



Douglas Herring & Associates

Environmental, Policy, and Planning Services

cc: City Attorney
12/26/08
Randy Riddle

RECEIVED
CITY MANAGER'S OFFICE
CITY OF RICHMOND

08 DEC 24 AM 10:30

December 22, 2008

Bill Lindsay, City Manager
City of Richmond
1401 Marina Way South
Richmond, CA 94804

Subject: Slanderous Comments and Unprofessional Conduct
by Councilman Tom Butt

Dear Mr. Lindsay:

I am writing to strongly protest comments that have been repeatedly made in public forums by Councilman Tom Butt about me and my consulting firm, Douglas Herring & Associates (DHA). As I believe you're aware, we recently completed an Environmental Impact Report (EIR) for the proposed Honda Port of Entry project.

Mr. Butt, who has never met me, began circulating insulting and defamatory comments about me back in July using his email Forum, which is apparently widely distributed. We reprinted the comments in the Final EIR, as required by law, further increasing their exposure and circulation. During the November 18, 2008 appeal hearing on the EIR certification, Mr. Butt continued his attack on me in an even more offensive and unprofessional manner. He made statements that were not only abusive, but very unfair and completely untrue. I was unable to be present to defend myself during the public appeal hearing, so his defamatory comments have gone unchallenged.

Mr. Butt continued his offensive attack in his November 20, 2008 email Forum, which is attached to this letter. In it, he makes such unfounded accusations as "environmental whore," "lower than pond scum," "slime mold," "bottom feeder," and "hack," among other insults and completely false statements about the veracity of the EIR, repeating similar comments he made orally during the public hearing.

It is my impression that these comments have been circulated quite widely by others, and both the written comments and a video clip of the oral comments have been forwarded back to me by different people in the environmental community. The comments have been forwarded to the State Board of Directors of the Association of Environmental Professionals (AEP), among many other recipients.

I have always worked extremely hard to serve my clients to the absolute best of my ability in a thorough and objective manner. I take great pride in the quality of my services and products. In over 20 years of providing CEQA services, I have received nothing but positive feedback from my clients until this ugly incident. (I invite you to read the Testimonials page on my website [<http://www.dha-environmental.com>] to

see what some of my clients have to say about my work. Also note on my homepage the comment your own Planning Director, Richard Mitchell, made concerning the Honda EIR.) My judgments are not and have never been for sale and, if I suffer from any bias, as alleged by Mr. Butt, it is in favoring protection of the environment over facilitating development.

The City of Richmond paid the DHA team a large premium to complete the Honda Port of Entry EIR in about half the time originally proposed. We completed the document in an expeditious manner, and worked extremely hard to ensure that the work was nonetheless thorough and carefully considered. Mr. Butt's accusations about our methodology and approach to this work are completely false. After serving the City so diligently, I am frankly baffled as to why we have elicited such antagonism and wildly erroneous assumptions regarding our intent from one of the City's elected officials.

As noted by Councilman Nathaniel Bates at the appeal hearing, no document is perfect, and flaws can always be found by those looking for them. (He did go on to express the opinion that DHA prepared a good document.) Nonetheless, despite some flaws, I believe we produced a very high quality document, and it is one that I am personally proud of, and would not hesitate to stand against the products of my larger competitors.

Mr. Butt's comments threaten to cause harm to my professional relationship, which I have carefully cultivated over 20 years of hard work. Such harm has the potential to undermine my ability to make an honest living in my chosen profession, particularly during this very challenging economic climate. I believe a public retraction of Mr. Butt's harmful and damaging comments are in order. I would also note that his highly unprofessional conduct dishonors the public office he occupies.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Herring". The signature is fluid and cursive, with a long horizontal stroke at the end.

Doug Herring, AICP

cc: Richard Mitchell
Janet Harbin
Kieron Slaughter

From: Doug Herring <doug@douglasherring.us>
Subject: **Fwd: TOM BUTT E-FORUM: Thoughts on the Honda Port of Entry Project**
Date: December 22, 2008 5:58:19 PM PST

From: Butt, Tom [<mailto:tom.butt@intres.com>]
Sent: Thursday, November 20, 2008 6:28 PM
To: undisclosed-recipients
Subject: TOM BUTT E-FORUM: Thoughts on the Honda Port of Entry Project

Copied below is the *West County Times*' article from today's paper about the Honda Port of Entry project approved by the Richmond City Council on November 18.

The City Council deliberated about six hours before voting on the final pieces.

There has been a lot of confusion and frustration about this project, primarily due to yet another poorly prepared EIR and financial information that has continued to evolve over the past few months.

My main concerns were with the project's effects on the quality of life of Richmond residents and with the business deal. In the end, my concerns were resolved, and I voted in favor. Getting there, however, was not easy. In addition to a pitiful EIR, staff was so focused on the business aspects that they neglected the quality of life aspects. It took weeks of meetings and negotiations, continuing into the public hearing, to get conditions of approval added that protect community interests. An appeal and threat of a CEQA lawsuit by Fred Arm of the previous Design Review Board certification of the FEIR and approval of the project helped motivate staff to consider modifications to the final conditions of approval.

Following are the changes that were added:

Train Horns. The project will result in no new train horn sounding, and it will require completion of the Quiet Zone that includes BNSF grade crossing at Garrard (Richmond Parkway), Ohio, Second Street and West Cutting Boulevard. This will be a significant benefit for residents of the Iron Triangle (including Atchison Village), Santa Fe, parts of Coronado, Point Richmond and Brickyard Cove. In addition, BNSF will implement best practices to eliminate the "wheel squeal" that occurs when trains are using tracks with the tight radius curves in Point Richmond.

The project will result in diminished grade crossing blockages at Garrard, West Cutting and Canal Boulevard. Train traffic will occur primarily between 7:00 PM and 4:00 AM. Automatic equipment will be installed to record times of grade crossing blockages, and monthly reports will be made public. The City has committed, as a condition of approval, to prosecute excessive blockages.

Following implementation of the California Air Resources Board (CARB) rule on "Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels" beginning in 2009 and completing in early 2012, air quality in Richmond will actually improve over the current conditions and health risk will drop (see <http://www.arb.ca.gov/ports/marinevess/documents/advisory1008.pdf>). The EIR was confusing in that it calculated emissions from the project as including nitrogen oxides (NOX) and particulate matter

(PM10) from ships as far out as 24 miles from the Golden Gate. The EIR did not include the reductions beginning next year from the new CARB rule on fuel used by ocean going ships. The result was alarmingly high emissions calculations, most of which would never reach Richmond and which will drop dramatically over the next three years. The revised conditions of approval require recalculation of emissions that will actually affect Richmond, and they must be lower than current conditions. Mitigation Measure 6-2 also requires a "targeted goal" of further reducing air quality impacts by 50% to 85% through a Clean Air Action Plan that may include cleaner engine technologies, truck idling restrictions, cleaner trucks, vessel speed reduction and Advanced Maritime Emissions Control Systems.

Solar: Solar electrical generation will be required to provide 100% of the needs of Point Potrero Marine Terminal, resulting in further improvement of regional air quality and reduction of greenhouse gases.

Parking; Sufficient parking will be reserved for adaptive reuses of historic buildings in the historic Shipyard 3 (Point Potrero Marine Terminal), which is part of Rosie the Riveter WWII Home Front National Historical Park and the

One of the most confusing aspects of the project has been the business plan. Various projections have been thrown around by the City for months, many of which were way overstated. Finally, a reliable projection was passed out at the meeting. Simply put, the guaranteed minimum gross revenue is about \$88 million over 15 years, and the net revenue after debt service and expenses, is about \$30 million over 15 years. That averages to about \$2 million per year. Since the City is borrowing, through a bond issue, the entire \$37 million cost, the net return on investment is infinite. The only thing that can go wrong would be that Honda goes belly up and defaults on its guarantee, in which case the City of Richmond would be stuck with debt service of about \$3.7 million a year.

Credit for most of the complicating aspects of approving this project can go to the environmental impact report, prepared by Douglas Herring & Associates. Like many such EIRs prepared for Richmond projects, this one, frankly, sucked. I want to share with you remarks I made at the hearing about environmental impact reports in general, and this one in particular:

The California Environmental Quality Act is good law and a noble endeavor, but it is only as good as the people who do the work.

Unfortunately, CEQA has spawned an industry of environmental prostitutes who will go any length to spin the truth to serve the people who pay for their services. These people are the bottom feeders of the consulting world, lower than pond scum and slime mold on the consultant food chain. And they all seem to be doing EIRs for the City of Richmond.

They make my life miserable. My job is to protect the health, safety and welfare of the people of Richmond. Their job, it seems, is to try to minimize and obfuscate anything and everything about a project that might adversely affect the people of Richmond or the environment.

Do you know how much time I've spent researching and correcting errors in this EIR? How much time I've spent haranguing city staff to get those corrections into the approval documents? Do you think I enjoy this? Do you think I have nothing better to do?

The city of Richmond wasted nearly \$500,000 on a sloppy and inaccurate EIR that isn't worth the paper it was written on.

Not only do these EIR consultants spin reality, they show complete disdain and contempt for the people they should be serving. Consider the following examples from the Honda Port of Entry EIR:

- All of the residents living closest to the project, and therefore those most affected by the project, purchased

their homes after the current Glovis operations at the PPMT had commenced, so they were well aware that they were moving to a residence in close proximity to an operating Port facility (FEIR, 2-237, V-22)

Dr. Louis Hagler's article is a one-sided discussion of the negative aspects of noise pollution. Dr. Hagler's article does not address any coping mechanisms to noise pollution such as the ability of humans to adapt or habituate to environmental noise (FEIR, 2-332 and 2-333, V-5)

The first passage is addressed to the residents of Seacliff and Brickyard to whom the consultant is saying, "What right do you have to complain? You should have moved somewhere else."

The second derides a respected medical doctor and a former Richmond resident who published a peer reviewed article in a respected medical journal. The EIR consultant not only disparages Dr. Hagler; he essentially tells the people of Richmond to suck it up and get used to the noise.

It's bad enough having these hacks evaluating our projects and pretending to implement CEQA. What's worse is that our City staff encourages and enables them. They seem to be similarly confused about who they work for and who pays their salaries. Wouldn't it be refreshing to see a staff planner stand up for the people once in a while?

In this case, the EIR consultant failed to independently verify critical information about such things as public access to the shoreline, noise and grade crossing blockages. Instead, he used third party information from biased sources, 30-year old irrelevant studies and pseudo-science to reach the conclusions he was directed to reach. He totally ignored current, relevant and important facts that were or could have been supplied by people living and working proximate to the project.

Another thing, this project is not some private developer exercising his right to develop his property under the regulatory authority of CEQA and the City's General plan and Zoning Ordinance. Regardless what authority the City has under CEQA, this is actually a City project, and the City is free to incorporate into it design features that go far beyond the City's authority under CEQA and even Design Review. Regardless of CEQA and legal issues of nexus that are typically argued regarding private projects, the city is fully empowered to control the design and operation and can insert into the various contracts for future lessees and operators whatever provisions it desires to protect the public's health, safety and welfare. The project is the City's own project, proposed to be paid for with nearly \$40 million in municipal bonds that are ultimately backed by the City's General Fund. No one else besides the City is putting any money into this project. Not Honda. Not Auto Warehousing. Not Transdevelopment. Not Glovis.

[copied newspaper article deleted]

WANT TO RECEIVE TOM BUTT E-FORUM AND OTHER ACTION ALERTS ON RICHMOND POLITICAL AND COMMUNITY ISSUES DELIVERED TO YOUR EMAIL ADDRESS? EMAIL YOUR NAME AND EMAIL ADDRESS AND/OR THE NAMES AND EMAIL ADDRESSES OF OTHERS WHO WOULD LIKE TO BE PLACED ON THE MAILING LIST AND THE MESSAGE "SUBSCRIBE" TO tom.butt@intres.com. COMMENTS, ARGUMENTS AND CORRECTIONS ARE WELCOME. TOM BUTT IS A MEMBER OF THE RICHMOND CITY COUNCIL WHEN OPINIONS AND VIEWS EXPRESSED, WITHOUT OTHER ATTRIBUTION, IN TOM BUTT E-FORUM, THEY ARE THOSE OF TOM BUTT AND DO NOT REFLECT OFFICIAL VIEWS OR POSITIONS OF THE CITY OF RICHMOND OR THE RICHMOND CITY COUNCIL UNLESS OTHERWISE NOTED. VISIT THE TOM BUTT WEBSITE FOR ADDITIONAL INFORMATION ABOUT TOM BUTT'S ACTIVITIES ON THE RICHMOND CITY COUNCIL: <http://www.tombutt.com>, PHONE 510/236-7435 OR 510/237-2084. SUBSCRIPTION TO THIS SERVICE IS AT THE PERSONAL DISCRETION OF THE RECIPIENT AND MAY BE TERMINATED BY RESPONDING WITH "UNSUBSCRIBE." IT MAY TAKE A FEW DAYS TO REMOVE ADDRESSES FROM THE DISTRIBUTION LIST