



September 22, 2024

City Attorney Mara W. Elliott
1200 Third Ave., Suite 1620
San Diego, CA 92101

RE: INQUIRY REGARDING DUE PROCESS COMPLIANCE AND PROCEDURAL ERRORS FOR POSTPONED HEARING ON PRJ-0693289S (KLAUBER)

As an official who is bound by Article VI, Section 3 of the United States Constitution which established the oath to support the United States Constitution and Article XX, Section 3 of the California Constitution that established the oath to support the state and federal Constitutions, this letter inquires with you, City Attorney Mara Elliot, whether Council President Elo-Rivera had the duty to ensure that **all aspects of Due Process were followed in preparation for and at the original scheduled time of the City Council hearing** for the appeal of the environmental determination for PRJ-0693289S (Klauber) which was scheduled for September 17, 2024, but was abruptly canceled.

1. If Council President Elo-Rivera did have that duty, did he ensure that proper notice was given, that appellants had adequate time to review evidence and prepare arguments, and that both parties were given sufficient time to present their cases?
2. Did the Council President ensure that any procedural missteps by city departments, such as the Development Services Department (DSD), were addressed and corrected to maintain the fairness and legality of the hearing process?

The following questions inquire whether the actions and decisions in this case complied with Due Process, the Brown Act, and other applicable laws and policies.

Proper Notification of Chollas Valley Community Planning Group (CVCPG) as an Appellant

3. CVCPG submitted its appeal on June 25, 2024, but was not informed of its status as an appellant until September 13, 2024, just four days before the hearing scheduled for September 17, 2024. Was the timing of this notification consistent with Due Process?
4. Did the reliance on an email subscription service, where the notice of the hearing was posted on September 4, 2024, comply with Due Process standards under the United States and California Constitutions, ensuring that appellants were properly and adequately informed?
5. What steps, if any, were taken to address and correct any procedural delays to ensure that appellants like CVCPG had the proper information and time to prepare before the hearing?

Adequate Time to Submit Written Materials

6. Was the timeframe provided to CVCPG on September 12, 2024—less than 2 hours—to submit written materials consistent with Due Process, given that city staff had submitted their recommendations and arguments on August 1, 2024?

Sufficient Time Allotted for CVCPG's Presentation

7. Was the time allotted to CVCPG - 10 minutes, despite its request for 30 minutes - adequate for the group to address the complexities of the case and respond to the city's evidence as would be consistent with Due Process?

Access to the City's Argument and Evidence

8. Did CVCPG receive sufficient access to be consistent with Due Process to the city's evidence and arguments, which were submitted on August 1, 2024, but only provided to CVCPG on the date that the companion materials to the City Council agenda for its September 17, 2024 meeting?
9. Was the lack of direct submission to CVCPG of the city's argument and evidence consistent with Due Process.

Scheduling of the Hearing Within Required Timeframes

10. Was the hearing scheduled in compliance with the **San Diego Municipal Code**, which requires hearings to be scheduled within ****60 days**** unless the next city council meeting after submission would not occur within 60 days? The hearing was scheduled for September 17, 2024, which was 84 days after CVCPG submitted its appeal on June 25, 2024.

Notification of Residents Within 300 Feet of the Development

11. Were residents within 300 feet of the proposed development notified as required by San Diego Municipal Code §112.0301? Were direct notifications provided in compliance with the municipal code, ensuring that all affected residents had the opportunity to participate?

Cancellation of the Hearing Without a City Council Vote

12. Was the cancellation of the hearing on September 17, 2024, conducted in compliance with the Brown Act (California Open Meetings Act)?
 - a. Did the public, including CVCPG, have the opportunity to comment on the action item of the removal of the hearing from the agenda and were legal requirements for transparency and public participation followed?
 - b. Given that the Council President received several emails of a September 6, 2024 letter to him requesting that the appeal hearing be rescheduled until most of the issues in this letter were resolved and that one of the issues was the very reason he state for the removal of the item from the agenda (clarification of the identity of the appellant(s)). Does the Council President's removal of the hearing from the agenda merit investigation of intentional, malicious or reckless disregard of Due Process?

Conformity with Due Process in Municipal Code Requirements

13. Does the current notification process stipulated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, which does not require direct notification of appellants regarding hearing schedules, comply with Due Process required by the United States and California Constitutions?
14. If the current process is insufficient, what steps are being taken to ensure that the San Diego Municipal Code aligns with constitutional requirements, providing proper notice and a fair opportunity for appellants to participate?

Improper Distribution of CVCPG's Presentation and Misleading Attachments

CVCPG was unaware until after the hearing was canceled that additional staff rationales from the Development Services Department (DSD) were attached to the agenda materials and published alongside CVCPG's PowerPoint presentation. These, labeled "Staff Recommendation," were further arguments by DSD to deny CVCPG's appeal. As these arguments and proffered evidence were not submitted directly to CVCPG as CVCPG would have expected as the appellant. CVCPG believed that the city's rationale was fully outlined in the **Notice of Right to Appeal (NORA)**. This lack of transparency likely created a misleading impression to the public that CVCPG's PowerPoint addressed these additional staff recommendations.

15. The **Brown Act** governs transparency and public participation in California government. Did the publication of CVCPG's PowerPoint without proper context violate the public's right to participate meaningfully by causing confusion about the issues?
16. Was the Brown Act violated if the agenda attachments were misleading, limiting public participation

and understanding of the issues under consideration.

17. If this was this a procedural misstep, did it constitute a **material defect** in Due Process?

Impact on CVCPG and Volunteers

It is important to emphasize that while the City has multiple branches of paid staff to argue its case, CVCPG is composed entirely of *volunteers*, most of whom are employed for the purposes of survival. Procedural errors significantly disadvantage community planning groups and especially those in under-resourced areas such as CVCPG, whose members must dedicate scarce personal time and resources to these proceedings. The imbalance in resources and preparation time highlights the importance of providing all relevant materials and notice to ensure fairness for volunteer groups like CVCPG.

Remedies

After thorough but prompt consideration of these questions, if it is found that material errors were made it is respectfully requested that the City of San Diego addresses the emotional and physical distress and disruption caused to CVCPG's Chair, board members, and community members, many of whom took time off of their jobs to prepare for and attend the Council meeting.

1. Does the abrupt cancellation of the hearing, after significant time and resources had been expended, necessitate formal acknowledgment and a commitment to improving transparency, fairness, and adherence to Due Process, the Brown Act, and other applicable legal requirements in future proceedings?
2. Should action be taken to compensate for the harm caused to these people?

We look forward to your *written response* to each question posed and request made herein. These may be sent to the email address of record for CVCPG. Enclosed are copies of correspondence that many aid in your consideration of these matters.

Andrea Hetheru, Chair
Chollas Valley Community Planning Group (CVCPG)



Cc: Councilmember Henry Foster III, District 4, Council President Sean Elo-Rivera

Enclosures 3:

September 8, 2024 Request for Clarification to Council President Elo-Rivera

Copies of emails between CVCPG and DSD Officials

Copy of email to Daniel Horton, Councilmember Foster Chief of Staff

