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August 7, 2008

VIA FACSIMILE (661) 259-8125; E-MAIL
AND U.S. MAIL

The Honorable Robert Kellar, Mayor
City of Santa Clarita
23920 Valencia Blvd., Suite 300
Santa Clarita, CA 91355

Re: Objections To G&L Reality/Mayo Draft EIR Public Comment Process

Dear Mayor Kellar:

I. INTRODUCTION.

This firm and the undersigned represent Smart Growth SCV. We are extremely concerned about irregularities in the City's process for circulating the Draft EIR for the above-referenced project, and for allowing (actually frustrating) public participation and comment on this controversial project.

For the reasons discussed below, we urge the City to:

- (1) Recirculate a complete copy of the Draft EIR including technical appendices;
- (2) Restart the 45-day (or 60-day) public comment period; and
- (3) Prior to the close of any renewed public comment period and consistent with every other example of such matters in the history of Santa Clarita, ensure that public testimony and oral comments are taken prior to the close of the official public comment period.

II. FACTUAL BACKGROUND.

With regard to a proposed expansion of the Henry Mayo Hospital complex, the City on June 26, 2008 released a Draft Master Plan EIR for a 45-day public comment period. According to the City's notice, the public comment period officially ends on August 11, 2008. However, the notice also says that comments must be submitted to the City no later than 5:00 p.m. on Friday, August 8, 2008 in order to be included in the Final EIR with written responses. Thus, the

public comment period for all practical purposes ends on August 8, 2008, a change of dates and shortening of time that is misleading to the public.

We also note other anomalies related to this project and the City's outreach to the public. The City has had a long tradition in other matters of encouraging full public participation in the CEQA process. For example, in a majority of its own EIRs, the City has provided public comment periods beyond the CEQA-mandated minimum 45-day period for a Draft EIR. The City has also consistently scheduled and conducted a public hearing during the official public comment period for Draft EIRs. At such hearings, the City staff makes a presentation about the project proposal and the public is encouraged to provide oral testimony. In preparing Final EIRs, the City has typically recorded and responded in writing in the Final EIR to oral comments received at public hearings and to written comments.

Consistent with this long-standing practice by the City, on July 29, 2008, the City Planning Commission held a special meeting to receive public comment on the Master's College Master Plan. Those oral public comments will be incorporated into the Final Master's College Master Plan EIR.

In addition, in cases where it is a commenting public agency, the City has a long history of demanding that other public agencies extend public comment periods to assure quality public input. For example, the City requested and received extensions of County of Los Angeles comment periods for the following projects:

- (1) Tennasco/Arco Placerita Canyon Co-generation Power Plant;
- (2) Elsmere Canyon Landfill;
- (3) Valencia Market Place Shopping Center;
- (4) Newhall Ranch; and
- (5) TMC/Southdown/CEMEX Sand and Gravel Mine.

However, the City in this matter plans to significantly depart from the process known and expected by the residents of Santa Clarita. Among other problems in this process:

- (1) The City has frustrated proper circulation and disclosure of the Draft Master Plan EIR, and thus public input, by providing incomplete sets of the Draft Master Plan EIR. Several chapters after chapter 4 were missing from copies obtained by members of Smart Growth SCV.
- (2) The City has refused in some instances to issue paper copies of the Draft Master Plan EIR to members of the public who have requested them and who have even offered to reimburse the City for the cost of reproduction.

In lieu of hard copies, the City has offered CDs to the public. No alternative has been offered to persons with disabilities, who are computer illiterate, or who lack ownership of a computer. We understand in some cases the City has offered only a combination of a CD and some portions of the Draft Master Plan EIR on paper.

- (3) City staff has indicated that there will be no public hearing and opportunity for oral testimony to be recorded and responded to in the Final Master Plan EIR, as has been the practice of the City for years. Instead, the notice issued states that the City Council will conduct a hearing on the project after the close of the currently scheduled public comment period.
- (4) The City apparently intends to respond only to written comments submitted during the limited (and truncated) 45-day comment period, with the City refusing to entertain an extension of time for those who had planned to provide oral comment at the usual public hearing.
- (5) Historically, EIRs have been placed at all local public libraries, but in this case, nothing was placed at the Canyon Country Public Library.

III. THE CITY'S ACTIONS ARE IMPROPER.

CEQA Guidelines Section 15087(g) provides that in order for a lead agency to enable informed public comment it should make copies of the Draft EIR available to all public libraries serving the area of the project and that the lead agency should make copies of the Draft EIR available to the public.

As stated by the Supreme Court in Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, the EIR's

“purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government. To this end, public participation is an essential part of the CEQA process.”

Id. at 1123 (italics in original; underline added).

The City's actions as described above, particularly as they are so unprecedented, thwart CEQA's public participation requirements. We ask why the City, for the first time and in connection with this controversial project, is changing its policies to so prejudice public input? Would you please respond?

“Circulation” of a Draft EIR must be meaningful for all persons who may wish to review and comment on the project. Making incomplete copies of the Draft EIR available, or providing CDs, does not constitute compliance with the letter or spirit of the law, and the City’s obligations to its citizens.

As noted above, members of the public have asked City staff to provide a paper copy of the Draft EIR, but they have instead been offered an electronic CD with the files encoded. This is useless to a person without a computer or unable to operate a computer unless they want to use the CD as a coaster on their dining room table.

Under the Americans With Disabilities Act, the City must make reasonable accommodations for those persons who do not have a computer or computer skills. The reasonable accommodation is for the City to make hard copies available to those who request them. The failure to do so has deprived, and continues to deprive, members of the public of their ability to review the Draft EIR and to prepare oral or written testimony.

Because the City has a long tradition of conducting public hearings to take oral testimony, many residents of the City and members of Smart Growth have expected the opportunity to make oral testimony at the usual public hearing. Now, however, these residents will have little time to review the Draft EIR -- if they received one in an accessible and/or complete format -- and to prepare written testimony because City staff says that the comment period will close on Monday, August 11, 2008 (or Friday, August 8, 2008 based on the written notice) without further extension.

The City’s notice of a 45-day comment period is not really 45 days. August 11, 2008 is the 45th day after the June 26, 2008 release date. But comments are only being received for response in the Final EIR through close of business on Friday, August 8, 2008. This is inconsistent with CEQA, which requires the lead agency to provide written responses to all comments received in the comment period. Because the City’s notice is misleading and in violation of CEQA’s public participation and noticing requirements, on this ground alone, the public comment period should be restarted, with proper and full notice to the public, and based upon the availability of complete paper copies (even if for a charge) to the public.

IV. CONCLUSION.

For the foregoing reasons, Smart Growth requests that the City immediately do the following:

- (1) Announce an extension of the public comment period of 45 or 60 days.
- (2) Provide notice that both paper and electronic versions of the Draft EIR will be made available to members of the public.

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- (3) Schedule a public hearing to receive public comment on the Draft EIR and ensure that such public comments are included in and responded to in the Final EIR.
- (4) Make full paper copies of the Draft EIR available at all public libraries.

Please advise immediately if the City will comply with these requests, as well as adhere to its historic practice of promoting full and meaningful public participation in this important process.

Please include this letter in the administrative record for this matter, and please ensure that I am added to the notice list for any and all hearings, decisions and actions related in any manner to this matter.

Thank you for your courtesy and prompt attention this matter.

Very truly yours,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM

RS/jef

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