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October 23, 2008

Ms. Lillian MacLeod
Project Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 96767

Sent by Email and USPS on 10-24-08

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

(NOTE: The Staff Report emailed at 9:02am, 10-24 with many documents - we still send the letter for the many questions still unanswered. Some sentences on Staff report have strikelines.)

On the behalf of our client, ***Friends of Shingle*** Springs ***Interchange, Inc. (FSSI)*** we have a number of questions from your email response today to our letter of 10-21-08. I have taken that email and numbered the statements for which I have questions and/or comments.[1]

The information provided in your letter is simply not understandable or does not give us necessary details to prepare for the November 4, 2008 BOS Hearing.

One of, if not "the" most puzzling thing about the Notice you served us with is its announcement that on 11-04-08 the Board will "**reconsider**" some prior unidentified approval the Board rendered "**following an appeal … submitted by ConocoPhillips …**"

Under these circumstances, it is virtually impossible to understand or explain to existing and potential FSSI members what is taking place and what will take place at the upcoming hearing. Based on my own personal knowledge in dealing with such matters, this greatly precludes or interferes with our ability to recruit FSSI members and donors in order to pose a legal challenge to your actions and those of the applicant.

Therefore, in addition to the right of public participation under CEQA and the Planning & Zoning Law, vital first amendment constitutional rights are being blatantly thwarted here.

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[1] As an introductory matter "for the record," FSSI and others have consistently objected to and hereby renew those objections to approval of this project as presently proposed, based on all the grounds stated by any person or party throughout the CEQA and Planning & Zoning Law proceedings. All these past, present and future objections, grounds and comments concerning the project are hereby incorporated by this reference as if fully restated here.

In order for us to be properly prepared we have to know what is the finding and resolution that Staff is asking the Board to make. That is certainly not discernable in your email letter. Your questions are in Arial Font and underlined:

(1) - "First, the public hearing completes the EIR process that was required by the Board subsequent to an appeal being filed on the approved project by a member of the public."

Please explain how this public hearing completes the EIR process that was required by "the Board subsequent to an appeal being filed on the approved project by a member of the public."

To our knowledge the ONLY appeal that could ever have been filed was at the Planning Commission stage, when the decision was made to approve the project pursuant to a Mitigated Negative Declaration in lieu of an EIR. To our knowledge, no appeals to Board of Supervisors decisions are allowed or have been made,[2] and we are not aware of anyone having requested "reconsider[ation]," or any County regulations allowing requests for "reconsider[ation]" under existing circumstances.

The language used in the Notice, in the context of the facts & circumstances of this case, makes it look like ConnocoPhillips is appealing the initial decision of the Board to prepare an EIR. Surely this cannot be the case. Is some other approval been rendered by the Board that FSSI and other members of the public never received notice of over the two-plus years that this project has remained dormant? Exactly what is the Board going to consider or reconsider? This notice does not make this clear. Far from it. The Notice is constitutionally inadequate, as a matter of procedural due process. We strongly object to such constitutional illegality.

[Q- 1] - How do the actions of the Board projected for 11-04-08 "complete the EIR process?"

[Q-2] - You strongly imply this was an - approved project - do you mean approved by the Planning Commission? Exactly what does the Staff mean by this statement? The project was NOT approved by the Board of Supervisors which ordered a full EIR at the Public Hearing of June 11, 2002 when the Staff tried to push this project through on a Mitigated Negative Declaration.

[Q-3] - What is the name of the "member of the public" who filed the appeal? Please provide us with a copy of the appeal. We fully participated in all CEQA and Planning & Zoning Law proceedings regarding this project from the beginning in 2001, but our records do no contain any information regarding such an appeal, or a request for reconsideration.

(2) - "Conoco did not appeal their own approval."

[2] As further pointed out below, EVEN IF THE APPLICANT APPEALED OR SOUGHT RECONSIDERATION OF THE BOARD'S DECISION TO REQUIRE AN EIR, THIS APPEAL OR REQUEST WAS RENDERED MOOT BY THE APPLICANT'S PREPARATION AND SUBMISSION OF A DRAFT EIR, FOLLOWED BY A PURPORTED FINAL EIR.

This is absolutely non-sensical. What "appeal" are you and the Notice referring to? The last thing we are aware of in the CEQA review process on this project was the submittal of the Final EIR after the circulation of the Draft EIR more than two years before (which by itself is a source of significant confusion).[3]

What "approv[al]" are you referring to? As previously stated, we are not aware of any final approval in the technical CEQA sense.

Of course, we know the applicant wouldn't appeal its own approval, but the Notice of public hearing dated 10-20-08 had the following statement:

The El Dorado County Board of Supervisors will hold a public hearing in the Supervisors Meeting Room. 330 Fair Lane, Placerville, CA 95667 on November 4, 2008, at 2:00 p.m., to ***reconsider***, following ***an appeal***, Design Review DROO-001 1 ***submitted by ConocoPhillips*** (Agent: Griffin Williamson) for a proposed 2,976 square foot Circle K mini-mart; and 76 gas station. Etc. (Emphasis added.)

That clearly states that there was to be reconsideration of and appeal by ConocoPhillips. By itself, THIS IS A SERIOUS ENOUGH ERROR TO INVALIDATE THE NOTICE. We respectfully demand that a CORRECTED notice be provided, AND THAT THE HEARING PRESENTLY SET FOR 11-04-08 BE RESCHEDULED ACCORDINGLY to comply with state and local laws and regulations dealing with proper notice.

By the way, that designation in the Notice of Public Hearing had this identification - DROO-001 1 and that is different from other ID's unless there has been a change in this ID, please inform us.

(3) - "In preparing the Final EIR, additional analysis was required as a result of public comment that lengthened the process."

My very first reaction to the receipt of the September 2008 FEIR from Pacific Municipal Consultants (PMC) was how small it was.

Excuse me, you wrote -- "public comment that lengthened the process."

There were only 67 pages of Public Comment in total on the DR 00-11 project DEIR, all of them dated in early 2006. Here is a short history of this matter and with it, the explanations of what really happened in this saga.

[3] We strongly object to the Final EIR prepared by the applicant, and its approval or certification as presently proposed, on the ground that the Draft EIR must be UPDATED & RECIRCULATED to take into account the many potentially significant changes in conditions and environmental setting in an area undergoing such significant and consistent growth (and most recent slow down) over a period of more than two years. This is particularly true in regard to economic and financial changes and their potential for causing physical environmental effects in combination with the impacts from the present project.

FSSI Answers and question to El Dorado County Letter from Lillian MacLeod
Design Review DR00-11 Email to AOA on 10-23-08 - 4 of 9

(A) - In a public hearing on June 11, 2002, the Board remanded this project back to the Planning Department for the preparation of an EIR. The whole process of the EIR started then and is on record in the County documents.

(B) - The NOP for the DEIR was issued on October 13, 2002, a period of four months from the June hearing. FSSI filed 37 pages of comments with a systematic Table of Contents on both hard copy and CD for the convenience of the County/Consultant and an approximate 250 pages of exhibits on November 12, 2002, which was within the 30 day comment period. The County accepted this material without objection. It is clearly part of the project's Administrative Record.

(C) - There was another NOP of a Draft Environmental Impact Report issued around May 20, 2005, there is no exact date on this NOP. The ending date for filing was June 20, 2005. AOA filed comments on the behalf of the appellant, FSSI on June 14, 2005, with this statement:

> ***Incorporation by Reference:*** By this reference, *FSSI* incorporates all materials in the "project file and related documents" mentioned in the first NOP, dated 10-13-02 at p.1 of the material attached to the NOP, under Appendices and List of Relevant Documents. This includes, in particular, all materials previously submitted by *FSSI*, its consultant, attorneys and experts in the Mitigated Negative Declaration proceedings, some of these materials are also attached to this letter.
>
> Rather than altering the enclosed AOA letter of 11-11-2002, I am attaching it and thereby incorporating all the contents by reference as most of the material, with the exception of some dates is totally applicable to this new NOP.
>
> Not only is our 11-11-02 letter sent to you on hard copy but that vital document is created in MS/Word with an interactive table of contents permitting real-time access to any subject. This will be a time saver in your preparation of the contents of the DEIR. A disk is enclosed.

(D) - The Pacific Municipal Consultants DEIR was finally issued November 2005, a period of three (3) full years from our 11-12-2002 filing. That DEIR is two inches thick. We do not have a record of the comments filed by others in this case, but in total the comments are very few in comparison to what was created by PMC

(E) - Alfa Omega Associates filed on the behalf of FSSI, and other members of the public, our 31 pages of comments on the DEIR on January 24, 2006. Other citizen comments were filed around that time, a total of ONLY 67 pages, hardly so much "public comment that lengthened the process."

(F) - As stated above there were only 67 pages of public comment on which PMC had to comment for the FEIR. However, the FEIR did not come back to the County until September 2008. An incredible eight (8) years passed from the time of the issuance of the first NOP on October 13, 2002 and the issuance of the FEIR in September, 2008.

We continue with our questions:

[Q-4] - Is El Dorado County Planning Department trying to **hang this timing problem on the back of "public comment?" This is not true and I find it disingenuous to use this argument.** There was very little public comment, (67 pages) and the response from PMC will show this to be true. The blame for any problems with fulfillment of time requirements rests totally with El Dorado County. The brief history should put that concept to rest.

[Q-5] - It seems to us that the PMC took more time to do this than was necessary, why do you make the allegation that - "**. . .** public comment that lengthened the process?"

Your next statement:

(4) - "It was further lengthened in order to revise the scope of work and corresponding contract requirements, based on the added analysis."

Although generally speaking the cause of the delay may be irrelevant, its effects are not. CEQA, and the Planning & Zoning Law, require "good faith" investigation, evaluation and disclosure. We do not believe this good faith has been shown. On the contrary, it clearly appears that the delay was an intentional effort to dissipate or dissolve the strong public opposition to the project as presently proposed, and particularly in regard to its severe health and safety impacts stemming from the violation of applicable standards & regulations.

[Q-6] - You state that "It was further lengthened in order to revise the scope of work". We ask, in view of the very few public comments why was this necessary? What exactly made it necessary to revise the scope of work?

We are entitled to obtain copies of the "corresponding contract requirements, based on the added analysis." We ask that these be made available immediately and ask that you inform us as soon as this material is ready.

(5) - The Board is holding a hearing on November 4 and as the applicant wishes this to be concluded, and we are mandated to streamline permit review, I placed it on the soonest hearing date possible.

Perhaps we are getting closer to the bottom line in this situation. "streamline permit review" is what this is all about, but we find it hard to reconcile the reality that there are so many errors and so much confusion, as outlined above in the Notice of Public Hearing. I believe it is totally incomprehensible to find out what this Hearing is all about.

Placing this hearing "on the soonest hearing date possible" is quite alright with us, but only if we are able to obtain the necessary documents to be able to prepare properly for this all important hearing.

From the last filing AOA/FSSI made, on January 24, 2006 there has not been a single word of any kind from the El Dorado County Planning Department, the Planning Commission, or the Board of

Supervisors. That is a period of three years and nine months, now the Planning Department wants to ramrod this hearing through on November 4, 2008 without even a clear picture of what is to be presented to the Board and without supplying the necessary documents to AOA/FSSI in a timely manner.

This is absolutely wrong, and we feel certain that the courts will agree with us on this issue, but there are still six more questions/comments in your email of 10-23-08 which must be presented.

(6) - "Election Day should not interfere with the proceedings." While this may be an unimportant issue to some, myself as well as FSSI members and other members of the public value highly the freedoms we have in America and strongly object to and oppose any government entity discourages voting. Indeed, this just adds to the statutory and constitutional violations associated with adequate notice previously raised.

(7) - "Further, CEQA does not require circulation of the FEIR for additional public comment." Literally, or technically, this may be true, but under the facts and circumstances of this particular case RECIRCULATION OF THE DRAFT EIR (WHICH MAY INCLUDE MATERIAL FROM THE PURPORTED FINAL EIR SUBMITTED BY THE APPLICANT) IS REQUIRED. The Final EIR submitted by the applicant only purports to address the comments submitted by FSSI and other members of the public in 2006. It does not address all the changes that have occurred since then. It must be updated accordingly.

(8) - "You raised the driveway issues several times in your letter. Those issues have been analyzed and addressed under Impact 4.12.3 of the DEIR and Responses 1-2, 3-2, and 3-4 to 3-6 of the FEIR."

Finally the rubber meets the road. This is exactly where we disagree heartily with what has been written by the PMC commenter in the FEIR. We do not believe that "Those issues have been analyzed and addressed under Impact 4.12.3 of the DEIR and Responses 1-2, 3-2, and 3-4 to 3-6 of the FEIR."

Your statement seems to indicate this is not going to be a factor or even a point of discussion. We do not believe that to be true or accurate, and we cannot let any such letter in any way abridge or take away the legal rights of our client, Friends of Shingle Springs Interchange, Inc. or the other citizens who have filed against this most dangerous project.

This is precisely why the Staff Report and the other documents that we have asked for in this letter are so very important to us to obtain at the earliest possible time.

(10) - "The other concerns you've expressed can be addressed at the public hearing for the Board to consider."

One grows tired of having to repeat, "we don't know what is to be contained in this hearing, the EDC Planning Department has not made that clear, and that is prejudicial to our Client." Our cursory reading of the materials you sent this morning only make the matter more confusing, and if it is confusing for a professional, what is for the general public?

(11) - "I will forward your letter on to the Board, as well as the consultants in order for them to be aware of the issues you've raised."

Thank you, Ms. MacLeod for doing that. Please see that this letter gets to them also. And thank you for your help in our brief telephone conversation yesterday.

We are still concerned about this rush to get this item on the Board Agenda, and sincerely question the need for this action in that it puts us is a very difficult position when there is so much to read and digest and so little time in which to do this.

Our concerns as have been expressed again and again all through this nearly nine year process are based on CEQA Law. The condensations of that law are found in the CEQA Guidelines adopted by the Resources Agency. We cite three main purposes of CEQA:

- To inform public decision-makers of potential adverse environmental impacts of public or private projects carried out or approved by them.
- To provide for public participation in the environmental review process.
- To identify, and require the implementation of, feasible alternatives or measures that would mitigate (reduce or avoid) a proposed project's adverse environmental impacts.

While state law does not rank these purposes in terms of importance, individual stakeholders have their own rankings depending on their own particular interest in the CEQA process. As public stakeholders in this process we have identified many times in our documentation filed with the El Dorado County Planning Department, the most grave concerns about this project.

Again and again we have expressed these concerns, as in our DEIR Comments of 11-11-2002:

What the driveways safety issue addressed by our consultants, Smith Engineering & Management, is all about is that the Board seems poised to lower traffic safety standards to accommodate a particular developer, for apparent economic reasons. We strongly challenge the Board's legal authority to take such action.

The lowering of existing safety standards itself is an action with obvious potentially significant impacts that must be analyzed in their own right, from a regional as well as project-specific standpoint, in the existing context or "environmental setting," which obviously includes the ongoing, unprecedented land use planning crisis.

Throughout the documents submitted by the FSSI, AOA and SMITH ENGINEERING and MANAGEMENT, CA Registered Traffic Engineer 21913 Daniel T. Smith, Jr. CA Traffic Engineer 938 we have maintained the above position with the strongest of words.

The El Dorado County Board of Supervisors lacks authority, jurisdiction or discretion to lower safety standards to accommodate an applicant perceived as being able to pay higher mitigation fees or property taxes.

In the September 2008 FEIR comments the PMC commenter, who's credentials to even be making these comments have never been shared with the public by El Dorado County, continually discounted all of these safety concerns as stated by one of the foremost Traffic Engineers in California, except in one place, page 2.0-40, third paragraph of the FEIR - here is an exact copy of that section:

However, the project's elevation above the S. Shingle Road roadway at the S. Shingle access driveway may inhibit the view of drivers exiting the project. The elevation of the site upon completion and its relation to the project's S. Shingle Road driveway cannot be determined with existing information, therefore the potential for driver sight obstruction does exist. **This is considered a potentially significant impact.**

Mitigation Measures

~~None Required~~ However, they put in a mitigation measure in which we do not believe is adequate to relieve the dangers of these driveways that do not meet the County Standards or the CalTrans standards as will be shown in the course of this process.

MM 4.12.3 Prior to the issuance of building permits, the applicant will provide to the County a cross-sectional view of the South Shingle Road driveway identifying the roadway/driveway intersection as well as the adjacent slope and provide analysis as to this slope's potential to obstruct the view of a site-exiting driver. Any landscaping, signage or any other objects that could obstruct the sight distance shall be prohibited to the satisfaction of the County.

There is much more in the vein that driveway standards are the responsibility of the County and not part of the EIR process, which we do not believe to be correct. The PMC commentator says that the driveway location is considered a modification of the design standard under the Design and improvement Standards Manual. In other words, they can alter the standards even though to do so creates a very real and dangerous situation. And this is not a CEQA matter?

Where else in all of this process does the public have any opportunity to file documents that seriously question what was admitted by one time by El Dorado County to be a serious and dangerous hazard to the public?

When I read those kinds of statements, I am profoundly saddened; because of all of the obligations of the Board of Supervisors in California there is one more important than all others.

That is the requirement to protect the health, safety and welfare of the people of California to which all Supervisors must take an oath to uphold.

We believe that our concern over the health, safety and welfare of the thousands of citizens who live in that area, and the millions who travel through the area each year are extremely valid.

These millions of innocent citizens are in very serious jeopardy if this project is approved and we ask you not to misjudge our determination to make right what we see as a serious wrong being forced on the public.

Indeed, we believe the Board lacks the police power and authority to approve a project that may have significant health and safety impacts on the public, particularly where the agency has failed to adequately investigate, evaluate and disclose those potential impacts, and particularly where the agency takes the lame position that it does not have sufficient information at this time to deal with the impacts and the measures that may be available to mitigate those impacts to an acceptable level. If after nearly nine years in process, the County still needs more time, then we are in a serious position in El Dorado County.

It is time once again to turn to CEQA Guideline: 15201. Public Participation

Public participation is an essential part of the CEQA process. **Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal**, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

In *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural, Assoc.* (1986) 42 Cal. 3d 929, **the court emphasized that the public holds a "privileged position" in the CEQA process "based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision making**." *(emphasis ours)*

It looks as though it is up to the Citizens of El Dorado County to look out after the interests of the safety of the people and the adequate and even-handed, fair enforcement of all applicable LORS. [4]

Sincerely yours,

/s/ Dale Smith
Dr. Dale Smith, ***AOA***
Consultant to the FSSI, Inc.

AOA Ltr - MacLeod - Questions from email of 10-23-08 in Resp. to our ltr. 10-23-08.doc

[4] **LORS - Laws, Ordinances, Regulations and Statutes**