



August 25, 2015

Mayor and City Council  
City of Carlsbad  
Sent Via Email

Subject: Caruso Environmental Assessment/  
Initiative and 9212 Report

Honorable Mayor and City Council:

There are a number of things to like about the Caruso project – and they have spent over \$ 2.7 million dollars to try to get everyone to focus on those items. But you must consider the entire project- how well the project fits with the community, its risks to the environment that your residents value so highly, the precedents it will set, and the impact of turning over so much of your local control to a private business.

The two key questions are: Is the Environmental Assessment (EA) adequate? Has your 9212 Report done a thorough job of assessing the impacts of this project on Carlsbad? The answer to both questions is a resounding “no”. Our conclusion is not based on a bus trip to an LA shopping center, disinformation provided by the project proponent, or review of an artist’s impression of what this project might look like. Our conclusion is based on the review of the thousands of pages of information submitted; technical reviews by experts; and experience gained from reviewing hundreds of environmental documents, numerous technical studies related to protecting our natural resources, and basic common sense.

The following will highlight just a few of the problems with these documents and the **huge risks that you will assume if you were to adopt the Specific Plan outright.**

### **Environmental Assessment**

Caruso claims their EA is not required, is equivalent to the information that would have been included in a CEQA analysis, and that the environmental protection measures they have included fully address the adverse impacts caused by their project. None of these statements are true.

#### **- Requirement for an adequate environmental assessment**

Court interpretations allows Caruso to bypass the formal CEQA environmental review with the initiative process but of course there are numerous other laws and reviews that

require them to provide this information :permits by the state and federal wildlife agencies(WLAs), storm water permits by the Regional Water Quality Control Board and of course approval by the California Coastal Commission(CCC) are just a few of those.

Caruso didn't voluntarily provide this information - it will be required as part of the approval process that the initiative does not allow them to bypass. Four agencies (WLAs, Caltrans and the CCC) and the San Luis Rey Band of Mission Indians have already submitted letters that say the EA was not adequate and identified additional steps that must be taken (consultation) and further studies that will be required. And of course the city would not have even considered approval without being able to demonstrate the environmental impacts had at least been considered. We believe early submission of this information was done to provide political cover – it sounds good. But you should not be fooled by such false claims.

- **The EA is not equivalent to CEQA**

The CEQA process details numerous opportunities for public and agency input-meaningful input after seeing the full details about a project and the analysis that has been done. The process is intended to support informed decisions by lead agencies. But you are being asked to make your decision without:

- Any detailed engineering drawings
- Three rounds of staff review that assure submittals are complete and can be fully evaluated
- Consideration of outside expert input
- Responses to agency comments that information is insufficient
- Adequate analysis that supports their conclusions
- No cumulative impacts analysis
- No statement of over-riding considerations where the EA documents impacts in excess of allowed thresholds

- **The EA fails to address numerous significant environmental impacts**

We have reviewed hundreds of environmental documents submitted to several cities in North County. Some are complete and thorough and provide solid documentation of the conclusions reached. In a single word we would describe this one as “shoddy.” It is like a freshman essay that uses lots of words that are strung together and sound like they might mean something, but would get an “F” by the professor. Unfortunately this is not just a college essay. This analysis is being used to justify a huge project that could cause substantial damage to the health of local residents and risks to the natural resources that are treasured by us all.

The following will discuss just a few of these:

## Visual Impacts Assessment

Every day thousands of us experience the lagoon and historic strawberry fields when we drive by them on I-5. This is a scenic view corridor, a protected public view. The EA analysis of these impacts should have included discussion about how that scenic corridor view changes when 35' high buildings are placed along the freeway. Typically that includes simulations that show current views from key locations and then what those views would look like with the project added. The discussion of impacts is then based on an understanding of what is being added to the view and how it changes the experience of the viewer, the sense of place.

The EA simply showed a map of where there are public views noted as scenic in the Agua Hedionda Local Coastal Plan- and then concluded that because most of the land would remain open space there would be no impacts. But it is the changes to the view that are potentially significant- the addition of 585k sq. ft. of shopping center, three lanes of traffic going in and five coming out, the 160 sq. ft. of allowed marquee sign up to 35' high in the scenic corridor.

Additional concerns include that there are regionally significant public view sites across the project site. No analysis of public view blockage by specific building massing was provided. No discussion of aesthetics of the proposed project or compatibility of proposed changes to the local community character context has occurred. Without the inclusion of the I-5 and Cannon Road corridors specifically included with key observation points and simulations, **the supposition of no impacts on Scenic Views is unfounded.** The Lagoon is not the only potential scenic resource, although it is the most dominant. Views of the coast, views of the distant hillsides, open valley floors and canyons are all important visual resources found in the area and all must be assessed.

None of these were depicted or discussed.

The April 15, 2015 letter from the CCC identifies numerous visual issues that must be addressed that have been ignored. Caruso of course knows this information will have to be submitted to the CCC ,but **they don't want you or the public to know what this project will look like before you make your decision.**

## Hazardous Materials

Much of this land was historically used for agriculture which commonly results in high levels of chemical applications, some of which remain in the soil. There are standard procedures for addressing this- but these have been ignored. The measures they propose do not assure you or the public that the documented hazards on this site will be adequately addressed.

Here are a few of the issues identified with Caruso's EA, Appendix O

- Hazardous materials reports were done in 2012 for the attorneys doing due diligence on the land purchase agreement- **not for this specific development**
- Report uses **outdated 2005 standards** of **American Society for Testing and Materials (ASTM)** and will be required to be redone using current 2013 standards
- There is **no requirement for soil testing**, although reports documented the presence of known hazardous materials, including carcinogens above the allowed limits in both 2012 and 2004
- The 2004 soil testing found 21 of 25 sample sites had Toxaphene above the EPA allowed limits. The 9212 Report 3<sup>rd</sup> party review by HDR notes “ Toxaphene...It is one **of the so-called Dirty Dozen**, a Group of 12 chemicals that are considered highly toxic and associated with numerous diseases and birth defects in livestock and humans.”
- The report concluded new land uses proposed will likely require removal of up to 191,000 cubic yards of contaminated soil from both passive open space where trails are proposed, and habitat areas. The impacts of that soil removal were not even mentioned.
- The 9212 3rd party review was limited to parcel 8, the 48 acres zoned for commercial. It ignored the other 155 acres i.e. – Parcel 10. The 2012 report identified three issues with parcel 10: 1. Toxaphene that exceeded the Human Health limits, 2. Presence of wetlands that would require agency consultation (not done) and 3. Part of the land is in the flood zone- which would also require consultation (not done).
- App O report also recommended that because of these elevated levels, and abandoned storage sheds with “poison” placards that the **“property be entered in the County of San Diego Department of Environmental Health Voluntary Assistance Program** prior to redevelopment. “

**The EA does not adequately address hazardous materials on site- creating a potential huge health risk for this community.** You need to make sure this project follows all requirements related to the handling of hazardous materials- with new reports using today's standards and addressing the entire project site, not just part of it.

### **Biological Resources**

The EA concludes that a few mitigation measures commonly applied in projects like this will adequately protect the sensitive natural resources on and adjacent to this site.

Some of the measures included are inadequate to protect the resources. For example it is not adequate to say you will provide a biological monitor during construction if nesting

birds are present if you have not done surveys in advance to determine if there are nesting birds.

That conclusion ignores much of the input from the CCC which they received almost a month before the initiative was submitted. In their April 15, 2015 letter the CCC noted numerous areas where additional information was required. This included things like identifying existing ESHA and wetlands not just on, but nearby the site (as were noted in the reports submitted by Dudek to the attorneys doing due diligence for the purchase agreement for the land) figures that show where buffers are located, a Natural Habitat Restoration, Maintenance and Monitoring Plan, a Public Access and Trail Plan, assurances that a safety factor of 1.5 is achieved with bluff setbacks.

Of course this information will have to be submitted later to the CCC- but failure to provide it now means that **both you and the public are being asked to make key decisions without having any of these questions answered.**

Both the EA and the 9212 note that key surveys of sensitive species are still being developed. It is not possible to assure protection of resources if you do not even know what resources you need to protect! Adequate mitigation measures need to be site specific.

Of great concern is the lack of detail about management of the natural lands. The general statements about this is that there will be “one or more qualified environmentally-focused non-profit entities, land conservancy organizations, land managers, public agencies and/or farming and agricultural interests to ensure responsible conservation, management, operations and maintenance of the designated open space/agricultural areas.”

This allows a single organization to provide oversight of the habitat, passive recreation and agricultural lands- each with very different requirements for management and expertise required. This in one more thing left to chance – “trust us.”

Of great concern to us is the failure to provide any details about the management of the natural lands and the in perpetuity funding for such management that Caruso has said they will provide. The standard city process would have the developer submit a Property Analysis Report (PAR) which would detail all of the necessary management actions and provide a cost estimate for each. They would include things like feet of fencing required, annual surveys for sensitive species, frequency of ranger patrols, management plan to limit public access to only the areas so designated, erosion control, location and kind of trash containers and pick-up schedules; limits on use such as restricting dogs. In the absence of this kind of **information there is no way to know if the land is being managed to the standards of the HMP.** Furthermore without knowing the costs and having a mechanism in place that assures the funds needed there is no assurance that the sensitive resources will be protected and certainly not that they will be protected in perpetuity.

## **Traffic/Air Quality**

The traffic assessment properly started with the SANDAG “Not so Brief Guide...” but then proceeded to take deductions from the projected trip numbers in ways that are not defensible and that have not been used to such an extent for any other project in Carlsbad. Their deductions included internal circulation on site, pass-by-trips on Cannon Rd, diverted trips from near-by roads, and TDM. All of these are appropriate to consider. But no other project arbitrarily applied every possible deduction factor, to the maximum extent allowed, with no consideration for the cumulative, real world impact of making such deductions. They used this method to reduce trip projections by over 30%- an unheard of level. Other projects making such a claim would provide actual data from other similar projects to demonstrate that such reductions could be achieved in the real world. Their similar sized Grove project in LA has more annual visitors than Disneyland, with the traffic and parking issues to match. That real world example does not support their conclusion that it is valid to make all of these deduction and that there will be no significant impacts.

Furthermore paying money to Caltrans and contributing to future roadway enhancements does not assure that necessary mitigation is completed in time to actually address the traffic congestion from this project. Caltrans letter confirms the construction of the needed improvements to the Cannon Rd. ramps will not be done until 2035- that leaves residents of this area sitting in traffic jams for many years. Proper mitigation would condition the project to have such improvements in place when they open- not years later.

In addition Caltrans noted several other issues that had not been adequately addressed in the EA- yet none of these have had any substantive discussion. Again- we are supposed to trust that somehow these will get addressed over time- even though the city is being asked to give up all discretionary oversight for 15 years.

## **Water Quality**

The EA provides a list of potential BMP’s that could be used to control run-off, but no process for prioritizing and selecting the ones that actually will be used. A hydro-modification study will be required to support the application for a storm water permit. These studies are included as part of the CEQA documentation, but here it is another essential piece of information that is being deferred- neither you nor the public will get to comment on it or make modifications. In the absence of that information you have no way of knowing that they have adequately controlled run-off and that no pollutants can reach the waters of the lagoon and ultimately our coastal waters. Caruso is basically again saying “trust me”- I will do this right.

The EA documents that there will be an increased volume of run-off from the project site, and that while the levels of many pollutants will be reduced, others will actually increase. There is no discussion of the potential impacts of those that will increase- in spite of the fact that some of them included dissolved solids of copper and zinc- heavy metals that are known to be toxic to marine life.

The EA discussion focusses on the operation of the project but provides inadequate discussion of the actions that protect the lagoon from polluted run-off during construction. For example, how will de-watering be done?

## 9212 Report

The 9212 Report cannot fairly be considered an independent review of Caruso's EA-or the true significant health and environmental impacts that will potentially be caused by this project. Both you and the public deserve better than this. Our key concerns include the following:

- It failed to identify all of the constraints staff and your consultants were operating under

For example how can you conclude it has addressed fire safety when there are no engineering drawings that show basic things like the turning radius for a fire truck, or conclude there are no impacts to wildlife when the report says the biological surveys are "not available?" Engineering drawings are critical for a complete staff review. Furthermore limitations on the type and quality of technical data limit the ability to do comprehensive analysis and calls to question the ability to make any accurate conclusions about the true impacts of the project.

- 3<sup>rd</sup> part reviewers were not really independent

Many of the consultants used for what was called "third party review" have on-going "as-needed" contracts with the city. Work is contracted on a task order basis. If the city does not like the results it is clearly understood that future work can be reduced or eliminated. Of course this colors what is written in those reports. In this case it could hardly have been made more clear that the city wants this project to proceed- starting with the Mayor's State of the City address last year where he said one of his three long term goals was to have Caruso build a shopping mall at the strawberry fields to photos of several council members at Jimmy's July 4<sup>th</sup> party captioned "supporters of the 85/15 initiative". **But supporting the project and turning a blind eye to all of the potential risks are two different things. Now is the time for you to get past your support of the project and make sure it is being done right.**

Local community organizations tried to hire technical consultants to address a number of the areas we are concerned about. We were unable to hire any local technical consultants. The reasons we got were that they do work for the city and would not jeopardize that by working for organizations who were challenging aspects of the project. Clearly they understand the culture of Carlsbad- **do not buck city hall without expecting that there will be repercussions.**

- Agency input was not included

A real third party analysis would have provided all possible technical input to the reviewers – not just what Caruso put in their own EA. The letter from the CCC was

submitted months ago. Letters from Caltrans and the WLA's should have been sought and included in the analysis. The Caltrans letter says the Cannon Rd ramps will not be constructed until 2035 and that further identifies five additional issues that were not adequately addressed in the EA on traffic. This is exactly the kind of input that would have been essential to balance the findings in the EA- and assure you and the public that this is not just the fox guarding the henhouse.

Some of this input is now included as an attachment in the staff report. But the only rebuttal to it is Caruso's – hardly an independent review.

- Technical expert input was ignored

North County Advocates submitted technical input from both air quality and water quality experts. Both of these experts raised substantive issues with the adequacy of the analysis, lack of key information, and need for better mitigation measures. These letters were included as attachments to the staff report, but it does not appear that they were provided to the city's 3<sup>rd</sup> party reviewers nor is there any evidence that they received any consideration.

On water quality, Dr. Horner notes that retention on-site would likely result in reduced pollutant concentrations, and would provide a further benefit for potential water-harvesting and reuse of water on site. On items like trash control – a one sentence text description is insufficient for an engineer to design a proper system. Some of the increased pollutants are heavy metals that are highly toxic to marine life – these are especially problematic in their dissolved forms as will occur here. Many contaminants found in urban run-off were not modeled. There are 22 acres of off-site land that drain through the project site that were not even mentioned in the analysis.

**Conclusion by Dr. Horner:**

“It falls short, in not going farther to emphasize and recommend the practices that can best serve this purpose in the circumstances existing in the Agua Hedionda situation. I consider that defect to be a lost opportunity to delineate the optimum path forward in the next stages of project development. Modeling forecasts that some pollutant concentrations and loadings in storm water run-off will decrease relative to pre-project levels, but that others will increase. I believe that specifying the best management practices available to the Agua Hedionda setting have the capability to mitigate those predicted increases, and should be emphasized now and going forward. “

**Certainly you want to make sure that storm water control is the optimum for this sensitive location- and not the cheapest one.**

- Additional technical input on aesthetics and hazardous materials

While community groups were not able to secure paid technical experts to provide input on many of the issues of concern, experts on aesthetics and hazardous materials did review and provide anonymous input. Part of their comments are included in the

discussion of the shortcomings with the EA as discussed above. However they also made comments about shortcoming with the 9212 Report as follows:

#### On Aesthetics:

The 9212 report fails to evaluate many critical factors. For example it talks about night lighting, but fails to mention there are no visual simulations provided. Key Observation Points should be identified from the Lagoon, from North and South-bound I-5 and along the Cannon Rd which should be treated as a community Scenic Corridor.

#### Conclusion:

“If the Specific Plan was not requesting the future CEQA exemptions, then subsequent visual analyses of each project phase would allow for design adjustments to minimize potential visual impacts associated with the project. By requesting future exemption from CEQA, the Specific Plan needs to demonstrate in more detail how the proposed development will not cause significant visual impacts to its immediate surroundings. **The current depth of analysis is inadequate** and the lack of detail and simulation products makes it difficult for the report preparer to conclude no visual, view, community character, or aesthetic impacts and it **makes it equally difficult for the reviewer or elected officials to determine if the proposed project changes will have a negative impact on the built or natural environment.**”

#### On Hazardous materials

The 9212 report concludes there are "no significant impacts"... from assessment of hazardous materials on site but notes "However, there are outstanding issues...."

In fact, there are major outstanding issues that invalidate the conclusions that there are no significant impacts as is stated in the technical consultant's report. In fact the city's own third party reviewer notes those and specifically qualifies their review to make it clear they do not agree with the conclusions in the EA. Their conclusion is

**“The reports lack the detail necessary to support the recommendations and conclusions presented.”** IE There are potential significant impacts associated with hazardous materials on this site - a health risk for people and wildlife.

Both the EA and the 3<sup>rd</sup> party reviewer identify numerous issues with the analysis of hazardous materials- issues that leave this community at risk until they are adequately addressed – as they should have been in the EA.

- In many cases the conclusions are vague and minimize the impacts

For example questions that should be addressed with a “yes” or “no” response are qualified instead of being clearly stated. For example the project is “substantially ” in compliance with the General Plan- this is a yes or no question- and the answer is no.

It calls out that the project provides less parking and allows larger signs than is currently allowed- but minimizes the impact of those changes. It discusses the review process and confirms that the “ministerial” review Caruso proposes takes all approvals out of the hands of the Mayor and City Council, for 15 years, but fails to call out that change could result in a final project with lots of problems- and no recourse for 15 years.

What the 9212 report really does is demonstrate numerous issues with this project – issues that require the kind of thorough review that can only come by putting this on the ballot and letting the people vote.

We wish that instead of spending millions of dollars on TV ads and slick mailers that Caruso had put that money into fixing the traffic, air pollution, heavy metals being released to the lagoon, visual impacts, and the thousands of other problems with his project. We have to live with his mess- he just has to count his money.

Sincerely,

Diane Nygaard  
Preserve Calavera