

EDWARD C. MOORE  
ATTORNEY AT LAW<sup>1</sup>

2436 Ninth Street  
Berkeley, California 94710

Tele: (510) 531-7272  
Fax: (510) 540-6151  
E-mail: Ecmooorelaw@gmail.com

April 12, 2010

Mayor Joanne Wile and  
City Council Members  
City of Albany  
1000 San Pablo Avenue  
Albany, California 94706

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ALBANY CITY CLERK

RE: Criticisms of Final Report Pertaining to Shared Vision Study.

Dear Mayor and Council Members:

**INTRODUCTION.** I first want to congratulate you, Fern Tiger and her associates (FTA) for the fine quality of the final report, A Community Vision for Albany's Waterfront (Apr. 5, 2010) (Final Report). As deep as my criticisms are of the Shared Vision process, giant strides forward have been taken by this community by empirically substantiating and depicting the wish lists of 1,200 or so Albany residents who were interested enough in future waterfront development to participate in this planning study (Shared Vision Study).

Second, I aim to criticize what has and has not been done with regard to this Shared Vision Study. In a nutshell, untutored public opinion (no matter how well substantiated empirically) is no substitute for expert opinion when protecting critically important public interests and assets over a long term.

I hope you can accept my criticisms in the public spirit with which they are offered. Waterfront planning is complicated and a host of people and interests are involved in this Shared Vision Study, each with different, largely hidden agendas. This makes it very difficult for legislators in your position to know and do what will be effective to protect numerous critical *non-economic* interests over the long haul. These interests and the Waterfront as a physical asset are entrusted for safekeeping to your offices. I doubt not your good intentions. But well meaning is just not enough. My criticisms may serve to help constructively reorient you a bit in your thinking about future land-use

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<sup>1</sup> Voluntarily inactive effective March 1, 2010.

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planning for the Waterfront *and* your responsibilities as elected legislators with sovereign jurisdiction over a very small but critical piece of our collective pie.

Because I am a Berkeley resident some of you may deem me one of those pesky outsiders referred to in the Final Report. (See Final Report, p. 47.) Be that as it may, I have attempted in good faith during the past several years to alter the course of your municipal planning by raising certain legal *and* broadly drawn public-interest concerns that pertain to *any public planning* for land uses at your particular Waterfront.<sup>2</sup> I offered you a new context within which to evaluate the Waterfront. For reasons that mystify me, no one else is talking about the issues I've raised. *All* my suggestions, objections and requests, whether legal, methodological and/or substantive, were *actively resisted* by your Waterfront Committee and have been substantially ignored by FTA. Nevertheless I participated in every step of this Shared Vision Study from diagnosis through conception, formation and performance of this remedial Shared Vision Study, and I attended nearly every meeting of the Waterfront Committee for almost four years. So I know personally that of which I speak and I am confident the administrative record will bear me out.

**A. NO SHARED VISION ARTICULATED** For reasons I can only surmise,<sup>3</sup> a golden opportunity, that is, a *publically well-funded* opportunity, to put Waterfront development into a *communally shared thematic context* from Albany's point of view has been largely wasted. The Final Report by FTA does not achieve the goal of articulating a shared vision for Albany waterfront development. How can that be you may ask? Consider the following:

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Use of the initial-capped term Waterfront is meant herein to embrace ocean-view waterfront in Albany *and* Berkeley west of the freeway as a unified whole notwithstanding various boundaries that layer and divide that Waterfront for political and other purposes.

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A *deeply* hidden strategic political agenda that persists over decades in dividing local control over *Waterfront land-use regulation* between Albany *and* Berkeley *and* the State of California *and* a single powerful corporate landowner?

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**Let me begin by asking:** What is the newly unifying theme of Albany's shared vision for waterfront development? What has emerged from all the theoretical brainstorming, the publically funded efforts at mass education and phased public participation, the quantitative *and* qualitative analysis by your consultants and their experts? Can you or anyone else put the theme in a simple sentence? The candid answer is, "*it can't be done because there isn't one.*" The closest thing to a theme heard from Fern Tiger during presentation of her Final Report to City Council on April 5, 2010, was the all-too-familiar Albany refrain, "*expand open space to the maximum extent feasible while maintaining or expanding local tax revenues.*" No new vision is discernable through the logic implicit in that bipolar developmental-tradeoff calculus.

**What about this as a theme:**

"In summary, the Albany community envisions: *a 190-acre waterfront that is a model of environmental and economic sustainability; that supports a multi-generational community, small-scale, independently-owned businesses, and local arts, culture, and cuisine.*" (Excerpt of Final Report distributed and quoted by FTA at Apr. 5, 2010, presentation to City Council, p. 13, italicized emphasis in original.)

This is a hodgepodge consisting of nouns and adjectives locally grown and correctly seasoned politically. *It is not a visionary theme for development of the Golden Gate's Crown Jewel on the eastern shore of the San Francisco Bay.* Rather, it's a paraphrase of a draft vision statement for the City of Albany as a whole, modified slightly to apply to the waterfront. (See and compare Final Report, p. v at bottom, and p. 55, left-hand column.)

**How about Illustrative Site Concepts Nos. 1 through 11?** (See Final Report, pp. 9-31.) Surely these site concepts depict a theme for a shared vision? Well no, not really. These site concepts are vague depictions (although very nice) of certain possibilities for "low-impact development" of Waterfront *private property* just in Albany. But little is new in any of it. The

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Sierra Club proposal for development of Waterfront private property by way of a hotel has, to good effect, been fleshed out with various hypothetical layouts and uses and numbers regarding revenue production. But other than depicting different ways to configure someone else's property to maximize public use of it while maintaining or moderately increasing tax revenue, these illustrations conceptualize little more than wishful thinking about various commonsensical alternatives at the *low-impact end* of a developmental continuum that has occurred in local imaginations during the past 140 years.<sup>4</sup>

*What is new* is that Site Concepts Nos. 1 through 11 depict *substantiated* abstractions drawn from *empirical data* generated by some 1,200 local residents who participated the waterfront-design games (see Final Report, p. 56 et seq.) As such, these site concepts should enable the corporate landowner and others to get a pretty good idea what will and will not be permitted developmentally in Albany under Measure C. Because the market value of real estate turns so much on what uses are permitted, the net positive effect of this Shared Vision Study may be in helping put a dollar value on privately held Waterfront land, based (just in part) on this empirical substantiation of what Albany residents will likely permit. That is one bit of useful and legally significant information obtained through this planning study.

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One hundred and forty years ago the State Legislature envisioned sale of tideland and submerged land under the San Francisco Bay to a depth of 9 feet in what is now Berkeley and Albany *to endow* the new University of California. One hundred years ago collective imagination envisioned deep-sea ports at our Waterfront connecting ships with railroads, and tideland and submerged land was bought up by a transcontinental railroad originating in the American south and terminating in Richmond, named in part the "Santa Fe" (Holy Faith). Seventy years ago saw creation of highways, Aquatic Park and Golden Gate Fields racetrack as the Bay and Golden Gate Bridges were constructed. Fifty years ago saw beginnings of the public harbor and diking of landfills (a public dump) that created much of the upland west of the freeway in Albany and Berkeley. Since the 1980's a succession high-end development schemes have been turned away with regard to Waterfront lands with ocean view, and an East Shore State Park has been created. A Cultural Landscape is quite clearly in the process of emerging from our collective unconscious into a more-or-less consciously *shared developmental* vision here on the eastern shore directly opposite the Golden Gate. What is trying to come forth into consciousness developmentally is not quite clear enough yet.

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Having such strong “objective” evidence of what Albany residents desire is no small step forward.

One *big problem* in Site Concepts Nos. 1 through 11 being deemed communally shared visions is that Berkeley also will want to get in on the development and revenue action. And the State Park too will want development that supports and does not undercut it’s public mission long term. So too the University of California and large majorities of the public who know the Waterfront. But because the Shared Vision Study by FTA has *insisted* -- over repeated objections -- on ignoring the Berkeley half of the privately owned Waterfront land, *no real or truly shared vision for Waterfront development in Albany has yet to be even approximated.* This is so because by ignoring the Berkeley half of real estate owned by a single corporation, *all these Site Concepts were born in a fragmented, game-filled fantasy land that refuses to confront existing Waterfront reality. This kind of thinking frequently leads to thinly rationalized “tradeoffs,” which are permitted to defeat and destroy non-economic interests that are simply forsaken, often without even being known or acknowledged.*

This seems to me a strategic mistake! You might begin by finding out who is actually responsible for that decision? The Waterfront Committee made it quite clear after hours of debate over two meetings that consideration of the adjoining Berkeley land was *legitimately* within the scope of the Shared Vision Study. Fern Tiger is much too politically astute to have made on her own the decision to ignore the Berkeley half of the privately owned real estate.

**How about the Design Guidelines Recommended?** Do not the proposed Design Guidelines reflect a shared vision for Waterfront development? The answer is no. Design guidelines are guidelines. They may work to specify a framework within which a developmental vision can be projected, but are themselves not a vision.

The goal of discerning a communally shared vision for Waterfront development in Albany has not been achieved. The process itself disappointed me greatly, but the end result should perhaps not surprise me. What most people do not realize is how long human processes involving public interests have been meaning to ensure an *edifying development of this particular landmark site*. Quite obviously the developmental potentials are still emerging from our heritages into contemporary personal awareness. Only with post-World-War-II Bay Area development, including diking and filling of land covered by tidal action during the past 60 years to create Waterfront upland, have the Cultural Landscape aspects implicit in this site/sight (heretofore invisibly resident since discovery by the Spanish in 1770-1772) begun to emerge into *public* consciousness and come to the fore.<sup>5</sup>

**B. REASONS NO SHARED VISION ARTICULATED** There are pretty clear causes that explain how this Shared Vision Study was truncated and it's ability

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One critical question from a Waterfront design point of view not being asked publically is: *what is it that's trying to be seen at the Waterfront 100 years from now? More retail shopping? More automobile driving and parking?* For reasons largely inchoate today, my intuition tells me, "definitely no, not that." It seems to me local residents already live in Boutique and Condominium Heaven; if we can't make a go of it with what we've got, nothing similarly built at the Waterfront will help. The Waterfront's *primary* use has emerged as recreational in a University community; economic uses are clearly secondary for a host of non-economic reasons pertaining to our communities' hoped-for edification. Providing additional space to drive and park motor vehicles seems almost sacrilegious somehow, given the deteriorating health of the World, the dynamic proximity and contrast of Interstates 80/580 and the symbolic significance and power of that seen from this Cultural Landscape.

*But if not retail and automobiles, what?* Why not something to feed healthy adult imaginations. This site/sight is after all a threshold between East and West at a Golden Gate in a University community at the western edge of Western Civilization! *But what - more "open space" is just not enough?* How about something to be seen; something living and present but subtle; something inspired; some healthful melding of Eastern influence on the West. *But what?* How about a mosaic of some sort that doubles subtly as a labyrinth or incorporeal-orientation map in five dimensions (height, width, length, depth divided by time)? How about *quietly* courting a descent and nearness of things deemed divine or sacred (e.g., *that quality without a name*) in an earthy, secular but vibrantly celebratory and thankful, low-key, feel-good Northern California kind of Way? *I get excited just thinking about it.* Even more exciting still will it be *here*, 100 years hence, in trying anew to see what is still yet seeking to unfold here in a future even further down a developmental path along the Way!

to accomplish the objective undercut. Reasons why such has been allowed to occur are too complicated to be addressed in this letter.

**The causes are pretty simple.** (1) The Albany part of the Waterfront was isolated from any larger context by the waterfront design games. The focus stayed within Albany city limits with bare mention of the Golden Gate, the San Francisco Bay, the State Park, the University of California or the Berkeley waterfront. (2) The isolation was compounded by envisioning the Albany waterfront from a high but closed-in perspective. A bird's eye perspective was assumed in looking down on *just* the Albany Waterfront. Instead of that perspective, one looking out from ground level to see what can be seen should have been assumed. This truncated perspective is seen on gaming maps and the model of the Albany Waterfront set up in the Community Center. (3) The isolation was further compounded by the fragmented nature of the waterfront design games. Only *partial expressions* of vision were solicited from *every* participant. No participant was free to express his or her complete vision. No one was asked about their experience, how they are move by what they see at the Waterfront. No one was permitted to design a Waterfront using the entire Golden Gate Fields' property. Thus each of the 199 maps compiled are thematically fragmented imaginings by superficially tutored participants. No unified vision of Waterfront development was solicited from anyone. (4) An intuitive if not natural desire held by many Albany residents to maintain *at all costs* the Waterfront in Albany as a source of local tax revenue has never been questioned or critically examined. This supposed need for perpetual tax revenue reflects an untutored prejudice that worked like a straight jacket to needlessly constrain the public envisioning process. Concern with tax revenue effectively trumped everything. (5) Various developmental alternatives were kept from the participants and never presented or explained (see *next paragraph*).

**Cultural Landscape Evasion.** The most obvious example of keeping pertinent information from Albany residents is the failure to mention the

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Waterfront as an emerging Cultural Landscape within the meaning of federal Historic Preservation Law, or alternatively, under California law as an "historically significant" resource. This omission was deliberate and persisted in over my repeated and substantiated<sup>6</sup> objections. Your Waterfront Committee would not even allow the subject onto its agenda for a presentation and discussion.<sup>7</sup> Legal mechanisms available to protect and enhance the development of Cultural Landscapes provide legal theories and tools for restricting private land uses at sites that qualify. The whole subject was deliberately kept off the lead agency agenda and purposely concealed from public consideration. Related State Park and public trust and Waterfront Aesthetic issues too were barely mentioned and left substantially unexplained as a practical matter.

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A Cultural Landscape is a term under federal Historic Preservation Law. My claim the Waterfront qualifies for listing on the National Register of Historic Places is set forth in my Comment to Draft Berkeley Ferry NEPA/CEQA Environmental Report (Dec. 31, 2008). Because the ferry project is federally funded, elevated levels of planning are required before ferry service can be approved since the Waterfront as a unified whole in Berkeley and Albany is a recreational area and/or a Cultural Landscape within meaning of federal law. A copy of my comment was submitted for consideration by your Waterfront Committee and is part of the administrative record.

Under California law, the correct term for the Waterfront would be that it is "historically significant," because it is a "site, area or place" that meets the criteria for listing on the California Register of Historical Resources, as being "associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage," or alternatively, "possesses high artistic values." (Tit. 14, Cal. Code of Regs., § 15064.5(a)(3), citing Pub. Resources Code § 5024.1, tit. 14, Cal. Code Regs., § 4852 (A)&(C).) These two criteria are phrased virtually identically under state and federal laws. Both criteria were addressed in my Comment to the draft NEPA/CEQA Report on the Berkeley Ferry (Dec. 2008).

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Your Waterfront Committee did its best to distance itself from having to consider these matters because (presumably) a resource such as the Waterfront generally "*shall* be considered by the lead agency to be 'historically significant' if the resource meets the criteria for listing ...." (Tit. 14, Cal. Code Regs., § 15064.5(a)(3), italicized emphasis added.) The Waterfront in Albany meets the criteria and the public should have been told about it during the Shared Vision Study. No mention of it was made. And even though this Shared Vision Study is statutorily exempted from the requirement for a CEQA environmental study and reporting, *the terms of exemption specifically require* "the consideration of environmental factors" impacting this historically significant resource. ( Tit. 14, Cal. Code Regs., § 15262.)



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A wealth of non-economic public interests, potentials and constraints that pertain to development of *this particular Waterfront* were simply not presented to the public. Fern Tiger's resume shows she has the art education and job experience to know generally what is at stake. She may not have the expertise to explain it to the public, but she surely knows enough to know how to get what was needed. Why weren't these important issues addressed and the developmental possibilities implicit in Aesthetic evaluations presented to the public for consideration?

The widespread lack of public understanding, and difficulties of becoming conversant in complicated interdisciplinary subject matters sufficiently to reliably inform the public, were issues raised by me early on when the idea of soliciting widespread input from the Albany public was first proposed. It seems to me now as it did then, that unless you inform the public regarding what is at stake and the development possibilities and consequences lawfully available, whatever vision is forthcoming will be prejudiced *against* that which is possible, even feasible, but not known about.

Visions coming through the poorly informed are poorly informed visions. FTA did not present the land-use expertise needed to inform Albany residents about their options in light of this Waterfront's very special particularities and purposes. Couple that failure with a tax-revenue determinant and local residents ended up once again singing along to Albany's favorite ditty, *The Waterfront Developmental Tradeoff Blues*. You know how it goes, so come on and sing along (in a nicely balanced bi-polar harmony, please):

You give us a little  
(open space, tax revenue and all)  
then you make a lot  
doing things we hate to see  
in places they shouldn't be begot

**C. PROBLEMS IN NOT SUBJECTING DESIGN GUIDELINES AND SITE CONCEPTS TO CEQA ANALYSIS.** I anticipate the Design Guidelines proposed by FTA (see Final Report, pp. 5-8) will be especially troubling to Albany Waterfront planning after Fern Tiger is long gone and her Shared Vision Study is ancient history. The Final Reports (at p. 3) states:

“[The recommended Design Guidelines] are meant to be used as a tool for both the city of Albany and the current or future owner(s) of the privately-owned [Waterfront land in Albany] to effectively develop the site as it’s use, or ownership, changes in the near- or long term. It should be noted that while these guidelines are based on extensive input and participation by more than 1,200 Albany residents [as described in this Final Report], Albany’s Measure C does not allow any development that requires changes to the current zoning (not reflected in the guidelines) without a majority vote of Albany residents. Thus, these guidelines do not override current zoning, but rather reflect a vision that it appears would be supported by a majority of residents.”

**First Big Problems:** During scoping sessions the nature of this Shared Vision project was a contentious issue. I contended the cultural, historical and/or aesthetic resources at the Waterfront would be potentially adversely impacted by adoption of a Shared Vision for Albany Waterfront development. Because the visioning process was to be publically funded, I contended the California Environmental Quality Act (CEQA) required an environmental impact study and reporting. You and your Waterfront Committee and City Attorney sidestepped the need for CEQA study by characterizing the projected Shared Vision process as a mere "planning study," which is statutorily exempt from the need for an environmental impact report. Yet here we are today and FTA wants you to accept her recommended Design Guidelines and Site Concepts as "tools to effectively develop" the Albany Waterfront.

Almost surely you will be advised that the fruits of this Shared Vision Study are meant to be *purely advisory*; and as such no environmental impact study need be undertaken. If the proposed Design Guidelines and Site Concepts

are binding in any way, they in effect change Waterfront land-use regulation in Albany and CEQA analysis and reporting is required.

Unfortunately for you and the public, the term “advisory” is troublesome and it’s use is fraught with potential legal problem. If it turns out -- *with a wink and a nod* -- that Albany officials *obligate* the private landowner to comply with these Design Guidelines and Site Concepts in exchange for permit approval, the Guidelines are effectively binding no matter what they are called. And Albany officialdom cannot effectively modify their local zoning to require the private Waterfront landowner to provide new uses not otherwise permitted but in harmonious accord with Shared Vision wishes lists. And endeavoring to manipulate legal processes to achieve a sought-for end result by -- for example -- using a Waterfront development proposal put to a Measure C vote (publicized as “in accord with” Shared Visions) can very easily and seriously backfire on the very people who are struggling to preserve the Waterfront from commercial exploitation. Whether or not legal problems arise in a Measure C context, local residents may suddenly wake up one day to find their elected officials bending over making *closed-door tradeoffs* in negotiations to settle lawsuit(s) brought by the owner/developer. And not to be forgotten (in all the confusion) is the enormous problem of projecting Albany Waterfront development without reference to what happens in Berkeley.

**Second Even Bigger Problem:** The major problem with the Shared Vision Design Guidelines *and* Site Concepts is that they are not based on anything other than public wishes (fragmented and unduly constricted wishes at that) of 1,200 Albany residents. *All the legal and equitable principles and laws protecting numerous public interests and assets in very special kinds of unique real property such as this Waterfront have simply been ignored in the promulgation of these Guidelines and Site Concepts.* Having a good sense of what the overwhelming majority of Albany residents want to see at the Waterfront is *very important* for elected and appointed officials to have. Good politicians don’t normally need elaborate social studies to ascertain constituent

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needs and desires, especially in a city with only 17,000 residents. But public desires, as important as are, *cannot and do not relieve those same public officials of obligations imposed by law to obtain opinions from experts who can knowingly assess adverse environmental impacts of proposed projects in ways the unaided public simply cannot.*

In this instance those impacts are *not* limited to just to the effects on the ecology or natural environment, as may normally be the case. Given the very special nature of *this particular Waterfront, located as it is directly opposite the Golden Gate, ocean view and all*, a national treasure and arguably the foremost Cultural Landscape in California, set aside in part for our edification (and through success in that, our healing), the potential significant adverse impacts resulting from projected physical changes at the Waterfront, as reflected, for example, in certain aspects of the proposed Design Guidelines and Site Concepts (e.g., retail shopping districts; automobile roadways and parking; windmill farms, etc.) extend to concerns touching our future communal health, safety, welfare and morality *over a very long haul.*

Apart from my letters in the administrative record, you are no closer today than you were four years ago to being informed about the general health, welfare and morality interests implicated in *any potential new land use* at this particular ocean-view Waterfront.<sup>8</sup>

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*I am not opposed to Waterfront development.* What I am opposed to is ill-informed and/or greedy, selfish, short-sighted and stupid development schemes meant to privatize an area that should remain open and freely available to the public. Need (in the minds of some) to generate new gobs of tax revenue is a sign of our communal sickness, not it's health. Blindly trashing a landmark site set apart for our edification by creating new retail shopping, commercial districts and streets and parking for automobiles, seems grotesque in it's insensitivity to the perfectly legitimate needs and rights and aspirations of the majority of us.

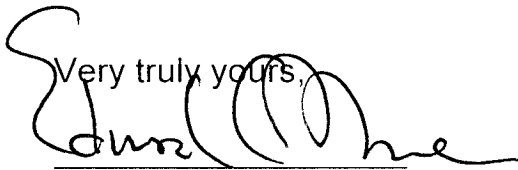
Yet even so, I say -- so be it -- *provided* that that is our communal judgment *after an informed public and knowledgeable public officials* have been free to debate the merits of the very many alternatives, economic and otherwise, that are available under our laws. *But that has not come even close to happening.* The Albany public was superficially informed at best

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**CONCLUSION.** Seems to me a municipal-planners nightmare has been created here in Albany. I don't know how you're going to get out of the mess. I very much caution you against rushing into *formal adoption* of the Final Report's recommended design guidelines and/or site concepts. These design guidelines and site concepts may have the desired effects just being presented in the Final Report. I'd be very careful how they are used. And you still need much better expert advice about what is at stake at this Waterfront.

**Renewed Suggestion.** I want to renew a suggestion I made several years ago. Why doesn't Albany and Berkeley and the State of California hold an international contest for the best description, explanation and depiction of Waterfront Aesthetics (e.g., the cultural, historical and aesthetic significance). Solicit not development designs, but a graphic and verbal explanation of what's here and why it's important. Offer some real prize money and prestige. This community might well find itself with 10 or 15 *really good informative* explanations of the Spirit of this Place and how developmental layouts can help or hinder it's unfolding within *and* without us. University communities typically draw people who know aesthetic *experience* first hand and often can diagnose and explain and sometimes even prescribe. Why not solicit advice in a format the public and it's servants can truly learn something useful from?

Thank you for your time and attention. Good luck with it.

Very truly yours,  
  
EDWARD C. MOORE

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about public rights and interests at stake, and about the developmental alternatives conceivable.

Even now neither you nor your electorate know what those public interests and development alternatives are because Albany has sidestepped study by experts. *And it is quite clear to me you need a different set of experts doing the environmental assessment.* If you hire CEQA consultants and economists who know nothing about Aesthetics at the Waterfront, you still won't know anything about it either after their study is completed.