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Sent by Email and USPS

Ref: EDC Notice of Public Hearing - BOS Nov. 4, 2008 - 2:00pm - Design Review DR00-11

On the behalf of our client, *Friends of Shingle Springs Interchange, Inc. (FSSI)* we want to know why ConocoPhillips is filing an appeal. The last action in this matter other than the release of the FEIR on this project recently was when the project was ordered by the BOS back to the Planning Department over two years ago for the preparation of that Board mandated FEIR.

Why is ConocoPhillips filing an appeal at this time? For over two years we have heard absolutely nothing about this project, then suddenly all this flurry of activity. We find this to be totally unacceptable for many reasons. This bolt out of the blue is especially difficult for me as I did not receive the FEIR promptly. This has put a very real crimp on our abilities to get the *FSSI, Inc.*, functional again to raise funds to carry out this opposition to a flawed project.

This **is** affecting our fund raising efforts at a time when it is already difficult to get donations. More importantly, we have had an arduous time in determining just what this FEIR is all about in terms of how this project was treated by Pacific Municipal Consultants (PMC). This FEIR makes it very hard to communicate a clear picture to our constituents because key issues are distorted by the County consultant and then pushed by El Dorado County.

This project has been in process for many years. We question the **urgent need** to push this forward at this time, especially in the face of the difficult economic times in all the Country.

We also question the release of the FEIR in view of the problems with the DEIR, many of which have not been cured in the newly released PMC FEIR.

Even that brings up a valid question, **why wasn't the FEIR circulated to the general public for examination and comments.** There were a number of people who filed documents on this project and spoke at the several hearings. Please tell us why the FEIR was not circulated for public comment.

The *FSSI, Inc.* is compelled to respectfully demand that only after the driveway safety problem is finally and properly addressed, starting with good faith responses to the comments and substantial

**FSSI Requests of El Dorado County on the Notice of Public Hearing
Board of Supervisors - Nov. 4, 2008 - 2:00pm - Design Review DR00-11 - 2 of 2**

evidence presented by our expert, can this project move forward. The DEIR containing this significant new information must then be updated and re-circulated for public review and comment. Only then should a public hearing be scheduled for this project before the Board of Supervisors.

This is necessary and fair because it will result in EDC ultimately releasing an FEIR that contains the information that the DEIR should have contained -- if the driveway health & safety issues had been addressed in a timely and proper manner after they were duly raised by *FSSI, Inc.* and/or others as they were in writing and public testimony before the Board.

In considering this recirculation demand, please contemplate -- that not granting it will result in serious and actual prejudice to the rights of *FSSI, Inc.* (members & staff included). This is a well informed and meaningful public which wants to be involved in participation, particularly the right to recruit and join with other project opponents, and raise the funding necessary to continue fighting this dangerous project. We believe they are being denied this constitutional right

We strongly maintain, based on sound legal authority, that omission and dismissal throughout the FEIR of the strong evidence of the violation of local and state driveway safety standards -- which are comprehensively laid out in our expert's past reports -- is so serious a CEQA violation as to require immediate remedial action including subsequent recirculation of the DEIR.

Another point not as important as the others, is that this hearing is scheduled on the day of our National Elections. I object to this, because it will keep some people from voting. Not that everything should stop for this voting process, but it strikes me as strange that so important a meeting would be held on that date, creating a conflict for some people.

We believe that the scheduling of this hearing at this date is a mistake. We must know what the hearing is for. It certainly cannot be for the consideration of an appeal, unless ConocoPhillips wishes to withdraw the project totally. That would certainly simplify things for the *FSSI, Inc.*

In spite of the statements made by PMC in the FEIR, all of the many changes that have occurred in those two years in the region must be considered according to CEQA requirements on Cumulative Impacts. Therefore we respectfully ask that EDC make available to *FSSI, Inc.*, a complete list of those changes within the EDC jurisdiction for the past two and a half years. These must be studied, in particular the awesome and gigantic changes brought on by the Red Hawk Casino.

Red Hawk expects to receive 3.7 million visitors in the first year of operation. From the day it opens, the casino will attract almost 10,000 car trips on Highway 50 every weekday, and almost 15,000 car trips per day on Saturdays. That means air quality will be drastically impacted by the huge increase in traffic. El Dorado County is already ranked 18th out of 25 most ozone-polluted counties in the U.S. by the American Lung Association.

The PMC says this cannot be considered in the 76 Service Station/Circle K Mini-Mart project under the CEQA Cumulative Impacts doctrine. We do not agree. We believe that all of the many changes having an impact on the area and region must be considered under CEQA law.

Therefore we ask that you reschedule the hearing, preferably sometime in the first quarter of 2009 and start work on preparing the list of all the changes having taken place in the region during the

**FSSI Requests of El Dorado County on the Notice of Public Hearing
Board of Supervisors - Nov. 4, 2008 - 2:00pm - Design Review DR00-11 - 3 of 3**

past two years since the DEIR was sent back for the creation of the FEIR, sending this list to us at the earliest possible time.

There are a number of flaws in the PMC FEIR. We list a few here:

15120. General

Subsection (c) highlights the differences in contents for draft EIRs and final EIRs. The Guidelines refer so often to draft or final EIRs that the contents should be identified in the introductory section in the article on EIR contents.

These “contents” were not identified in the PMC FEIR on Project DR 00-11.

15122. Table of Contents or Index

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

There is only one word for the PMC Table of Contents. **Inadequate**

15123. Summary

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the Lead Agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

There was no summary in the DR 00-11 FEIR. There was an executive summary in the DEIR, and this is exactly where we have problems with the whole system and hence our request for up-dating and re-circulation of the DEIR.

Without an updated DEIR, the FEIR is like the proverbial “naked checklist” in CEQA parlance which has a prominent place in CEQA discussions. There is absolutely no correlation between these two very important documents without the update of the DEIR. The cumulative result is that CEQA’s basic goal is thwarted.

The basic goal of the California Environmental Quality Act (CEQA) ([Pub. Res. Code §21000 et seq.](#)) is to develop and maintain a high-quality environment now and in the future, while the specific goals of CEQA are for California's public agencies to:

- 1) identify the significant environmental effects of their actions; and, either
- 2) avoid those significant environmental effects, where feasible; or
- 3) mitigate those significant environmental effects, where feasible.

**FSSI Requests of El Dorado County on the Notice of Public Hearing
Board of Supervisors - Nov. 4, 2008 - 2:00pm - Design Review DR00-11 - 4 of 4**

The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects which a proposed project is likely to have and to list ways which the significant environmental effects may be minimized and indicate alternatives to the project.

The Public has been cut out of this process in a most significant way and hence our request for this process to be done correctly according to CEQA Law. This should go all the way back to the very beginning because EDC ought to have examined this project through the CEQA requirement of:

15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant

FSSI, Inc. has in its By-laws some very important principles that must be examined once again by the El Dorado County Planning Department, especially the top executives.

(a) This is a non-profit, public benefit corporation concerned with the public welfare in regard to, inter alia, environmental, health & safety and land use matters. The corporation will rely primarily on the continued ability to raise private funds, which calls for retaining complete privacy and confidentiality regarding membership matters and donations.

(b) The corporation was formed by citizens who recognize, are seriously concerned about, and seek to exercise their constitutionally protected and guaranteed rights to, inter alia, freely associate and take action concerning the existence and the solution to environmental, health & safety and related regional, county-wide and local problems, particularly traffic safety and congestion as well as associated, health-related matters, such as air pollution.

To the leaders of El Dorado County, we ask you to contrast what the County has done as we have pointed out on these four pages -- in comparison with what *FSSI, Inc.* has publically affirmed above before the State of California - that it will carry out these and all of the *FSSI, Inc.* commitments to the citizens of El Dorado County. We stand firm in our assertion that the EDC actions are not lawful and could put very many lives in jeopardy.

In view of this evidence, we ask you to remand this whole project back to the EDC Planning Department for fulfillment of our several requests and then bring it forward a reasonable date and time for the next hearing, preferably in the first quarter of 2009.

Respectfully submitted,

/s/ Dale Smith

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