



# City of Sebastopol

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CITY MANAGER  
MELVIN K. DAVIS

February 8, 1988

TO: Melvin K. Davis, City Manager  
FROM: Larry McLaughlin, City Attorney  
SUBJECT: Development Applications vs "Laguna Report"

I have reviewed all memorandums and correspondence on this subject to date.

As I see the problem, the Planning Commission needs to review the Laguna Report and either concur or disagree with its findings, and until they do so, the Environmental Coordinator will not be able to make a finding of "no significant effect on the environment" for projects involving fill or development below 76 feet along the Laguna, and will not be able to issue a Negative Declaration.

The Environmental Coordinator may forward the application to the Planning Commission to make the environmental determination (if time permits), or, could make a finding that the project needs an EIR. With regard to new development applications, there seems to be no other alternative but to proceed in this manner.

I am not completely familiar with all of the proposed development projects in the area of the Laguna. However, as I review Mr. Schoch's memorandum of February 5, it would appear to be his opinion that, for new projects, the Planning Commission should differentiate between filling below 76 feet where filling has occurred in the past, and filling below 76 feet where the land is in its natural state and there has been no prior development.

However, that does not appear to be what the "Laguna Report" says, and the Planning Commission will have to make that determination. Prior to the Planning Commission hearing, staff cannot go beyond the actual wording of the Report, unless the Committee wishes to issue an Amended Report.

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In reviewing the Summary of the Report, its recommendations are quite broad. As you know, I have reservations in several areas (my memo of January 14). I spoke with Bruce Aspinall and we agree that further review is needed before the Planning Commission considers the Report. A basic problem is that the Report may be interpreted to affect existing projects, as well as new projects.

As I advised in my memorandum of November 6, 1987, a developer may have "vested rights" and, if so, the City may not change its land regulations as they apply to those existing projects.

Prohibition of future development may be permissible, so long as there remains some viable use of the property, and the owner is not deprived of all economic use.

Therefore, for new projects, I would differentiate between the "policy of no net fill" and the "policy of no development"; I have much less problem with the "no net fill" than I do with the "no development". The prohibition of "development" could deprive a property owner of any viable use of his property.

LWM/sm

cc: Bruce Aspinall, City Planner  
Paul L. Schoch, City Engineer