60110-REC, condition 11 specifies that prior to issuance of grading permits or site preparation, a pest control firm "shall implement a rodent control program" that "shall comply with all applicable local, state and federal regulations." **I object to and oppose the use of poisons** near and adjacent to wildlife and wetland habitat areas, including areas in Phase 1 and the Riparian Corridor and bluff sides. In particular, anti-coagulant poisons must not be used, as there is certain to be secondary kill among the wildlife in the area, including gopher snakes, raptors (of which there is a pair of red-tail hawks nesting annually in the vicinity), great blue herons, owls, egrets and other birds, foxes and coyotes. Secondary kill (snake, crow, cat) occurred on the West Bluff several years ago when Catellus Development Corp., despite the neighbors' objections, poisoned the gophers and other animals on the bluff with anti-coagulants prior to grading.

As to Development agreement findings—Playa Capital has not completed conditions of Riparian Corridor and Freshwater Marsh (FWM), have not made crossings for wildlife

(coyote killed along Culver Blvd week of 12-12-08, photo by Leah Walton).



There will be more wildlife killed if the proposed project is allowed without adequate traffic mitigations and wildlife crossings. A crossing had been a condition of the Lincoln Blvd. widening, but to my knowledge, has not been accomplished. This needs to be further addressed with the restoration of Ballona wetlands and adjacent habitat.

I question whether the Streambed alteration agreement for waters to be cleaned and sent into FWM as a beneficial use has been properly implemented.

There is evidence that the University City Syndicate well is venting oilfield and GHGs in FWM—new gas releases after re-abandoning the well, and after the ETI study was done.

Cumulative impacts of all the current and permitted building in surrounding neighborhoods have not been adequately addressed in these documents, particularly as to traffic and air quality impacts. These are additional impacts that were likely not known at the inception of this project, and its EIR.

GENERAL FUND IMPACTS

There **are** potential General fund impacts, contrary to the conclusions in the documents before the Council. There will likely be costs of litigation if the proposed project is approved as it is at this time, with potential liability for permitting such high density residential construction in an area with earthquake, liquefaction and flooding hazards. How is the City indemnified against such liability?

In addition there may be liability and thus General fund impacts for building such high density residential construction in an area with large underground quantities of methane gas and associated oilfield gases. Proposed methane mitigations are still of questionable efficacy, based on mitigation and monitoring information (or lack thereof) from Phase 1, as pointed out in the 2007 Audit by Controller Laura Chick. Further, a declaration from the staff person most knowledgeable in regard to methane systems at LA Dept. of Building and Safety, indicates that Playa Vista Phase 1 permits were often expedited without sufficient care, or adherence to LADBS codes and policies. This was done knowingly. LA Controller Laura Chick's Audit found that methane inspectors were inadequately trained and were without proper qualifications. Despite the City's assertions in regard to its methane mitigation and monitoring system, which it now proposes to use for Playa Vista Phase 2, the City never properly responded to these issues, which are still outstanding and are not resolved.

Due Process--The public was denied meaningful participation by being given only one minute to speak at the PLUM committee meeting of March 9, 2010.

Phase 1 was approved as a stand-alone project; the issue of piece-mealing of the whole project (separating Phase 1 and 2 in order to disguise the enormity of the whole, as well as its cumulative impacts) was raised by the public and community members. I object to the piece-mealing of the Phase 1 and 2 projects. I also object to the enormity of the up-zoning as proposed. I object to and oppose the proposed ordinance as delineated in the City Attorney report, which allows for building heights in Phase 1 (retroactively?) to exceed the height of the bluff, and rise more than 240 ft. above grade (10% of Specific Plan area), and up to 240 ft. above grade for 20% of Specific Plan area, as well as 95 feet above mean sea level in Height Zone A and 112 feet in Height Zone B in Phase 2. These heights are not consistent with the character of the surrounding bluffs, habitat, restoration of the wetlands and neighborhoods.

ALTERNATIVES

The relocation of the Riparian Corridor and preservation in place was not seriously considered as an alternative to the current project. Just because most of the work has been done does not make this alternative moot. Playa Capital continued construction at their own risk, and the City allowed construction activities to continue, during litigation and after the Court order. Preservation and/or reburial in place is still an alternative; as is the creation of a conservation easement for the Tongva sacred/cultural site.

Aquifers underlying Playa Vista Phase 2 area are designated by the State as potential drinking water sources. As a project alternative, a restored "treatment" wetlands on the Phase 2 site would assist in the clean-up of the watershed's waters. Playa Capital has destroyed much of the wetlands that historically were on the Phase 2 site, including a large wetland and pond area that was a favorite habitat of egrets, coots, ducks, and other shorebirds, as well as many frogs. The bulldozing, filling in and surcharging of this pond and wetland was accomplished prior to the original EIR, as the EIR process was beginning, despite objections by the public, and in contravention of the purpose of CEQA. The re-creation of a treatment wetland could be accomplished as mitigation for what was destroyed.

The funds necessary to create such a treatment wetlands at the project site--including funds to help with the purchase or condemnation of the property--may be available to the City through Prop O or the recent

Prop 84: funding for planning, acquisition, demonstration and/or restoration projects related to clean water and drinking water.

As a feasible alternative, the Appellate Court said, “the Proposed Project's office, retail and community serving uses could be developed as proposed, pursuant to the provisions of the existing Specific Plan”. Such development would more than adequately provide for any perceived need for a shopping and retail component desired by Playa Vista Phase 1 residents.

I request that the City deny the proposed approvals and not certify the R-DEIR, FEIR, Tentative Tract Map, etc, and instead apply for funding to plan, acquire, and restore the Phase 2 area to permanently protect and restore as a natural area for groundwater recharge and treatment wetlands, and cultural site for the Tongva.

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