Comments of Michael McKinsey, Brenda Barnes and Peter Naughton, Homeowners and Interested Parties,[1] on Draft EIR re: Proposed Development at 2930 Colorado Avenue, Santa Monica 90404, SCH#2010061036:

Introduction

In Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, the Supreme Court of California reversed the trial court's and the Court of Appeal's approval by the County of Sacramento of a community plan for a large, mixed-use development project proposed by developers, as well as a specific plan for the first portion of that development. That project was thus at a far earlier and more lawful stage of development than is the current one before the City Council of Santa Monica, which proposes to allow development without a specific plan at all, and in violation of existing comprehensive zoning codes and specific plan for the subject area. Nonetheless, even when the County had been proceeding properly, it had proceeded unlawfully. The Supreme Court states about the Environmental Impact Report (EIR) the County used to justify approval of the project:

> The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. (*Laurel Heights I*, *supra*, 47 Cal.3d at pp. 391-392.) For the EIR to serve these goals it must present information **in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. On the important issues of long-term water supply and impacts on migratory fish, the County's actions in the present case fell short of these standards. (40 Cal.4th at pp. 449-450, emphasis added.)**

Even the most cursory review of the following comments on the instant Draft EIR, along with comments submitted by numerous other residents of the site proposed to be developed, and by their supporters such as community groups, will abundantly show the City has treated environmental review as, at best, "a set of technical hurdles for agencies and

1 The State Mobilehome Residency Law ("MRL"), Civil Code §§ 798 et seq. Uses "homeowner" as the terminology for a person entitled to reside in a mobilehome park. In Santa Monica, under Santa Monica Rent Control, City Charter § 2001, homeowners are covered as to the space they rent to put their mobilehomes on, on a permanent foundation, and live permanently in them, as "tenants," just as are all other persons entitled to rent housing units in Santa Monica. For consistency throughout these Comments, unless referring specifically to housing services and rents due to them as tenants of the spaces of ground or real estate rented by homeowners under Santa Monica Rent Control, the persons commenting will be referred to as "homeowners," as under the MRL. Each of the three of us is commenting jointly with the other two, but for him or her self alone, not representing each other.

developers to overcome." The instant Draft EIR does not present information "in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed." It also does not give the public "an adequate opportunity to comment" on such a presentation of information. In the areas of visual character/quality of the project site and area, scenic vistas, and scenic resources (p.75), and removal of mature trees (p.102),water quality standards or waste discharge requirement, cause substantial erosion or siltation on- or off-site, cause flooding on- or off-site, cause substantial polluted runoff, place housing or structures within a 100-year flood plain that would impede or redirect flood flows, or expose people or structures to significant risk involving flooding, it instead claims no EIR is required for this enormous proposed development (353,000 square feet plus a two-story subterranean garage) (Draft EIR, pp.) or, as in the case of water supply and quality (p.182), air quality (p.167) soil testing (p.137), groundwater testing, dewatering (p.183), soil erosion/liquefaction, seismically induced ground shaking (pp.137-140), and project construction and equipment staging (p.116), it puts off consideration of the information until the developers apply for building permits.

As to water supply, the EIR at issue in Vineyard Area Citizens, like the instant one, claimed no EIR on the issue was necessary because fewer than 500 residential units were proposed. The Supreme Court disagreed:

> **while the EIR adequately informed decision makers and the public of the County's plan for near-term provision of water to the development, it failed to do so as to the long-term provision and hence failed to disclose the impacts of providing the necessary supplies in the long term. While the EIR identifies the intended water sources in general terms, it does not clearly and coherently explain, using material properly stated or incorporated in the EIR, how the long-term demand is likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts are to be mitigated.**

Following are our comments of the various types of failure to proceed as required by law in this Draft EIR.

Types of Failure to Proceed as Required by Law consisting of not following applicable law.

Standard of Appellate Court Review: De Novo.

1. Failure to Have Any Pre-Existing Legislative Framework Giving Stakeholders Constitutionally-Adequate Notice of their Rights and Duties in Circumstances that Could Result in Loss of their Home:

For some reason homeowners have not been able to find given in the Santa Monica General Plan, hereinafter called "LUCE", it calls what were in the Municipal Code up until that time called "zoning districts," just "districts." Santa Monica Municipal Code § 9.04.04.010, entitled "Establishment of districts," begins "The City of Santa Monica is divided into zoning districts of such number and character as are necessary to achieve compatibility of uses

within each district and to implement the General Plan." [Emphasis added.] It concludes: "The R1, R2R, R2, R3, R4, RVC and R-MH Districts shall be considered residential districts. The BCD, C2, C3, C4, C5, C6, CM and CP Districts shall be considered commercial districts. The M1 District shall be considered an industrial district. The CC District shall be considered a public, institutional district."

No zoning district listed in any section of the Municipal Code is a mixed-use district. Neither is there any statutory authority whatsoever in any section of the Municipal Code implementing the General Plan (LUCE is two elements of a General Plan, the Land Use and Circulation Elements) for a "Creative District." It was "necessary" to list the "zoning districts" listed in SMMC § 9.04.04.010 to "implement the General Plan." Since LUCE changed the General Plan, it is just as "necessary" to pass municipal code sections giving notice of what people's rights and duties are, to "implement" the new General Plan. The City has not done that, and yet is proceeding with considering a development agreement, so the City is not proceeding according to law.

In the LUCE, new types of uses described are termed just "districts," not "zoning districts," in conformity with the SMMC. This seems to have been to make citizens feel the LUCE was "user-friendly" or "just between us folks," not a law. Nonetheless, LUCE is part of a General Plan for the City. It has a legislative function, which is to lay out the general parameters for land use and circulation in parts of the City. It does not do that, as prior changes in some General Plans had, by overlaying new requirements only over other zoning districts, or parts of a zoning district, or combinations of several.

LUCE is just part of a General Plan, but the City Council has been treating it as though it were implemented in law already, in the Draft EIR, in discussions held in public, and in retorts made to these homeowners when they have complained at public hearings about what procedures were being followed. One problem therefore hereby raised as a separate failure to proceed as required by law, is that the Draft EIR and all actions by the City to date with regard to classifying the subject property as in the MUCD used in the LUCE, is that there is no statutory authority to assign any property, including but not limited to the subject one, to an MUCD. The General Plan has not been implemented in law the City Council can follow, as concerns MUCDs, or any of the other zoning districts, or just districts, referred to in the LUCE that are not included in SMMC § 9.04.04.010. Neither SMMC § 9.04.04.010 nor any other provision of law establishes MUCD as a zoning district of the City of Santa Monica to which a property can be assigned.

In fact, no provisions of SMMC have yet been adopted by the City even providing how provisions of the Planning Code applying to mixed use districts will be adopted. By contrast, SMMC § 9.04.04.040, entitled "Adoption of overlay districts," states, "Where a specifically delineated area within the City requires preparation of an overlay district designation, that district shall be adopted in the manner set forth in Part 9.04.20.16 of this Chapter." That part has many sections, one entitled "Interim Zoning." Part 9.04.20.16, similarly, applies to "Amendments of Comprehensive Land Use and Zoning Ordinance" and has many parts, one of which is "Interim Zoning." Given neither one of these parts of the Code has yet been followed, nor has any other part been followed to implement LUCE in the Municipal Code, there is no implementation of the LUCE part of a General Plan in any

municipal code provisions, it is no wonder these homeowners have been astounded that actions have been taken without notice to them—and it is no wonder no one in the City's staff knew to give notice to them, since there are no implementing municipal code sections to tell them when to give notice.

These complaints made by these homeowners have included, and are repeated here for the record at this stage, that (a) no proper pre-existing procedure for making a discretionary zoning decision has been followed, so everything done has been done with failure to proceed as required by law; (b) rezoning occurred without adequate notice or hearings; (c) actions were taken such as entering into a "Memorandum of Understanding," which was later treated by the City as a decision to grant a development agreement having already been made back in 2007 without any notice at all to these homeowners, but which the City in 2011 treated as a decision that could lead to possible loss of their home, and which is also not referred to in any section of the SMMC having to do with homeowners and property owners, by contrast to vendors and providers of services, all of this without notice; (d) without notice as required for rezoning and for adoption of a specific plan for a new zoning district, adoption of a General Plan occurred—as to which these commenters were entitled to and given just newspaper notice as given to everyone in the City about adoption of new General Plan elements. However, then without the specific individual written notice to stakeholders required by law for rezoning property where a person lives and for adoption of a specific plan for a new zoning district where that property is located, that portion of a new General Plan was then misused by the City. Instead of being used as just a General Plan, the LUCE was turned into some kind of hybrid combination General Plan cum sub silentio municipal code section, cum even ad hoc delineation of a completely new type of zoning district, not even one of the general classification types given in SMMC § 9.04.04.010, which are limited to only residential, commercial, industrial, or public, institutional districts, and also cum delineation sub silentio of a new type of zoning district not included in the preexisting zoning districts of which the SMMC gave these homeowners notice; (e) without notice to these homeowners as required by both state and City law before any discretionary zoning decision is made that affects property where they live, hearings were held and a decision was made on granting discretionary zoning changes as part of discretionary development agreement approval for a separate property not the one where these homeowners reside; and (f) all of the above was done before preparing, circulating for comments, and adopting an EIR as required separately before each separate type of decision, which requirement was not satisfied by preparing and circulating just the EIR required for adoption of two new elements of a General Plan.

The subject property is now and always since 1995 has been zoned R-MH. SMMC § 9.04.04.010 states that is a residential district. Therefore, the proposed development in including uses other than residential ones violates the applicable zoning code section. Moreover, SMMC Part 9.04.08.42 R-MH, entitled Residential Mobile Home Park District explicitly prohibits any use in the zone other than listed uses, which include, some subject to performance standard permit or conditional use permit, only trailer court or mobile home park, small family day care homes, yard sales, limited to two per calendar year, for each dwelling unit, for a maximum of two days, large family day care homes, and child day care centers. SMMC § 9.04.08.42.050, entitled "Prohibited uses," explicitly and specifically prohibits, "Any use not specifically authorized." [Emphasis added.]

Draft EIR's claim at p. 193 that R-MH permitted uses "include, but are not limited to, mobile homes and small day care homes," is therefore not even correct in how it lists permitted uses. Mobilehomes are not uses in an R-MH zone. " Trailer court or mobile home park" is the applicable designation of permitted use. Far more crucially, the Draft EIR's claim that the uses are "not limited to" mobile home use is just ***ABJECTLY, PATENTLY, NECESSARILY INTENTIONALLY FALSE***. SMMC § 9.04.08.42.050, quoted above, entitled "Prohibited uses," explicitly and specifically prohibits, "Any use not specifically authorized." [Emphasis added.] Uses in the zone where the subject property sits, therefore, are limited to those listed.

The Draft EIR claims also at p. 193 that an interim ordinance implementing LUCE in some unstated way affects the subject property. However, that ordinance is contained in full in Exhibit and applies not at all to R-MH zones, except Section 3(b) allows development agreements to be entered into violating existing height limits as discussed in sections 1(m), (n), and (o) of the ordinance, and Section 3(d) allows ministerial approval of 100% Affordable Housing Projects "with 50 units or less in which one hundred percent (100%) of the housing units are deed-restricted or restricted by an agreement approved by the City for occupancy by households with incomes of eighty percent (80%) of median income or less."

The violations of the existing R-MH zoning ordinances in the proposed projects are not in any sense limited to height limits, contrary to the Draft EIR's claims at p. 201. ***THE USES PROPOSED ARE EXPLICITLY PROHIBITED, HAVING NOTHING WHATEVER TO DO WITH HEIGHT***. The Interim Ordinance does not permit community benefits to substitute for any variation from existing zoning ordinances except height limits. Likewise, neither the description of these projects nor ministerial processing for an affordable housing project applies to the subject case. Moreover, even as to the zones to which the Interim Ordinance does apply, it provides for no exemption from existing zoning ordinances for uses prohibited by SMMC in any zone. Neither could it legally do so, since public hearings that were not held are required by law to change the comprehensive zoning ordinance.

Neither does claimed compliance with the City's Housing Element in the General Plan, discussed at Draft EIR pp. 201-202, excuse having a municipal ordinance or ten or 100 giving pre-existing notice of the regulatory framework and each party's rights and duties in the circumstances, which requires prior hearings, adoption of a specific plan, no telling what kind of notice since no ordinances exist to tell us, and under general principles of due process of law, notice of the issues involved in advance and a meaningful opportunity to be heard.

Anticipating Responses to these Comments, commenters here must explicitly state that no other elements of a General Plan staff might choose to come up with will in any way correct the defects listed above. It is the regulatory implementation of the General Plan that is missing. The SMMC provides, as it must in compliance with constitutional rights to due process of law, that that regulatory implementation is "necessary." The Interim Ordinance repeals ordinances contrary to its provisions, but as applying to the subject property the only applicable provisions are those about height limits.

SMMC § 9.04.06.070, entitled "Compliance," reads in full as follows:

> All City departments, officials, or public employees, vested with the duty or authority to issue licenses, permits, or certificates of occupancy where required by law, shall comply with the provisions of this Chapter. No permit or license for buildings, uses, or purposes shall be issued which would be in conflict with the provisions of this Chapter. Any permit or license issued in conflict with the provisions of this Chapter, shall be null and void. (Prior code § 9002.7) [Emphasis added.]

The Draft EIR's use of the MUCD zoning district as part of the regulatory framework in which the subject property is placed is therefore unlawful. Concomitant actions by the City since it approved the development agreement for property at Stewart and Colorado and these homeowners filed a claim are also all unlawful as applied to these commenters. These actions had involved the City approving that other agreement also without any of the required regulatory framework referred to here as to the subject property, in part on the pretext that work needed to get going on that other project in the then-recessionary period and could not wait for the "four or five years" it was anticipated it would be before a decision was made on the VTP application. However, then after the claim was filed, still without any required regulatory framework, the City sped up action on the subject EIR such that mere months later a decision was anticipated. All the speed ups-slow downs-no notice actions of the City are an unlawful shell game trying to make these commenters be either too early or too late in everything they do, when there is no regulatory framework to give notice of what is required at all. Now you see it, now you don't, is unlawful. All actions so far by the City as to trying to take away homes at VTP are failures to proceed as required by law in the Santa Monica Comprehensive Land Use and Zoning Ordinances. See Exhibits 24 and 25.

2. Drawing Self-Justifying District Boundaries that Actually Have No Historical or Geographical Basis.

Putting aside for purposes of discussion the fatal failures to proceed as required by law discussed above, the Draft EIR presents no evidence that the project site belongs in the Mixed Use Creative land use designation in any other form from the one it presently has as a mobilehome park, as is necessary to achieve compatibility of uses within [the MUCD, if it existed], in the terms used in SMMC § 9.04.04.010 (Exhibit 23).[2] The Draft EIR attempts to

2 The MRL uses "mobilehome" with no space in the middle of two words, as the spelling for what Santa Monica Municipal Code § 9.04.02.030.845, in the definition for "Trailer," calls a "mobile home," with a space between the two words. See, Exhibit 21. The MRL also defines a "trailer" differently from a "mobilehome," and gives different rights to sell while leaving in place in the mobilehome park where it is situated, to owners of the latter, with no right to sell in place for owners of trailers. However, under Santa Monica Rent Control, City Charter § , tenants of covered rental units have the same rights after rent control as they did before rent control. One of those rights, in the case of Village Trailer Park ("VTP" or "the Park") homeowners, was to sell both mobilehomes and trailers, any house on any space in the Park. Therefore, for this reason and because the Municipal Code makes no distinction between the two types of manufactured house, in Santa Monica there is no distinction between a trailer and a mobilehome. For consistency throughout these Comments, "mobilehome" as spelled in the MRL will be the spelling used, and that term will mean both "trailer" and "mobile home" as used in the MRL.

label the Village Trailer Park as part of the "industrial core" of Santa Monica in its self-justifying attempt to pretend planning principles require moving a residential mobilehome park that has been where it is for over 60 years—with uses other than residential surrounding it on three out of four sides and a street separating it from the only other residential uses in the neighborhood--out of the zoning classification it has had since 1995, R-MH, mobilehome park, to what the LUCE, calls Mixed Use Creative District ("MUCD"). This latter is a hybrid zoning classification not heretofore in existence in Santa Monica, a combination of the C5 classification of properties on the south side of Colorado Avenue between 26th Street and Stewart Street, and a higher residential zone than heretofore existed in Santa Monica. The Draft EIR, however, fails because it presents no evidence that the project site, an existing functional mobilehome park, is located within that so called industrial core. (Draft EIR, p. 194)

The draft EIR provides no basis for its assertion that that "industrial core" extends from the I-10 freeway on the south to any boundary line it chooses. In this case, by choosing Colorado Avenue, instead of Santa Monica Blvd. Or Olympic Blvd.--natural arterial boundaries (draft EIR p.249)--for any area so defined, the draft EIR defines the area in which VTP is located as not being inherently residential. It does so to suit its purpose of "justifying" eliminating its R-MH zoning. Putting aside also the unlawfulness of changing zoning in an EIR, the Draft EIR fails in describing how VTP fits within its neighborhood. This is not surprising, since like everything else in the Draft EIR, this description of how VTP allegedly fits in the "industrial core" of Santa Monica ending at the south side of Colorado Avenue shows not the slightest attempt to actually visit what it describes.

The Mixed Use Creative designation in LUCE is one that purports to be related to building locations, types, and sizes, but, in effect, when applied to an existing residential use, is a move to indirectly address who might be able to live in this area, and what life style they might have. It is therefore exclusionary. The Draft EIR provides no evidence to justify a zoning change from non-subsidized low-cost housing to other uses.

Village Trailer Park is part of the primarily residential area bounded by Santa Monica Boulevard, the first natural northern boundary of any area seen as extending from the Regional Route, I-405, serving Santa Monica. Altering the existing zoning of RMH for Village Trailer Park is a technique to prevent the development and redevelopment of the type of housing the park currently provides. The draft EIR fails to present any evidence that its retention as a mobilehome Residential zone would harm the existing character of the neighborhood.

In fact, any reasonable preexisting not self-justifying definition of the area in which VTP exists did not use the definition the Draft EIR uses. For instance, the 90404 zip code extends from 11th Street or Lincoln, depending on the west boundary chosen, east to Centinela, and from Pico Blvd. north to Wilshire Blvd. (USPS Map of Santa Monica zip codes 90404 and 90401, with most of all the remaining zip codes in Santa Monica: 90402, 90403, and 90405). The zip code therefore uses at the point where VTP is, the north and south boundaries of Wilshire and Pico Blvds. As far west as 11th Street, Colorado makes a difference, since at that point the zip code goes west to Lincoln rather than only to 11th Street, as it does north of that

point. The point of 11th Street and Colorado is more than18 blocks west of VTP. That Colorado makes any difference that far west is irrelevant to whether it can be called a boundary for any purpose at the point where VTP is. Accordingly, by the time one gets as far west as 11th Street and Colorado Avenue, the importance of being an exit off the 405 fades, since people are less likely to go that far on surface streets off the 405, and instead are likely to take the 10 and use Cloverfield or Lincoln to cut over.

The irrelevance of Colorado as a boundary except for the LUCE and Draft EIR self-serving purpose of trying to make a newly-defined area seem historical or natural, is also shown by how people get to VTP from all different directions. Colorado Avenue is a two-lane street with a center bidirectional turning lane at some points, a concrete median at others. While it goes from Ocean Avenue to Centinela Blvd., all the way E-W through the City, Colorado Avenue has never had the characteristics of a through street or a boundary. Pico, Olympic, Santa Monica and Wilshire all have these characteristics for different purposes, as is shown by their being called Boulevards whereas Colorado is an Avenue. This also is shown by all four of these being exits from the 405, whereas Colorado is not.

The irrelevance of Colorado Avenue as a boundary of anything is also shown by its virtually never being used a traveling through street. At the point where VTP is on Colorado Avenue, to get to that point on surface streets from a freeway when coming from the Valley or Hollywood, it is only seven (7) blocks west of the 405 on surface streets using the Santa Monica Blvd. exit, and then two (2) blocks south on Yale, or four (4) blocks south when using the Wilshire exit. One naturally takes one of the exits, depending on the traffic on the 405 in the direction one is traveling, and then takes main surface streets and cuts over to 2030 Colorado Avenue at the very last one to two blocks.

To get to 2930 Colorado Avenue from the 10 one would have to go to the 10 from the 405 and Santa Monica Blvd., which would mean going through one of the busiest interchanges in the world, and then take the Centinela or Cloverfield exit and come back seven (7) blocks north and then two (2) blocks west. That means the same distance on surface streets after taking up to a half hour extra on freeways.

When coming from the south, it is shorter to take the 10 and the Centinela or Cloverfield exit, but again, one stays on Centinela or Cloverfield and then cuts down on Colorado only west or east for the last few blocks. Locals might use Pico or Olympic and cut across from Cloverfield to Olympic using the industrial park angle of 26th Street as the sign on Cloverfield directs to get to 26th Street, but even then, one is on Stewart after Pennsylvania for less than a block, and then on Colorado for 500 feet. Again, Colorado is simply not a boundary.

When coming from the South on the 405, likewise, Colorado is not a natural boundary of anything. One naturally takes National on surface streets to Centinela (called Bundy at that point because of the Santa Monica Airport cutting off Centinela for a few blocks).

One simply never takes Colorado as a street to travel on as contrasted with a street to cut over to or from to get to some location actually on Colorado. One of the main reasons Colorado is not a main street is it changes names at the Santa Monica's city boundary at

Centinela, and whether it is Nebraska or Ohio or what in West LA is impossible to remember. People take main streets—Olympic or Santa Monica, or if they are farther away, Pico or Wilshire. Then they cut over. Colorado never has been a natural boundary of anything until the Planning Department wanted to make a new district and started making up facts.

Accordingly, until the LUCE and then this Draft EIR following its attempts to make this area into a separate district, no one in this district ever used the boundaries the Draft EIR now uses for any purpose. For instance, if a person such as Brenda Barnes living at VTP were giving directions to get to her house by car, she would give the general orientation first by saying it's on Colorado, which is between Olympic and Santa Monica Blvds., and it's between 26th and Centinela. If the person knows all those main streets, very little more is necessary for directions. If they don't know those main streets, then you have to expand to what they might know by saying, for instance, do you know where the Santa Monica Blvd. Exit off the 405 is?

As another way to see that Colorado is not the historical or natural boundary of "Santa Monica's industrial core," also notice how the boundary of the LUCE MUCD along Colorado stairsteps back to the South from Colorado toward Olympic virtually immediately as one proceeds from Stewart East toward Centinela. It is along Colorado until you get to Stanford, but actually the properties on the West side of Stanford at Colorado and going South are not what the LUCE calls MUCD uses at all. On the corner is the Westside Christian Church. South of it is an industrial two - story building. Then comes the portions of Village Trailer Park located on Stanford Street.[3]

South of that part of Village Trailer Park is a large compound that appears to be a live-in design or architecture two-story studio. It has a solid gate off Stanford into a drive-in courtyard surrounded by buildings, where numerous cars have always parked for the whole 25 years we have lived here.

South of that is a grassy area with palm trees, west of which is the gated entrance to the Southern California Gas Company's truck yard. South of the Gas Company's entrance and south of the design firm's office-house compound is an advertising-PR type firm. Some commercial company, we think Direct TV or some such, parks its trucks in the lot behind that building. South of there is some nondescript two-story industrial building used by we know not whom, maybe two different companies, and then Time Warner Cable's business office is on the northwest corner of Stanford and Nebraska.

On the East side of Stanford at Colorado is the first stairstep back toward Olympic of the MUCD. That goes just to the alley half a block away. This area, starting just three parcels

3 This is obviously all that remains of what used to be two more entire rows of trailers called E and F coming off Colorado while the ones still located off Colorado are A, B, C and D. The reason it is obvious what is now at least part of land where the Church and the industrial building are used to be parts of Rows E and F of Village Trailer Park is that those two rows start at 9 and 10, respectively, and have a large space between them now used for very gale back yards, which clearly used to be a driveway between rows before Stanford Street was put in to five a side entrance to that part of the Park.

East of Stewart Street, is not included in the MUCD--even though the Draft EIR would have us believe Colorado Avenue has always been some natural boundary with the "industrial core" of Santa Monica—is residential, R-2. This South side of Colorado up to Berkeley Street is residential, R-2, left out of the MUCD.

South of the alley on the East side of Stanford is about a quarter of a block of two-story commercial shops. There is a nice commercial print shop there, and miscellaneous other commercial and office uses. South of that are one-story house-looking buildings, which may be used for housing or commercial, one cannot tell.

On the Southeast corner of Pennsylvania and Stanford and across the street from it to the South as well are one story buildings that seem to be industrial because although they have entrances from the street that could be commercial or creative studio entrances, they have tiny plaques or small signs identifying what business is there, and we have never seen people coming and going. Otherwise, though,there is nothing particularly "industrial" about these buildings. They could have been used for anything all this time as far as could be told from outside. They are not noisy or dirty or having lots of workers coming and going the way property people think of as a factory would be.

Then farther South on Stanford past Pennsylvania the East side of the street gets pretty "industrial". There are drills and saws and FedEx trucks and that kind of thing, and dumpsters in alleys always overflowing with cardboard boxes and next to buildings. The street stays that way for a block all the way to Nebraska, dirty and smelly quite a bit, but mixed in there is a film and photography business here and there, and down on Nebraska there are loads of creative types and artists, plus a small cafe and SCI-Arch.

On the other side of those buildings, the Olympic Blvd. North side, are two schools not mentioned in the Draft EIR as subject to pollution, noise, vibrations, and other impacts from the proposed project, much closer to us and much bigger schools, as SCI-Arch is, than the Lighthouse Christian School on the alley South of Santa Monica Blvd. on Yale, which is mentioned in the Draft EIR.

If you come back to Colorado Ave. then go South on Berkeley, you see the second stairstep of the MUCD, although the Draft EIR pretends Colorado Ave. always was the boundary of Santa Monica's "industrial core," trying to justify changing the use of Village Trailer Park from mobilehome park as it has been for 60 years, whatever was around it.[4]

4 In fact, we have heard from neighbors who lived here as children that the whole neighborhood was orange groves. Does that make Colorado Ave. the natural boundary of an agricultural district? For that matter, when we first moved to Santa Monica in 1980, or maybe shortly before that when we came here to the beach, all of the now-Water Garden land and land now covered with office buildings up to Broadway was housing. So where and when was there ever an “industrial core” extending to Colorado Avenue? It's only a matter of perspective, how far back history goes, but the historical importance of Colorado Avenue as a boundary appears to go all of three parcels East of Stewart Street and start in about January 2006.

At that point the current industrial zone the LUCE changes to MUCD goes only to the South side of Pennsylvania Avenue. At that point, other than the widening sliver on the South side of Nebraska as Olympic veers South, the industrial zone cum MUCD is only one block long. We are not so familiar with that part as we are the part closer to us, but we do know that just half a block East that one-block long zone becomes only half a block wide, to the alley between Berkeley and Franklin.

So much for Colorado being a natural boundary of the "industrial core" of Santa Monica since at that point in the middle of a N-S block the zone becomes completely residential all the way to Nebraska except for the South side of Nebraska from there for another block and a half East to the City limit at Centinela.

Clearly what really happened here is a trailer park took up a whole City block at the edge of an industrial zone, as a buffer between it and the residential zone on two sides of it, but over the years encroachment was allowed into half of the residential block across the street, and part of the trailer park was sold and allowed to be used for church and other uses. Needless to say, with the exception of the architecture studio, and photography and film studios and the PR firm, which has probably been a zoning violation by being Industrial land used for office and residential use all these years, nothing listed here except Village Trailer Park fits in the MUCD. Village Trailer Park itself, however, could easily fit, if the City just notified people that now retail and creative art uses are allowed as well as residential uses.

3. <u>City giving its own property a completely unnatural gerrymandered boundary</u>

Exhibit 14 shows on p.2 how Mountain View Mobilehome Park owned by the City was ridiculously gerrymandered to keep it residential and how a less ridiculous boundary makes it feasible for VTP to stay residential as it has been for 60 years while surrounded on three sides by other uses. Only drawing a jagged boundary that looks like shark's teeth in a cartoon could allow the MVMP to stay R-MH zoned adjacent to an industrial area on two sides and a residential area on two sides, at the same time the Draft EIR says it is infeasible to leave Village Trailer Park, surrounded as it has always been on two sides by on two sides by residential use, on one side by industrial use (the Gas Company truck parking yard) and on one side by some other use (changed by the other Development Agreements on Colorado and Stewart from Industrial to Mixed Use Creative).

One amazing gerrymander line leaves Mountain View Mobilehome Park as it was before, zoned as R-MH, and another amazing gerrymander line claims to put VTP inside a natural boundary of Santa Monica's industrial core in spite of its being residential for over 60 years, while changing the surrounding zone from Industrial to mixed C5 and some unknown high residential use, then allowing condos for sale as is not allowed in C5.

4. <u>Illegal Spot Zoning</u>

LUCE p.2.6-2 has a map of Santa Monica's districts with 2930 Colorado in the Mixed Use Creative District and with the Bergamot Transit Village ending on the west side of Stewart.

In the Draft EIR by contrast, the entire area is referred to as "close to the Bergamot Transit Station". In fact, in the Power Point presentation map then Planning Director Eileen Fogarty used to give a presentation to the California APA Conference entitled "Santa Monica's New General Plan" on November 3, 2010, at p.23 (copy attached as Exhibit), Ms. Fogarty put the Bergamot Transit Station at Cloverfield and Olympic, where it actually will be, and drew the circle for the "Transit Village" around that "new" station extending almost to Pico on the South and Santa Monica Blvd. on the north and well past Stewart on the East and 20th Street on the West.

On the other hand, on the very next page when discussing integrating land use with transportation, she moved the Bergamot station a good five to six blocks east, to Stewart and Olympic, and made the "Bergamot Transit Village" the entire area combining both what Luce actually designates as the Bergamot Transit Village and what LUCE calls the Mixed Use Creative District. Only by combining the two and pretending the station would be five blocks east of where it actually will be, could she make any plausible argument that there was in Santa Monica's "New General Plan" any integration whatsoever of land use with transportation.

That she did so also reveals however, another failure to proceed as required by law in this Draft EIR as concerns LUCE, which is part of the General Plan. LUCE sets up a Mixed Use Creative District, but then the City is putting art galleries and studios in the Industrial Conservation District instead, in a portion which is the entire area now called Bergamot Station, the area between the angled part of 26th Street between Cloverfield and Olympic on the West, and Stewart on the East, between Olympic on the North and Exposition on the South. That little sliver of land Luce puts in the Industrial Conservation area south of the Transit Village.

However, since that land, like the Mountain View Mobilehome Park, belongs to the City, and the City did not want to use it for what the district it is in allows, to keep its image up in the sophisticated world the City Council aims to be part of, suddenly "Industrial Conservation" became "Mixed Use Creative." More correctly, since there does not seem to be any housing use planned there, the City made it just "Mixed Use Creative Minus Housing" ("MUCDMH"). Or maybe it is Neighborhood Commercial Plus Creative ("NCPC"). Or maybe it is Bergamot Transit Village Adjacent or Annex, which either way would be BTVA.

The point is, as far as failure to proceed as required by law, the LUCE as the City is actually applying it it is just illegal spot zoning. Whatever the City chooses to do, it draws a ridiculous boundary to allow, and claims that boundary is "natural" or "historical" or part of some "core." Actually, just looking at the ridiculous boundary line compared to streets is all it takes to see the boundary as what it is: gerrymandering to try to legitimize spot zoning. Then when even that simply cannot be done because two spot zones with the same use are geographically separated from each other, the City on its own land, where it does not need to give itself the same kind of justification it allegedly gives projects proposed by others, just builds things that do not fit in the zone at all. Either way, the same illegal spot zoning occurs, and no pretense that any real planning took place to cause it can hide that reality.

5. The Draft EIR fails to proceed as required by law in that it concludes there is

adequate law to approve the proposed project when there is no specific plan for the MUCD, as for the Bergamot Transit Village, so every project is not in conformity with a specific plan in conformity with the General Plan, supported by an EIR, as required by law.

6. The Draft EIR fails to proceed as required by law in that LUCE does require the MUC District to be 50% housing and 50% commercial or office-studio use, so since the project at Stewart and Colorado, the first one in the District, is 100% commercial, and is enormous, some 900,000 square feet, unless the second one between Village Trailer Park and that one is far more than 50% housing, the District will be largely commercial and disruptive of the R-2 zones all around it to the North for four (4) blocks and the R-1 for four (4) more blocks to the City's border at this point, and to the East R-2 for three (3) blocks to the city's border. In fact, given the size of the project the city approved at Colorado and Stewart, it is impossible to have 50% housing and 50% commercial in new projects in the MUCD unless all of both the project proposed at Roberts and the one at Village Trailer Park are housing, which would not make either one a mixed-use project. That is why we filed a claim against that project. At this point the only way to comply with law is not to approve a new project at Village Trailer Park, and to approve a solely housing project at Roberts, unless approval is refused by the court for that first project. Alternatively, the City could do a specific plan for the MUC District and indicate where housing is going to come from to cover the 50% requirement as to overly-commercial projects approved, and then pass municipal code ordinances to implement LUCE and that specific plan, then begin consideration of this proposed project again if it is still lawful.

7. The proposed project does not comply with law in following the LUCE policy D-24.14 in determining the feasibility of preserving Village Trailer Park by creating a master plan for a multi-property development that will comply with all LUCE policies applicable to the MUCD.

The Draft EIR pretends at p.362 that the City does not have to follow this policy of the LUCE because: (i) too much development is sought in the proposed development to transfer to (ii) only two adjacent properties without exceeding the maximum 2.5 FAR in LUCE for the MUCD, and (iii) there is no TDR program yet to implement such a transfer.

Pretense (i) does not comply with law because what the developers seek they are not by definition entitled to unless LUCE is complied with, so what they seek cannot be an excuse not to make a multi-property master plan that preserves the Park as is.

Pretense (ii) does not comply with law because nothing in LUCE limits the multi-property master plan requirement for exploring the feasibility of retaining the Park as is, to exploring just two adjacent properties. After all, to try to avoid the correct charge that the city is illegally spot zoning, the City gerrymandered the entire MUCD in LUCE, and now in the Draft EIR tries to justify that while retaining its own mobilehome park and putting galleries and studios in an industrial conservation zone. LUCE put at least 30 parcels, and perhaps as many as 360, in the MUCD, depending on the size of the parcel, there being about 15 blocks in the District and 2-24 parcels in a block.

Pretense (iii) is the reason above all, that this Draft EIR does not comply with law as to

the LUCE requirement that VTP be retained as it is if feasible, since it makes up everything that would be in a specific plan to do what it does. Therefore, it would be beyond ingenuous to say it cannot save Village Trailer Park as it is as LUCE instructs it to do if that is feasible just because this proposed development is being considered unlawfully without a specific plan. If the Village Trailer Park cannot be retained as it is without the specific plan being completed, that is a sign the City is proceeding as not permitted to proceed by law, so is not proceeding as required to proceed.

8. The Draft EIR in trying to justify the proposed project does not comply with law in that there appears to be no Master Plan for Santa Monica in effect at this time complying with Chapter 9.24 of the Santa Monica Municipal Code, except as to Parks and Recreation, Land Use and Circulation (LUCE), Housing, and Urban Forest. These other than LUCE are mentioned on the Internet but not available to read. Therefore, the Draft EIR does not proceed as required by law, in that it appears at sometime since 1959 when Chapter 9.24 became effective, the City instead of operating pursuant to a Master Plan that at least considered conservation, a unified streets and highways plan, a public service and facilities plan, a public buildings plan, a community design plan, and additional plans and data (such as an air quality plan and a water quality and supply plan, perhaps, all of which the City is listed with the applicable state agencies as not having adopted).

9. The Draft EIR does not comply with law in that the Development Agreement chapter of the Municipal Code, section 9.48.040, in compliance with State Law, Government Code s 65865 (a) requires a person entering into a development agreement with the City to have a legal or equitable interest in the the subject real property. We get tax bills with our rent increase notices every year showing Village Trailer Park, Inc. owns the Park, as can easily be verified on the Internet. If Village Trailer Park, LLC has an equitable interest in the property, the City should have proceeded as required by law to determine what that equitable interest is rather than calling VTP, LLC the "owner" of the property. Then when the City determined the applicant had only an equitable interest, it would have had the right to receive proof of what that interest was, and then it would know better, as we do, than to believe VTP, LLC's representative when he says "he" improved the Park during the last five years, which we know of our own personal knowledge is not true.

As to the next section, discussing an enormous mostly commercial-film production and condominiums for sale proposed development to be plopped into an R-2 neighborhood (353,000 square feet plus a two-story subterranean garage) (Draft EIR, p. 182), the Draft EIR either claims matters are insignificant without adequate support for the claim, claims matters are significant but will be mitigated to less than significant, again without adequate support for the claim, or states matter are significant and not mitigatable, but indicates no community benefits related to the environmental impacts that must be demanded from the proposed developers to make up to the community for the significant environmental impacts. CEQA's concern with these unlawful approaches is as it should be heightened because the Draft EIR 's reliance on this historical record without adequate evidence does not adequately characterize the long-term risk of going ahead with the development.

10. The Draft EIR does not proceed as required by law because it states it is not required to analyze whether there will be adequate water supply for the proposed project

because there are not 500 residential units proposed (Draft EIR p.333), but Vineyard Area Citizens v City of Rancho Cordova (2007) 40 Cal. 4th 412, 433 states a water supply EIR is required for every project subject to CEQA, not just residential ones with 500 or more units, pursuant to Water Code §§10910-10912 as amended in 2001. Vineyard Area Citizens states at 40 Cal. 4th 439, Government Code § 66473-7 requires the general mandates for a water plan approval at the General Plan level must be replaced at the large project approval stage by "firm assurances" of an adequate future water supply to support the project and to allow the public to be able to discuss it, and the Draft EIR must identify not only the likely source of water to supply the project, but also adequately address the reasonably foreseeable impacts of supplying water to the project, for the next 20 years.

11. The Draft EIR does not proceed as required by law because it uses ridiculous and not even attempted to be justified estimates of current water use at VTP, when in fact under the Rent Control Charter Amendment the owner of the property pays for all the water used here, so he could have provided proof of how much is used, and in fact the City owns the water supplier, so it could have checked its own records to see how much water is currently used at VTP. Then it subtracts that from an amount the project is expected to use of 61,022 gal/day, but that is not explained meaningfully so the public can discuss it either. Instead the Draft EIR at p.336 merely says the City has plenty of water from the Metropolitan Water District, does not say how much of the City is entitled to, how much is projected to be be needed for population increase in projects already approved or in daily increase in population due to the rail line coming to Santa Monica, or how much will be needed by all the other cities and other entities entitled to buy water from the MWD.

12. The case cited above also requires the public be given information to be allowed to discuss whether or not what is said is true and actually discusses all the environmental impacts of supplying water to the project.

13. The Draft EIR fails to proceed as required by law on the matter of soil in that the City cannot suggest it has adequately informed the public so it can comment upon the City's analysis of the environmental effects of this project, if there were nothing else wrong with the DEIR, when there was no soil testing. This project involves two stories of subterranean excavation and tons of weight on the soil. For all we know from the DEIR, the water table may be 15 feet down, the soil may not be adequate to hold such weight, and there may be contamination that will cause further problems. On that last point, we know of our own personal knowledge that for the 15 years previous to 2000 when the owner was forced by a homeowner lawsuit to upgrade the sewer, there were outflows of raw human sewage onto this land at least once, often three times a year. No remediation of the soil has been undertaken since then. Therefore, contamination is a very real possibility. In any event, not even doing a soil test before publishing a Draft EIT for a project of the magnitude of the one proposed here is unconscionable.

14. The Draft EIR fails to proceed as required by law in that the lead agency has the burden of proof that every claim it makes is supported, but the Draft EIR repeatedly just claims items are not above some threshold without even telling where that threshold is given so the public can discuss whether it is the applicable threshold. It repeatedly does not give enough information for the public to be able to discuss whether or not its statements are

correct. For most things a formula for which it provides no proof it is the correct one, or an e-mail from someone else that works for the City, is the most evidence for a claim. For some, there are just bald claims without the slightest attempt to present any support.

As to Air Quality, e.g, it says (pp. 91, 92, 94, 95,115,117) that many aspects of the proposed project will have significant environmental impacts and no feasible mitigation measures exist, but it does not say what kind of community benefits are going to be extracted from the developers to make up to the public for those impacts. Therefore, the public cannot intelligently discuss whether or not, first, the extent of the environmental impacts has been adequately discussed, or what other types and quantities of in this case, the various types of pollutants, have been estimated correctly given the computer models that were used, or whether other computer models or actual on-site testing of actual construction like the proposed construction should have been done instead, or the like.

The Draft EIR simply gives few if any facts. When it does give facts and links to the location of those facts, the public is able to show how false the claims made are, as we did above in section 1. The Draft EIR in the case of air pollutants does not tell what kind of receptor tests each pollutant, where the receptors are that test these pollutants, how they determine how much comes from which project, or anything else the public can intelligently discuss.

There simply is no analysis such as what amount of each of these pollutants causes asthma in the average 55-pound child, or anything else real. The most cynical of these non-supported claims as to air quality is the claim at p.113 that the SCAQMD says the only danger of a particular kind of pollutant is getting cancer after being exposed to it continuously for 70 years, so since this construction will not last 70 years, there is no significant impact.

First of all, to be able to to discuss this claim intelligently, the public needs to know where the SCAQMD said that was to the only possible impact (in what document that can be checked, located where and unless there is a stated and rare reason why not, it should be in an identified attached exhibit on a stated page). Then we shall see what the credentials are of the SCAQMD official who would make such a claim. We are quite sure it never happened, just as the SMMC does not say uses in an R-MH zone are those listed but not limited to those, and in fact states the exact opposite, that all other uses if not specifically listed are prohibited.

Second, having had to already file a lawsuit against these proposed developers for not following laws applicable to us as they demolished trailers here (after apparently giving the information used at Draft EIR p.168 that no trailers would be demolished), we know we have to look into every single aspect of this proposed development ourselves to protect our health. The Draft EIR does not give us enough information to be able to do that.

This same lack of analysis and giving details so the public can intelligently discuss whether the impacts and possible mitigation have been properly supported is present regarding the following factors as well as air quality:

14 (a): Mitigation of significant noise levels to sensitive users due to construction,

by Mitigation Measures CON 10-15, p. 115. The Draft EIR just claims the mitigation measures will reduce the impacts to less than significant, with no proof from any source the public can check and intelligently discuss.

14 (b): V**isual character/quality of the project site and area, scenic vistas, and scenic resources (p.75): just bald statements without any support.**

14 (c): Water quality standards or waste discharge requirement, cause substantial erosion or siltation on- or off-site, cause flooding on- or off-site, cause substantial polluted runoff, place housing or structures within a 100-year flood plain that would impede or redirect flood flows, or expose people or structures to significant risk involving flooding: The Draft EIR (p.183) re Hydrology and Water Quality states-"The addition of the proposed project would represent a negligible increase in the overall permeability of the site because the lot coverage, and, therefore, permeability, will remain nearly identical" . No evidence to support that assumption is presented.

14 (d): THE FAILURE OF THE DRAFT EIR TO ADEQUATELY PRESENT RELIABLE EVIDENCE ABOUT THE PROPOSED PROJECT'S ADVERSE EFFECTS ON GREENHOUSE GAS/CLIMATE CHANGE PREVENTS MEANINGFUL PUBLIC PARTICIPATION IN THE EVALUATION PROCESS.

<u>The Draft EIR has not adequately dealt with the Proposed Project's Adverse Effects on Greenhouse Gas/Climate Change (Greenhouse Gas/Climate Change, and Air Quality Either Currently or as Required by Health & Safety C. §§ 38501 et seq., showing a 15% reduction in emissions over 2006 levels by 2020</u>

No evidence that SCAQMD was approached regarding the project. There is no evidence that the project related emissions specified in the Draft EIR are accurately identified, categorized or evaluated.

There is no information to explain how Project Consistency with Applicable Attorney General and OPR's Global Warming and Greenhouse Gas Reduction Measures would be achieved.

There is no evidence of how SCAQMD guidance was timely obtained or used in presenting any of the air quality data presented for the current year, and in particular for the output of Mobile source Green House Gas (GHG) emissions from URBEMIS2007. Consequently the data presented is unverified.

The Draft EIR states that the proposed project would result in 7,003 metric tons of CO2e per year under the Cumulative Plus Project (Year 2020) Conditions. The Approval Year Plus Project (Year 2011) Conditions would result in 7,143 metric tons of CO2e per year. No basis is given for how the reduction of CO2e metric tonnage is achieved.

Appendix Table 4.7.2 blandly states that Regional Significance Thresholds have been complied with, and gives "TAHA, 2011" as the source for "accounting for construction

emissions by averaging them over a 30-year project lifetime" in order to achieve this compliance. What TAHA, 2011 is or where it can be inspected to discuss if it applies and/or was improperly used is not given. That is its only effort to "explain" its compliance. The public is therefore deprived of the opportunity to discuss intelligently and influence decision-makers on whether this section was done correctly.

15. The same failure to proceed as required by law due to inability of the public to intelligently discuss an environmental impact with the information the Draft EIR presents is so regarding the many items put off until later, such as some time later a Construction Impact Mitigation Plan will be prepared. Vineyard Area Citizens states we are entitled to know the details of environmental impacts and discuss them, not just be told someone's opinion, or that sometime later something will be done.

Finally, nailing down the Draft EIR as just "a set of technical hurdles for agencies and developers to overcome", the DEIR uses outdated and inapplicable computer models rather than real on-site work to conclude all the other categories of environmental impacts it covers present "insignificant" or "significant but not mitigatable" impacts that nonetheless should be overlooked so this project can be approved.

NO SUBSTANTIAL EVIDENCE THAT PRE-CONSTRUCTION SITE EVALUATION HAS BEEN DONE IS PRESENTED. ASSERTIONS ABOUT THE SUITABILITY OF THE SITE FOR THIS PROJECT ARE THEREFORE INADEQUATE TO ALLOW MEANINGFUL PUBLIC PARTICIPATION IN THE EVALUATION PROCESS.

15 (a): The same problem preventing the public from being able to discuss environmental impacts intelligently and decision-makers to know environmental impacts before they approve a development project, because the Draft EIR improperly puts off consideration of the information until the proposed developers apply for building permits, which of course would be long after the project was approved, is present in the Draft EIR in the case of water supply and quality (p.182)

15 (b): air quality (p.167)

15 (c): soil testing **(p.137):** No soil testing results are presented

The Draft EIR, (p.183), states that there is a risk of groundwater recharge during and after construction on the site and presents no evidence to the contrary. In fact it admits that "Soil and groundwater testing to a minimum depth of 50 feet" are required to quantify that risk . The results of that testing are not included, nor is there even a clear statement that any were in fact done.

15 (d): groundwater testing: No groundwater testing results are presented

The Draft EIR, (p.183), states that there is a risk of groundwater recharge during and after construction on the site and presents no evidence to the contrary. In fact it admits that "Soil and groundwater testing to a minimum depth of 50 feet" are required to quantify that risk . The results of that testing, or even any indication it occurred, are not presented in the Draft

EIR.

Failure to present site specific evidence on potential substantial impacts on groundwater and water quality prevents a full understanding of the environmental consequences of this project, and deprives the public of meaningful participation in the evaluation of this proposal.

15 (e): dewatering **(p.183)**

15 (f): soil erosion/liquefaction: <u>No geotechnical engineering review re soil transport by wind and water is presented</u>

No evidence that runoff or erosion would occur during construction is presented except to say "The proposed project would involve the full development of the site, including the construction of four buildings, a subterranean parking structure and the extension of a paved road.....…... impervious surfaces",and because.."the project site is underlain with Hanford soils, which have low potential for erosion", (p 139) . No study of the soil composition of the site has been presented regarding the presence of Hanford soils.

15 (g): seismically induced ground shaking (pp.137-140)

15 (h): project construction and equipment staging (p.116):
THE FAILURE OF THE DRAFT EIR TO ADEQUATELY PRESENT RELIABLE EVIDENCE ABOUT THE PROPOSED PROJECT'S GENERATION OF CONSTRUCTION NOISE PREVENTS MEANINGFUL PUBLIC PARTICIPATION IN THE EVALUATION PROCESS

<u>No evidence of Mitigation of Construction Noise is presented</u>

The Draft EIR is fundamentally obfuscatory about the damage through noise pollution which this project is going to bring on this neighborhood

(I) The Draft EIR states that "the fact that residents of urban areas are used to temporary construction noise from time to time, the City does not consider construction activities consistent with certain timing limits to constitute significant environmental effects".(p.207).

(ii) No evidence of how Construction Noise Mitigation Measures CON11 through CON15 could be relied on to control construction noise levels which would be sourced on the site for a minimum period of 13 months.

(iii) On p 220 t**he Draft EIR** states that "stationary source noise levels were calculated based on available technical data" without saying what that data was or how it was used.

(iv) On p 221 the Draft EIR says that Vibration levels were estimated based on information provided by the FTA. through a source entitled *Transit Noise and Vibration Impact Assessment*, May 2006. without specifying how the assumptions relating to mass transit construction projects outlined in that publication apply to the redevelopment of a small inner urban site such as the Village Trailer Park and/or how they were modified to do so.

(v) No evidence is presented to support the statement that Mobile Source Noise Levels are at a “less-than-significant” level.

(vi) The FHWA TNM Version 2.5 Look-Up Tables used in building a model to predict mobile source noise levels has been discontinued and is not considered to be good practice in transportation planning.

(vii) The Draft EIR does not specify how California Department of Transportation *Technical Noise Supplement* was used to predict Ldn noise levels from mobile sources. The conclusion that “ the proposed project would result in a less-than-significant impact related to mobile noise.” (EIR p221) is unproven.

(viii) No effort is made to quantify the noise in the neighborhood from the likely construction at other development sites in the neighborhood, 2834 Colorado or at 2812 Colorado (Roberts Business Park). Therefore no basis for a comprehensive view of the adequacy of Noise Mitigation Measures currently used in Santa Monica is presented.

The Draft EIR is therefore fundamentally flawed in its failure to present data on noise generation from the proposed project in a manner to permit meaningful participation by the public in evaluation of impact of this development.

15 (g): <u>No geotechnical engineering review re liquefaction and/or seismic settling is presented</u>**.**

Mitigation GS3 does not provide any information on how impacts related to liquefaction would be reduced to less than significant because the draft EIR provides no information on what the specific characteristics of the soil are.. It says on page 137 -”According to the City of Santa Monica’s Geologic Hazards map, the southwestern portion of the project site is located within an area that has “medium potential” for liquefaction, and the northeastern portion of the site is located within an area that has “high potential” for liquefaction. And then concludes “Nonetheless, a portion of the site is located in an area with a high liquefaction potential.”(p.138).

The Draft EIR states (p 138) that, since Mitigation GS1 requires, 'At the time of final building plan check, a site-specific Geotechnical Report (shall) be submitted to the City of Santa Monica Building and Safety Division for review and approval ”, such a submission “solves these problems”. A report on analysis of site-specific soil samples to determine the site-specific liquefaction and seismic settlement potential thereon has to be provided for public review. Failure to do so prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.

16. The Draft EIR fails to proceed as required by law in that it also indicates no attempt by the City to obtain payment from the proposed developers for public facilities as permitted in Government Code §65864(c), nor does it discuss why it did not do so as to the many matters it admits the problems with specific types of environmental impacts could be significant, such as the property being in a Fault Hazard Management Zone (p.137),

exceeding SCAQMD daily construction significant threshold emissions (p.206), and fugitive dust thresholds (p.111).

17. The Draft EIR fails to proceed as required by law in repeatedly deciding that "sensitive receptors would not be exposed to substantial pollutant concentrations," apparently thereby limiting where “sensitive receptors” are, to the schools it identifies (which as indicated in section 2 above, are not even all the schools in the neighborhood). The Draft EIR does this, e.g., at p.113 regarding diesel particulate matter. This problem is the same as to odors (Draft EIR p.95).

This limiting “sensitive receptors” to school children is contrary to the MOU entered into with the proposed developers in 2007 that they would build the building where all the current tenants of land for homes at the property were going to be given replacement apartments to rent while those current land tenants were allowed to stay on the property. Many of these people are “sensitive receptors,” since they are elderly, have to use oxygen from tanks to breathe, have asthma, have resident children who have asthma, and/or are in danger because of advanced age, weakness, and/or living in polluted cities in America for decades, of becoming ill from being exposed to toxic air contaminants, e.g., diesel particulate matter.

18. The Draft EIR fails to proceed as required by law as to shadows to be cast onto adjacent properties (pp.75 &76 & Fig.4.1-3). These admitted shadows it calls less than significant impacts of the proposed development because (a) the shadows would not be cast upon "shadow-sensitive uses”, (b) for durations that exceed those identified in City thresholds.

No California case uses the term “shadow-sensitive areas,” much less uses that term to says it is acceptable to shade some areas more than others. Neither is there any such term used in the SMMC or defined there. Where this came from the Draft EIR does not bother to say so the public can intelligently discuss whether that applies to where and how the Draft EIR is applying it.

Neither does any California case allow shading adjacent properties for some duration of time per day as an acceptable threshold. The Draft EIR, in any event, which has the burden of proof on all the issues, does not bother to cite the source so the public can intelligently discuss whether it applies as the Draft EIR uses it.

The California solar rights law does not allow a city to keep any resident from putting solar panels on his/her roof unless the City has a specific health and safety reason for doing so. One can only imagine how far a court would deem the City's finding particular roofs to be not "shadow-sensitive uses", from the necessary health and safety reason necessary for preventing installation of solar panels there. Neither is it difficult to conceive of the damages any of those owners of "shadow-insensitive roofs" will collect from the City for deciding on its own, in violation of the state law, that possibly well over a 10% loss of solar power generation ability is just fine, without a health and safety reason. 10% of a 12-hour day is 1.2 hrs. The charts listed in the Draft EIR have neighboring houses shaded over three (3) hours in some cases. Not shadow-sensitive, indeed! Violation of state law is not proceeding as required by law.

Types of Failure to Proceed as Required by Law consisting of failing to present substantial evidence that a particular impact is insignificant, or that mitigation is adequate to make it insignificant, or that if it is significant and cannot be mitigated, that community benefits discussed will be adequate to compensate the community for the significant impacts.

Standard of Appellate Court Review: Substantial Evidence.

19. The Draft EIR fails to proceed as required by law as to the "several" mature trees it admits cannot be moved elsewhere and therefore will be destroyed if the proposed project is approved. The actual number—which no reasonable person would discount by using the word "several" as the Draft EIR does—is 110 (p. 99). SMMC § 9.04.02.030.860, defines "Tree" as follows:

> A plant having at least one well-defined stem or trunk and normally attaining a mature height of at least fifteen feet, with an average mature spread of fifteen feet, and having a trunk that shall be kept clear of leaves and branches at least six feet above grade at maturity.

This does not, as the Draft EIR does at pp. 100-102, limit trees that must be considered trees, with the values to the environment listed and supported by source evidence in the Comments we submitted in June 2010, to those that are "not locally-protected resources." The Draft EIR finds this provision in the SMMC applying only to trees in City rights-of-way. Therefore, that provision makes those trees protected because they belong to the City, but that does not excuse an EIR's not discussing the environmental impacts of removing during development other mature trees and not being required to replace them all as mitigation. The rest of the discussion, likewise, seems to be limited to the City's Urban Forest plan, which is about street trees, not trees on property to be developed, which is what the Draft EIR is supposed to discuss, and the environmental impacts of losing 110 mature trees (p. 99).

In fact, discussing the environmental impacts of the loss of 110 mature trees when there is no local law requiring their replacement if development destroys them is a perfect example of exactly why the law requires an environmental impact report done by people who know how to discuss environmental impacts and do so, and why the law requires that City to consider those impacts before a decision to allow a development is made. This is contrasted to people who present mere words to rubber-stamp the very agency like the City of Santa Monica that has already made up its mind to approve a development and does not want to have to even discuss alternatives. If there is a law prohibiting whatever the matter is, as discussed in Sections 1 through 18 above and the City has not followed the law, that is the kind of failure to proceed as required by law that will be reversed by the Court without considering what the evidence of environmental impacts were. The kind involved here is the kind where there is no law that has been violated except CEQA itself. Therefore, the standard of review is whether the lead agency had substantial evidence to conclude as it did.

Here, there is no evidence the loss of 110 trees will not impact the environment significantly by loss of rain absorption, carbon sequestration, soil erosion control, flood control, oxygen creation, carbon dioxide absorption, providing shade, providing a place for

wildlife and children to climb, and on and on. By failing to discuss any of these, the Draft EIR fails to proceed as required by CEQA.

20. Failure to proceed as required by law in using Conflicting data about what is going to be demolished and therefore not considering all the environmental impacts of the proposed development.

The Traffic Study, (Appendices, p. 212), says that the project entails the demolition of 76 mobile homes. "The site is currently occupied by approximately 76 rent controlled mobile homes. The proposed project would demolish the existing mobile homes." However, the Draft EIR says that "no mobile homes are going to be demolished"(p.168). In fact, in 2006 when the proposed developers gave notice of eviction, the City's files show they gave it to 109 families. The Rent Control Board's files show there were 109 trailers here in 1979 when registration was first required. There were therefore 109 trailers on the site at any relevant time, and any that have been demolished or will be demolished will be demolished as a result of the development. The MOU entered into by the City in 2007 recognizes these trailers are mostly too old to legally be moved under state law, and therefore to develop something else on the property will require demolition on-site. Such demolition's environmental impacts therefore have to be evaluated as part of the Draft EIR.

To find otherwise would make no more sense than to say moving contaminated soil to excavate is not a result of development. It simply is.

We submit the reason the developers are giving the City the wrong information that the trailers will not be demolished for the development, and why we had to file a lawsuit against them to get them to get the trailers inspected for asbestos, lead-based paint, formaldehyde, and mold, is that the presence of these substances in sometimes 60-year old trailers is well-known and substantial. Most of them cause no impact until the trailer is disturbed by demolition. However, once development causes them to be disturbed, the impacts are highly significant. For instance, papers turned over in our lawsuit against the proposed developers showed 6 out of 10 trailers demolished in a certain time period had significant levels of asbestos in them, and at least one had lead-based paint. Those environmental impacts have to be discussed.

21. Failure to proceed as required by law in Inaccurately describing existing buildings to be demolished on the site.

The Draft EIR shows a "View of the office on the proposed site" Figure 4.10-1 (p. 187) and Fig 4.1-1 (on page 71). The photograph referred to as Fig. 4.1-1 shows a building which is not in fact the office, but a building opposite the office, North of trailer space B-1, which building has been boarded up since the resident manager who lived there got ill from mold infestation there.

In fact the building shown in the photograph (Fig 4.1-1) (and described in the caption as "the office") is not mentioned as being on the site at all in the description of the site. The Draft EIR (p.41) describes the existing site as follows:

“Existing Site characteristics : The existing buildings (sic) on-site are one-story. The only permanent structure is the office located at the entrance of the mobile home park, which is one-story and built in a typical mid-century modern style with low-slung buildings, distinct lines and large slanted windows. The adjacent pool is surrounded by a chain link fence. The remaining uses on-site are mobile homes in various styles and conditions, as well as surface parking”.

Not only does the above not mention the former resident manager's residence building photographed in Fig.4.1-1, (which the caption calls the “office,”), it also ignores another building on site, the Laundry Room in Row C .

The Tree Inventory (!) Appendix D, (Draft EIR Vol.2 p.196) is the only time the Draft EIR gets the number of existing on-site structures correct, which seems to indicate only the arborist, who put tags on most of the trees, actually came to the site. Even then it incorrectly labels the three buildings it shows in TREE INVENTORY as, “Office”, “Manager”, and “Laundry”, and so fails to mention that the building called “Office” in this inventory also contains a community room, a community library and two bathrooms with showers.

The importance of getting what is on the site correct when discussing environmental impacts of demolishing them is obvious, but particularly when one building left out is one known to be infested with mold and others include a laundry room and two bathrooms, which are likely to be infested with mold if one building on the site is, and all the buildings are mid-Century buildings, again, as with demolishing trailers, the Draft EIR has eliminated discussion of significant environmental impacts caused by development. CEQA requires discussion of them all. Failure to mention demolition of the community room, a community library and a row of showers for use by tenants, and presenting false data to conceal the existence of several mid- century buildings on the site, also deprives the public of the opportunity for meaningful participation in evaluation of this proposal.

22. Failure to proceed as required by law in presenting traffic information and increased trips to be generated by the proposed project, in that inadequacies in the model used are not admitted to in the Draft EIR so the public can have a meaningful opportunity to discuss the results intelligently and influence decision-makers not to approve the proposed project, in that the trip generation computer model guidelines and disclaimers specifically state its validity with various types of mixed uses has not been validated and it should be checked with on-site traffic counts and not used by anyone but expert traffic engineers, whose participation is not indicated in the Draft EIR. Nonetheless, the Draft EIR fails to indicate any on-site traffic counts were done, which is particularly important since rush-hour traffic is the key determinate of whether there is significant impact of additional trips caused by the proposed project, and evidence of comments by Los Angeles County Metropolitan Transportation Authority is omitted, in particular that a Traffic Impact Analysis (TIA) as required by the State of California Congestion Management Program TIA Guidelines was ever even discussed with that agency, let alone attempted.

> Traffic data used in the Draft EIR is out of date. It is therefore unreliable as to the assessment of the impact of the proposed project on current traffic conditions.

Traffic counts we have done in the current year show that the traffic data presented in the Draft EIR intersection operation analysis does not accurately reflect the traffic impacts of the proposed development.

The data used throughout the Traffic Study for the Draft EIR was collected in 2007 for the majority of the intersections included as being within the traffic zone of influence of the proposed project. (Draft EIR p.252) The Santa Monica City TRAFFIX data base is based on traffic counts done in 2007.

No new traffic counts were undertaken as the basis for any of the trip generation assertions made by the Draft EIR.

Traffic counts for the Traffic Study for the Draft EIR were done in the fall of 2008 for the intersections at Centinela Avenue & Exposition Boulevard,• Bundy Drive & Wilshire Boulevard, Bundy Drive & Santa Monica Boulevard, Bundy Drive & Olympic Boulevard and Bundy Drive & I-10 Eastbound On-Ramp.

So called "existing traffic" (Draft EIR p. 216) information on conditions at the intersections at Yale Street & Colorado Avenue, Stewart Street & Pennsylvania Avenue, and Centinela Avenue & Nebraska Avenue, is almost three years old with a traffic count done in <u>January 2009</u> as its source. No attempt to add in the additional trips already determined for the project approved at Colorado and Stewart was made, nor was there any attempt shown to add the effects of the projects approved since January 2009 closer to the beach from the subject property and therefore sure to have commuter traffic impacting these intersections.

<u>At crucially important intersections no criteria to determine a significant traffic impact were defined</u>.

For the below mentioned intersections, no criteria to determine a significant traffic impact were defined. Instead, these intersections were treated as though they were signalized, and the impact analyzes were conducted as if they were signalized intersections, which none is. (Draft EIR vol II p. 299). Therefore the proposed feasibility of mitigation of traffic impact has no proper basis. These intersections are:

- Yale Street & Colorado Avenue
- Stewart Street & Pennsylvania Avenue
- Stanford Street (west) & Colorado Avenue
- Stanford Street (east) & Colorado Avenue
- Centinela Avenue & Pennsylvania Avenue/Iowa Avenue

<u>No data is presented to show how the traffic mitigation measures proposed would be compatible with the social, economic and neighborhood character of the primarily residential area in which the project is sited</u>.

Notwithstanding that the Draft EIR does not adequately establish how the use of the City of Santa Monica TRAFFIX database would show that any mitigation measure

proposed would fully mitigate project-related traffic impact in the neighborhood, the traffic mitigation measures proposed are not compatible with the social, economic and neighborhood character of the primarily residential area in which the project is sited. This failure to present information on how the mitigation measures would be compatible with the primarily residential character of the area in which the site is located prevents meaningful public participation in the evaluation process.

The Draft EIR does not provide reliable trip generation data to as the basis for estimating the traffic impacts of the project on the neighborhood.

Trip Generation does not take into account the project site location bordering on a Trip Generation Area Type 1 (Draft EIR vol II p 915).

Although the Travel Demand Forecasting Model used in the study purports to be based on a relationship between travel and the built environment, the disclaimer information on it states it is unreliable in providing information on the behavior of pass by trips, a crucial element in measuring the traffic impact of the proposed project.

No Current Origin Destination (O-D) data is provided. No information on what trip production rates from the zonal socio-economic estimates of the LUCE were incorporated in the traffic study. What assumptions underlying the City of Santa Monica's Travel Demand Forecasting Model were used in the traffic study have not been specified. In particular the following information has not been provided:

(a) What definition was used for trip rates by trip chaining?
(b) How do the trip rates by trip purpose compare with those for other urban areas with similar characteristics (and what were the areas so deemed)? Were person or vehicle trip rates used? How do the
rates compare with earlier rates for this area?
(c) How do the mean trip lengths by trip purpose compare with those from other areas in Santa Monica with similar characteristics (and what were the areas so deemed)? Are the Home-based Work mean trip lengths the longest and the Home Based-Other mean trip lengths the shortest?
(d) How do the Trip Length Frequency Distributions by trip purpose compare with other areas in Santa Monica with similar characteristics?

The Draft EIR does not specify how the use of the City of Santa Monica TRAFFIX database from 2007 could determine that any mitigation measure proposed would fully mitigate project-related impacts. Neither does it specify how the use of the City of Santa Monica TRAFFIX database would show that any mitigation measure proposed would fully mitigate project-related traffic impact in the neighborhood in construction year 2012.

The Draft EIR merely states that traffic impacts would be mitigated. There is no evidence of how that would happen, how that was deduced from any data, or even what specific data was used to make that deduction. Conclusions of the traffic study that mitigation measures proposed for any intersection studied would reduce project

impacts to below significant levels do not provide the basis for meaningful public participation in the evaluation of the project.

For all these reasons the traffic impact conclusions of the Draft EIR are presented in a way that deprives the public of meaningful participation in a decision on what traffic impacts of the proposed project on the neighborhood could/should, or cannot be, mitigated.

23. The Draft EIR fails to proceed as required by law in ignoring the comments of those of us who commented upon the Notice of Intent in July 2010. In particular, the factors of environmental injustice and unlawfulness of this project under the Rent Control Law were simply ignored.

None of our comments of categories needed to be covered, made in response to the notice of preparation of a Draft EIR, have been included in the draft EIR. Primary among these is Environmental Injustice.

THE DRAFT EIR OMITS ANY DISCUSSION OF WHAT ENVIRONMENTAL INJUSTICES THE PROJECT REPRESENTS AND SO PREVENTS MEANINGFUL PUBLIC PARTICIPATION IN THE EVALUATION PROCESS

Environmental injustice occurs whenever an inequitable distribution of the environmental burdens of pollution and high density development fall on particular demographics or geographic areas. In this instance root causes of such environmental injustices include unresponsive and unaccountable Santa Monica City government policies and regulation, and the lack of resources and political power in the community where Village Trailer Park is located. The decision to rezone Village Trailer is being touted as "compatible with LUCE goals." The way the first two projects to be considered under the LUCE addition to the General Plan have been handled shows LUCE's phraseology of goals and policies was merely a cloak under which a combination of business-focused zoning and secret tax regulatory control targets would meet.

Meeting these undisclosed targets is apparently the dominant consideration in the hybrid "mixed use creative" land use category. Nothing else would explain ignoring at least 11 levels of insanity and illegality in approving this project, discussed above. The LUCE itself as the City Council is interpreting it makes no effort to protect neighborhoods whenever their destruction would yield a greater tax revenue base for the city. This is in spite of the fact that LUCE states a primary goal of "preserving existing neighborhoods," thereby having lulled residents of VTP into thinking, of course, that their neighborhood, the 3.85 acre Park where they lived, which had existed for 60 years at the time, would certainly be preserved. The Council's twisting of these very goals, by deciding in advance to make areas other than this one less commercial, have pushed demand for commercial uses into this one. No evidence is presented in the Draft EIR to show that the destruction of Village Trailer Park was necessary to uphold proper planning of the City of Santa Monica.

The Draft EIR does not refute the analysis given in our Comments to the Notice that the Draft EIR would be prepared (Appendix A, pp.3-7) that the area in which VTP is located has the highest presence of minority and low-income populations, seniors, and women of any area of the City, so burdening it with over development when other less so areas are not so burdened must be justified. Even a preliminary environmental justice analysis evaluates each alternative to determine whether there is a potential for disproportionately high and adverse effects on minority or low-income, senior, and /or women populations when compared to populations in the study area that are not so highly concentrated in these suspect groups. By failing to do ANY analysis, the Draft EIR fails to provide the public ANY meaningful public participation in the evaluation process as to whether environmental injustice is justified in this case. In fact, by ignoring the issue completely, the Draft EIR shows it has not responded to the comments made before its preparation, but instead has treated the EIR process as just "a set of technical hurdles for agencies and developers to overcome." Vineyard Area Citizens v. City of Rancho Cordova (supra), 40 Cal.4th at pp. 449.

Neither is our proposed category of illegality of the project included in the DEIR, which in our comments we stated needed to be included as part of our Item 6: *"The EIR Must Discuss the Environment Impacts of the Proposed Project's Illegality Being Hidden from the Residents by the City and the City's Conspiring with the Developers to Try to Transform the Illegal Development into a Legal One (Neighborhood Effects, Population and Housing, and Land Use and Planning) "* **[Emphasis added.]**

Instead, the Draft EIR glosses over the fact that 109 rental spaces for mobilehomes owned by residents (or rented out to tenants by homeowners) are and have been since 1979—27 years before this proposed development was proposed to the City--covered by rent control at the site. There is no precedent whatsoever in any law for any city or county in California or any other state EVER eliminating 109 housing spaces, where people own their own homes and are covered by rent control provisions in the jurisdiction's charter to not have that rent of $300-500 per month raised except with the Rent Control Board's permission, when the owner of the land proves under pre-existing standards that it is not making a fair return on the land.

Neither is there any precedent in any state for renters of land with the right under rent control not to be evicted except for good cause, to have their right to rent the land for $300-500 per month converted into a mere right to rent a 325 square foot single resident occupancy apartment for $1400 a month on a month-to-month or some other lease basis.

Finally, there is no precedent in any real estate appraisal law applying in any context—eminent domain, disaster relief, or whatever—that would make an obligation for relocating homeowners such as the proposed developers have under state and local law, into just the obligation to pay what renters would receive. This proposed development's effects on existing homeowners at the site has not been taken into account in the Draft EIR at all, except with "let 'em eat cake" discounting words. The facts of the magnitude of the problem have not been confronted in the Draft EIR at all.

Conclusion

The magnitude of defects in the Draft EIR discussed above mean this Draft EIR must be completely reworked and recirculated. The cases all say an adequate period to comment must be given, not just the 45-day minimum. Given the magnitude of the project to be covered by this Draft EIR and the major change the proposed project represents from purely residential use for over 60 years and now unblighted status, so no clear justification for any change, to unpresented density and mixed uses never combined in this City before, far more than 45 days should have been given in the first place, and with the major reworking that must take place, more than that minimum should be allowed in fairness to the public when the major changes that must be made are made.

In addition to the inadequacies of the Draft EIR, more time should be given for two other reasons. One is that we are threatened with loss of 109 rent-controlled home spaces, as to which the state law considers us homeowners. Nothing in the Draft EIR considers us anything but renters or adequately covers the impact of the proposed development on us as homeowners. That means it is contemplated that 109 families, many of whom do not have the money to hire professional environmental law attorneys, will lose homes they own without adequate time to object to the bases being given for that loss.

The second additional reason is that since this Draft EIR was circulated, Mr. Luzzatto has begun demolishing and relocating trailers at the property. The Draft EIR says no trailers will be demolished as part of the development (p. 168). His demolishing them now is what, if it is not part of the development? It certainly is not anything any of us requested or want. He started doing this just when the Landmarks Commission was on the verge of voting, as it then did vote soon after, to investigate the landmark status of this property. Destroying old trailers in that time period is akin to destroying evidence in a lawsuit. Then one of us filed a lawsuit trying to stop it, and he had the size of the crew increased fivefold and working all day Saturday to finish doing it before she could get a TRO. She therefore is now seeking damages for the improper, unpermitted, improperly noticed demolition and destruction of old building materials involved in disturbing trailers from their sites. Another neighbor has written protesting that we are living in a ghost town, where no one would choose to live.

Given (1) these wrongful acts, and (2) the concomitant wrongful failure of the Draft EIR to consider environmental impacts of demolition of trailers as part of environmental impacts of the proposed development, as well as all the other defects discussed herein, including what must have been intentional misrepresentation of the contents of the fatally-defective City law, the Draft EIR also must be recirculated. Part of what makes this so crucial is the fact that 109 trailers were here in 2006 when the developers served the first notice that they were going to close this Park and leave the land empty, and in order to do that some number very near 109 trailers would have to be demolished because the 2007 staff report on the MOU states most here cannot be moved under state law. Another aspect is papers the developers filed in the lawsuit state 6 out of 10 trailers they demolished on a certain set of days had significant levels of asbestos in them. No tests were done for lead-based paint, mold, or formaldehyde, when we know all of those toxins are in trailers and buildings at this site.

A table summary of these comments except as to failure to discuss Environmental Injustice

and Project Illegality follows and is attached. Exhibits are submitted concurrently under separate cover.

DATED: January 6, 2012

Respectfully submitted,

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SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
Aesthetics: Project structures would cast shadows onto adjacent properties. However, the shadows would not be cast upon shadow-sensitive uses for durations that exceed those identified in City thresholds. Impacts would be less than significant.	No mitigation measures are required	The DEIR does not show any evidence for its assumptions about 9 am shadows and defines shadow sensitive areas to obscure the inappropriateness of the height of the development
AIR QUALITY: Operation of the proposed project would generate daily air pollutant emissions, but emissions would not exceed SCAQMD regional significance thresholds. Therefore, the proposed project would result in a less-than significant impact related to regional operational emissions.	No mitigation measures are required.	How do we know that? No evidence that SCAQMD was approached regarding the project. There is no evidence that the project related emissions specified in the DEIR are accurately identified, categorized or evaluated.
The proposed project would generate off- and on-site localized emissions. Localized emissions would be below significance thresholds. Therefore, the proposed project would result in a less-than-significant impact related to localized concentrations.	No mitigation measures are required.	How do we know that? There is no evidence of how SCAQMD guidance was timely obtained or used in presenting any of the air quality data presented for the current year, and in particular for the output of Mobile source Green House Gas (GHG) emissions from URBEMIS2007. Consequently the data presented is unverified.
Operation of the proposed project would generate toxic air contaminant emissions, but emissions would not exceed SCAQMD significance thresholds. Therefore, the proposed project would result in a less than significant impact related to toxic air contaminants	No mitigation measures are required.	The data presented is unverified.
Biological Resources: Several mature trees on the project site would be removed to accommodate new development. However, these trees are ornamental landscape trees and are not locally-protected resources. Tree removal and/or replacement would be conducted in accordance with the City's Tree Code. Therefore, impacts would be less than significant.	No mitigation measures are required.	CEQA requires discussion of known environmental impacts. What happens regarding street trees or trees the City owns is irrelevant.
Construction Effects: Construction activity would generate odors from various activities (e.g., equipment exhaust). However, sensitive receptors would not be exposed to substantial odors. Therefore, the proposed project would result in a less than- significant impact related to odors	No mitigation measures are required.	A plan for exhaust dispersion during construction is required irrespective of sensitivity of receptors and/or their location.
Construction activity would intermittently generate high	CON 10 through 15	no reliable information is included

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
noise levels on and adjacent to the project site. This may affect noise sensitive uses in the vicinity and conflict with the City policies. Implementation of Mitigation Measure CON10 through CON15 would reduce impacts to less than significant.	CON 10 through 15	to provide better risk determination of noise levels. Mitigation measures are vague. e.g CON12 says "electricity will be used whenever available".
Construction activity would generate vibration levels that exceed the established standards. Therefore, the proposed project would result in a significant and unavoidable impact related to construction vibration.	No feasible mitigation exists.	Significant and unavoidable
The proposed project would contribute to a cumulative construction air quality and construction vibration impact.	No feasible mitigation measures exist	Cumulatively considerable
Geology and Soils: The project site is located in a Fault Hazard Management Zone as designated by the City. Compliance with all applicable provisions of the Santa Monica Building Code and implementation of Mitigation Measure GS1 would reduce impacts to less than significant.	GS 1: At the time of final building plan check, a site-specific Geotechnical Report shall be submitted to the City of Santa Monica Building and Safety Division for review and approval. The Geotechnical Report shall be prepared in accordance with the City's Guidelines for Geotechnical Reports and at a minimum shall address: seismic hazards (fault management zone; groundshaking; liquefaction; subsidence, etc); hydrocollapse potential; and expansive soils. Information obtained from the Geotechnical Report shall be incorporated into the design and construction of the proposed project. The recommendations provided in the Geotechnical Report regarding foundation design, retaining wall design, excavations and shoring shall be fully implemented	How can we discuss this intelligently? A report on analysis of site-specific soil samples to determine the site-specific liquefaction and seismic settlement potential thereon has to be provided for public review. Failure to do so prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.
Seismically induced ground shaking could expose people or structures on the project site to potential adverse effects.	GS 1 At the time of final building plan check, a site-specific Geotechnical Report shall be submitted to the City of Santa Monica Building and Safety Division for review and approval. The Geotechnical Report shall be prepared in accordance with the City's Guidelines for Geotechnical Reports and at a minimum shall address: seismic hazards (fault management zone; groundshaking; liquefaction; subsidence, etc); hydrocollapse potential; and expansive soils. Information obtained from the Geotechnical Report shall be incorporated into the design and construction of the proposed project. The recommendations provided in the Geotechnical Report regarding foundation design, retaining wall design, excavations and shoring shall be fully implemented	How can we discuss this intelligently? A report on analysis of site-specific soil samples to determine the site-specific liquefaction and seismic settlement potential thereon has to be provided for public review. Failure to do so prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
Seismic activity could produce sufficient ground shaking to result in liquefaction on-site.	At the time of final building plan check, a site-specific Geotechnical Report shall be submitted to the City of Santa Monica Building and Safety Division for review and approval. The Geotechnical Report shall be prepared in accordance with the City's Guidelines for Geotechnical Reports and at a minimum shall address: seismic hazards (fault management zone; groundshaking; liquefaction; subsidence, etc); hydrocollapse potential; and expansive soils. Information obtained from the Geotechnical Report shall be incorporated into the design and construction of the proposed project. The recommendations provided in the Geotechnical Report regarding foundation design, retaining wall design, excavations and shoring shall be fully implemented	How can we discuss this intelligently? A report on analysis of site-specific soil samples to determine the site-specific liquefaction and seismic settlement potential thereon has to be provided for public review. Failure to do so prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.
The project site is located on Hanford soils, which have a low potential for expansion; however, without proper site preparation or design features to provide adequate foundations, the proposed project could result in a significant impact related to expansive soils.	At the time of final building plan check, a site-specific Geotechnical Report shall be submitted to the City of Santa Monica Building and Safety Division for review and approval. The Geotechnical Report shall be prepared in accordance with the City's Guidelines for Geotechnical Reports and at a minimum shall address: seismic hazards (fault management zone; groundshaking; liquefaction; subsidence, etc); hydrocollapse potential; and expansive soils. Information obtained from the Geotechnical Report shall be incorporated into the design and construction of the proposed project. The recommendations provided in the Geotechnical Report regarding foundation design, retaining wall design, excavations and shoring shall be fully implemented	How can we discuss this intelligently? A report on analysis of site-specific soil samples to determine the site-specific liquefaction and seismic settlement potential thereon has to be provided for public review. Failure to do so prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.
The proposed project would not contribute to a cumulative impact related to geology and soils.	No mitigation measures are required.	How can we discuss this intelligently?No evidence is presented to support this. No calculations are provided. There is nothing to discuss. Failure to provide any evidence prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.
Greenhouse Gas: Operation of the proposed project	No mitigation measures are required.	URBEMIS2007 model output

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
would generate greenhouse gas emissions, but emissions would not exceed the established significance threshold.		and other data presented is unverified.
Hazards and Hazardous Materials		
The proposed project could potentially uncover asbestos and lead based paint during demolition of existing structures. Therefore, the proposed project could potentially create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. Implementation of Mitigation Measures HM1 and HM2 would reduce this impact to less than significant.	HM1 Prior to issuance of a demolition permit, a Licensed Asbestos Inspector shall be retained to determine the presence of asbestos and asbestos containing materials (ACM) within structures to be demolished that are present on the project site. If asbestos is discovered, a Licensed Asbestos Abatement Contractor shall be retained to safely remove all asbestos from the development site. HM2 Prior to issuance of a demolition permit, lead-based paint testing shall be conducted for existing permanent structures to be demolished. All materials identified as containing lead shall be removed by a licensed lead-based paint/materials abatement contractor.	These abatement proposals are inadequate. No acceptable Exposure/Ambient Air Standards are specified. A 3rd party licensed Asbestos Air Monitoring Firm is required. In addition to/or instead of a Licensed Asbestos Abatement Contractor, a Licensed Asbestos HAZARD Abatement Contractor, and a Licensed Asbestos Hazard Evaluation Specialist are required. The project also requires an Asbestos Hazard Abatement project designer to provide information on any work, and work sequence prior to any demolition and that this study be made available at the EIR stage. Formaldehyde and mold have caused illness at this site. The DEIR deliberately ignores these hazards.
HYDROLOGY AND WATER QUALITY		
The proposed project may require temporary and/or permanent dewatering. Therefore, groundwater impacts would be potentially significant. Implementation of Mitigation Measure HW1 would reduce this impact to less than significant.	HW1 If temporary and/or permanent dewatering on the project site is required, the Applicant shall obtain a dewatering permit from the City of Santa Monica Water Resources Protection Program prior to the issuance of a grading permit. Soil and groundwater testing to a minimum depth of 50 feet shall be conducted to the satisfaction of the Water Resources Protection Program staff. If contaminated groundwater is discovered on-site, treatment and discharge of the contaminated groundwater shall be conducted in compliance with applicable regulatory requirements including the Los Angeles Regional Water Quality Control Board standards	It is obfuscationary to state that a mitigation measure might be required when no information is included to provide better risk determination. How can we discuss how to avoid, minimize and/or mitigate contaminated groundwater impacts. and any evaluation of those risks when they are blandly categorized as something that might "happen in the future", and if they do, the it is ok! No analysis as required has been provided.
Implementation of the proposed project could increase stormwater runoff from the site to the local storm drain system. However, this increase would not require the expansion or construction of new major storm drain infrastructure. This impact would be less than significant.		The conclusion that storm water run off is less than significant is based on accessing a Los Angeles Department of City Planning website on September 15, 2010. (DEIR p.177) and on an inter office email dated September 1, 2010. (DEIR p 175). This is not adequate. No information is

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
		presented on the adequacy of the sewer mains to meet the demands of the project. The project site is located in the FEMA Q3 Floodplain (ECTP 2 p.17). It is therefore in a zone of uncertainty and possible risks associated with flood inundation. It is obfuscationary to state that no mitigation measures are required when no information is included to provide better risk determination. How can we avoid, minimize and/or mitigate postconstruction stormwater runoff impacts.and any evaluation of those risks when they are blandly categorized as "negligible" with no evidence presented to justify that categorization?
ECTP 2=Exposition Corridor Transit Project Phase 2 Final EIR		Note on the above: The Pico-Kenter Storm Drain has been identified as deficient, as it is incapable of accommodating the runoff from a 50-year storm event (SMPCDD 2004, 4.7-1). In addition, the connector pipes (lines between the catch basins and storm drain mains) to the Pico-Kenter Storm Drain are made of corrugated metal that has gradually deteriorated.(ECTP 2 p.15)
Neighborhood Effects: Localized construction emissions would exceed SCAQMD significance thresholds for fugitive dust after mitigation is applied. Therefore, construction of the proposed project would result in a significant and unavoidable impact related to localized air emissions.		There simply is no analysis such as what amount of each of these pollutants causes asthma in the average 55-pound child, or anything else real.
Construction activity would intermittently generate high noise levels on and adjacent to the project site. This may affect noise sensitive uses in the vicinity and conflict with the City policies. Implementation of CON10 through CON15 would reduce the impacts to less than significant.	CON10 All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices. CON11 Grading and construction contractors shall use quieter equipment as opposed to noisier equipment (such as rubber-tired equipment rather than metal-tracked equipment). CON12 The construction contractor shall use on-site electrical sources to power equipment rather than diesel generators when electricity is	no reliable information is included to provide better risk determination of noise levels. Con Mitigation measures are vague. e.g 12 says "electricity will be used when available".

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
	readily available. CON13 Construction haul truck and materials delivery traffic shall avoided (sic) residential areas whenever feasible.	
Project construction and equipment staging would temporarily increase truck traffic in the project area, which could disrupt the normal use of the sidewalk and adjacent streets, and affect parking availability. However, Mitigation Measure CON16 would reduce the impacts to neighborhoods to less than significant		CON 16 denies public the opportunity to assess the impacts of the project. Specific data on which streets will be affected, when and how they will be so affected is required now, or else an admission that nobody knows how should be made.
The proposed project would increase traffic levels along neighborhood street segments in the vicinity of the project site. The projected increases are above City adopted thresholds on 6 of the 15 studied street segments under the existing plus project conditions. The projected increases are above City adopted thresholds on 5 of the 15 studied street segments under the future plus project conditions. Therefore, without mitigation, the proposed project would result in a significant impact related to neighborhood traffic	No feasible mitigation exists to reduce this impact	No surveys were conducted, Source of trip rates, mean trip lengths, and trip length frequency distributions used in the model calibration are not provided Data was “borrowed” from other urban areas. Impacts are understated.
The cumulative growth in housing and development associated with the proposed project and related projects in the neighborhood would lead to an increased level of traffic in the project vicinity, thereby resulting in potential traffic impacts to neighborhood street segments. No feasible mitigation measures were identified to reduce the significant impact related to neighborhood traffic to less than significant. Therefore, the proposed project would contribute to a cumulative impact related to neighborhood traffic	No feasible mitigation exists to reduce this impact	Travel survey information used for model calibration to estimate impacts has not been made available. Failure to provide any evidence prevents a full understanding of the environmental consequences of this project and deprives the public of an opportunity for meaningful participation in the evaluation process.
Noise: The proposed project would increase traffic and associated roadway noise levels in the project area.	No mitigation measures are required	No evidence that these noise levels would not exceed the significance threshold is presented. The 5-dBA significance threshold proposed is not acceptable
The proposed project would generate vibration as a result of trucks accessing in the project site.	No mitigation measures are required	No evidence that these noise levels would not exceed the significance threshold is presented. The 5-dBA significance threshold proposed is not acceptable
Traffic and Transportation: The proposed project would increase traffic levels along neighborhood street segments in the vicinity of the project site. The proposed project would result in a significant and unavoidable impact related to neighborhood traffic.		

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
Driveways would provide adequate access to the project site.		The project would require upgrading of access from Colorado Avenue resulting in a traffic hazard. (DEIR p 59)
Utilities and Service Systems: Operation of the proposed project would result in an increase in water demand over existing conditions.		
The proposed project could require new water connections or conveyance systems.	Compliance with Santa Monica Municipal Code requirements would reduce the proposed project's impacts related to water infrastructure to less than significant.	DISAGREE: Note that on p.336 it says:about water supply "Impact U-3 The proposed project could require new water connections or conveyance systems." THAT Compliance consists of "the applicant will be required to submit a Water Study to the City of Santa Monica Public Works Department prior to the issuance of the building permit that verifies that the City's water system can accommodate the project's fire flows and all potable water demand." Until that's done, all the reasoning in the DEIR is just speculation and does not give public an opportunity to discuss it.
The proposed project would not contribute to a cumulative water impact.		It is obfuscationary to state that no mitigation measures are required when no information is included to provide better risk determination. How can we discuss how to avoid, minimize and/or mitigate postconstruction deficient water supply impacts, and make any evaluation of those risks when they are blandly categorized as "negligible" with no evidence presented to justify that categorization?
Development of the proposed project would result in an increase in wastewater flows from the project site. However, this would not exceed the capacity of existing wastewater infrastructure, nor would it require the construction of new, or expansion of existing, wastewater treatment facilities or conveyance systems.		
The proposed project would not contribute to a cumulative wastewater impact.		No data is presented to justify this. It cites Appendix 1,p.37 as the basis for not discussing this at all

SUMMARY OF COMMENTS

Potential Significant Impacts	DEIR Mitigation measures	Summary of Comments
Construction activities would generate debris on-site; however, existing landfills		landfill expansion is a problem
Implementation of the proposed project would result in an increase in solid waste generation on-site; however, existing landfills		landfill expansion is a problem
Population and Housing: The proposed project would displace 109 mobile home lots at the project site. However, these rent controlled housing units would be replaced, on a one-for-one basis in the new development so no net loss of rent controlled housing occurs.	No mitigation measures are required.	Loss of value of leasehold is ignored. $1400 "affordable" market rent minus $300-500 currently paid for at least 100 years (Rent Control has existed in NY City for 65 years already, and there is no sign of its ending, so there is no reason to say we had a right to Rent Controlled rent for less than 100 years- if there is a reason, tell us what it is so we can intelligently discuss it-the cost of an annuity to pay $1,575,000 over 12 months/yr for the next 100 years at a discount rate of 2% (what banks are currently charging people such as these proposed developers who say they have the $35 million it is going to take to build this project, is approximately $ 200,000 (Exh 9)
The proposed project would displace existing residents living on the project site. The proposed project would require approval of a relocation plan for existing residents. Residents would be given the option to relocate to the new affordable units constructed as part of the proposed project. If the resident does not want to relocate to one of these affordable housing units, they would be assisted in their relocation efforts. Therefore, this impact would be less than significant.	No mitigation measures are required.	No definition of affordable is given. Failure to do so prevents a full understanding of the consequences of this project for the low income tenants being rehoused and deprives the public of an opportunity for meaningful participation in the evaluation process.

List of Exhibits