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Sunday, June 17, 2012

All Councilmembers of the
Los Angeles City Council
200 North Main Street
Los Angeles, CA 90122

Via email only

Re: The Hollywood Community Plan
Council File # 12-0303
ENV-2005-2158-EIR
June 14, 2012 Update to FEIR
Council Date: Tuesday, June 19, 2012

Dear Honorable Councilmembers:

These comments expand on my June 15, 2012 comments on the June 14, 2012 Update on the FEIR for the above referenced Plan. I do not waive any rights, especially with respect to the late date at which these additions have been made and the fact that The City is refusing to allow the public time to comment at the Council session on June 19, 2012.

These comments deal with the Recirculation Section of the June 14, 2012 Update. The first portion recites the Recirculation Section with my comments following in the indented portion. Thereafter, there is a general discussion of the CEQA law showing why the EIR needs a new Notice of Availability as well as all other notices and consultations required for a Draft EIR.

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The City wrote: A number of comments were received calling for the recirculation of the EIR. Findings have been prepared for City Council consideration clearly indicating that there is no requirement to recirculate the EIR. See Master Responses MR-1, as amended, and MR2.

The City wrote: No new baseline is being proposed for evaluation.

New Baseline is not the test for recirculation. The failure of The City to heed material data makes the EIR fatally flawed.

The City wrote: Census 2010 data was reviewed to determine if conclusions would differ when compared to 2005; no substantial difference was identified; impacts remain unchanged.

There is no discussion anywhere in the FEIR to show that there would be no different impacts, and the statement is absurd on its face. The 2005 population was off by 20,000 people. By using the falsely high 224,426 ppl, the City's saying Hollywood should build for 250,000 ppl in 2030 seemed reasonable; that would be only 25,000 more people in 25 years. However, predicting an increase in population had no factual basis, when the facts showed that Hollywood was in a steep decline.

The more accurate population of 204,000 ppl in 2005 required the City to consider the Down Zoning Alternative as it was clear that Hollywood was NOT gaining population and it would not gain any population.

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The fact that a blind person does not see the car that hits him does not mean the car did not hit him.

The City wrote: No new conclusions have been made and no new baseline year data have been introduced and recirculation is not required.

Two and three wrongs do not make a right. No law supports the notion that when substantial new information arises after the DEIR that it may be ignored and that ignoring it means that it is legally OK to continue to ignore it.

The City wrote: The 2005 baseline utilized by the proposed Hollywood Community Plan is correct and impacts identified remain unchanged by the analysis of 2010 Census data.

This statement is an outright misrepresentation. The population was not 224,466 in 2005 and to say so is materially deceptive – that alone evidences how desperate Councilmember Garcetti has become to deliver Hollywood on a silver platter to the developers.

In addition, this false statement needs to be compared to another sentence of the June 14, 2012 Update, “Final EIR, page 3-2, in Master Response 1 (MR-1), the following is added after the first partial paragraph:

Population within the Hollywood CPA has fluctuated over the years. Population decreased from the 2005 estimated population of 224,426 to the 2010 census

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population of 198,228. Over the longer term, population may decline or may increase. SCAG forecasts the population will increase projecting a 2030 Hollywood population of 244,602 persons. There may be a number of reasons for this fluctuation in Hollywood population, and the decline seen between 2005 and 2010.

On June 14, 2012, five days before the council considers certification of the Final EIR, The City adds an ambiguous admission that its population statistics are not reliable, but even its correction is replete with falsehoods. For example, "Population decreased from the 2005 estimated population of 224,426 to the 2010 census population of 198,228" is a blatant falsehood, and if any expert takes the stand and so testifies, his testimony should be stricken as not based on reliable data or on accepted methods within his industry. The population did not decrease from 224,426 in 2005 because the population in 2005 as about 204,000 ppl.

The City wrote: The Draft and Final EIR present this data and analysis as full disclosure. CEQA requires that the responses to comments in the Final EIR demonstrate good faith and a well-reasoned analysis, and not be overly conclusory.

The entire Hollywood Community Plan from the very beginning has been conclusory. The City should be ashamed to have written such a travesty. A comparison to the professionalism of the 1915 Transit Study [Study of Street Traffic

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Conditions in the City of Los Angeles, 1915] should make Councilmember Garcetti hang his head in shame. The 1915 Transit Study was added to the Administrative Record months ago and if it is not there, then it has been illegally omitted.¹

This so-called plan is oriented towards one goal – to remove all development limitations for the developers with no regard for the harm done to Hollywood or to the city’s finances.

The City wrote: The Final Environmental Impact Report, including responses to comments received during the circulation period of the Draft EIR, was issued in October 2011 with detailed responses to all comment letters received during the circulation period of the EIR. Some comments assert that the EIR is inadequate for not appropriately addressing impacts of the Plan. The information in the Final EIR demonstrates that no additional impacts beyond those already identified in the Draft EIR have been identified by the comments, and thus, the Final EIR is adequate.

Again the City presents a falsehood. We have a very serious matter, which some believe should invoke the Felony Murder Rule, that was identified and said comments added by the public. I speak of the fraudulent emergency response times which councilmember Garcetti and others used to deprive the LAFD of an additional \$200 Million. As a result people have died. Most recently a man died on the freeway when the fire

¹ When one interim Planning deputy for a councilmember was asked about the 1915 L.A. Transit Study, she had never heard of it.

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department was unable to get the jaws of life to a man for 11 minutes – the delay was the actual and proximate result of council President Garcetti’s pushing these fraudulent response data on the council to justify additional impairment of the emergency response times.

The June 14, 2012 Update finds complaints that the bogus data is resulting in being people maimed and death are not significant. The only thing that is significant in CD #13 is funneling millions of dollars to developers. An analysis of the City’s expenditures while cutting the LAFD budget shows that it continued to give hundreds of millions of dollars to the developers. Just last week, the council voted to give \$67 Million tax dollars to another downtown hotel. The City continues to give away hundreds of millions of current and future tax dollars leaving no funds for updating infrastructure and depriving us of future funds. Yet, this expenditure pattern is not discussed in the Hollywood Community Plan even though we know that the City intends to continue giving away tax dollars to its political cronies.

The City wrote: In addition, staff has prepared this Additional Response to Comments document, indicating that no additional impacts beyond those already identified in the Draft EIR have been raised since the close of the DEIR circulation period. Where available, additional data from the 2010 Census was reported and analyzed in the Final EIR; addition of these data did not result in the identification of any new significant impacts.

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The June 14, 2012 Update is redundant. It is false that the FEIR took into account the 2000 US census data or the 2010 US Census data. Instead it ignored the data. The City clings to the falsehood that the population was 224,426 in 2005 knowing that the figure is wrong by about 20,000 ppl, yet it stubbornly refuses to acknowledge this fact or even admit that 204,000 ppl is a more reasonable number. When the public is presented with falsehood after falsehood, the public cannot make meaning comment.

The City wrote: Such data was released by the Federal Government after the Notice of Preparation and after the Notice of Availability was published for the Draft EIR.

Another falsehood. The 2000 US Census data was not released after the NOP and that data showed that the population was already in decline between 1990 and 2000. Again, the City simply ignores any data that it does not like and declares there are no impacts.

Furthermore, significant data that becomes available after the release of a Final EIR and prior to its certification requires the EIR be re-written and re-circulated. Sutter Sensible Planning, Inc. v Board of Supervisors (3rd Dist. 1981) 122 Cal. App.3d 813, 822, 176 Cal.Rptr 342 Thus, if one closes his/her eyes to the population data which was available since 2000 and only looks at the 2010 US census data, that material data which showed that Hollywood is in twenty year population decline and

that the decline is likely to continue required a re-write and a re-circulation of the EIR.

The City wrote: See responses to Baseline and Capacity comments above, and Master Response MR-1, as amended, and Corrections and Additions. As illustrated in the Findings provided to the City Council for consideration, CEQA Guidelines Section 15088.5 does not require recirculation of the Final EIR based on the following:

The City wrote: a) No significant new information has been added that would deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect of the Project, a feasible way to mitigate or avoid such an impact that the Applicant has declined to implement, or a feasible Project alternative;

The failure to add significant new information does not provide an escape clause when that information becomes available but The City refuses to acknowledge it.

The City wrote: b) The new information, including certain factual corrections and minor changes, provides clarification to points and information already included in the Draft EIR;

When the City did provide new data such as finally admitting that the population in 2010 was 198,228, it did so within a confusingly ambiguous context. The City fails to discuss that when the population fell from 210,794 ppl in 2000 to 198,228 in 2010, the population in 2005 was not 224,426 in

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2005. Yet, The City persists to this day to use the false population of 224,426 in 2005.

The City wrote: c) There are no significant new environmental impacts resulting from the Project or from a new mitigation measure proposed to be implemented;

The Down Zoning Alternative would reduce the environment impacts of more construction which has already proven to be a serious harm to Hollywood.

Furthermore, the June 14, 2014 Update inadvertently provides new data showing that the advent of the subway and the CRA mixed-use projects have had a significant impact on Hollywood families. Families have been moving away from these areas and instead unmarrieds have been moving into the small apartments which the CRA has been constructing. This phenomenon, which was added on June 14, 2012 only because the public had already added it to the Administrative Record, is a dramatic adverse impact of Hollywood. It shows that the Villaraigosa - Garcetti plan to destroy Los Angeles' renown for R-1 neighborhoods is succeeding.

Driving out stable working class families in favor of transients is an adverse impact which needs to be discussed by the entire community.

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The City wrote: d) There is no substantial increase in the severity of an environmental impact that has not been mitigated to a level of insignificance;

From the get-go, the Hollywood Plan has not mitigated any severe environmental impact. Either its mitigations are unfunded or it admits that they are un-mitigable.

The City wrote: e) The decision maker has not declined to adopt any feasible project alternatives or mitigation measures, considerably different from others previously analyzed, that clearly would lessen the environmental impacts of the Project;

The City admits that it did not study the Down Zoning Alternative, and the Framework as well as CEQA both require that all reasonable alternatives be studied.

The City wrote: f) The Final EIR is not so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded.

Oh Yes., it is. It is a disgrace that this great city has produced such claptrap as an official document. The defective nature of the 7-15-2010 Draft Hollywood Community Plan, the DEIR and the FEIR as well as the First Addition to the FEIR and this second addition to the FEIR made any meaning public review impossible. Nowhere will The City disclose to the public that fact that Hollywood had a unique population surge

between 1970 and 1990 due to factors which are well known but which The City fails to discuss, but instead the City pretends that the twenty year population decline never occurred and that Hollywood is still adding population.

As many have said from the outset, Garbage in, Garbage out. The residents comments have fallen into two categories:

1. The basic flaws which require a new DEIR and re-circulation;

2. The terrible damage that would be done to Hollywood if 250,000 people did come and we had to rely on this foolishness to provide for our infrastructure. Either Garcetti knew that the population was declining when he slashed the size of the new Regional Hollywood Fire station from 2 acres to ½ acre or he had a conscious disregard for the lives on future Hollywoodians. The alleged mitigations are unfunded, and legally speaking, the courts hold an unfunded mitigation to be no mitigation. Thus, even if the population data were correct, the HCP is still fatally defective.

The City wrote: g) The decision maker will consider the Final EIR, as to whether there is substantial evidence to conclude that none of the conditions requiring recirculation of the Final EIR are present and therefore recirculation of the Final EIR is not required.

There is no evidence that Hollywood's population will be more than 190,000 in 2030 and "No Evidence" fails the substantial evidence test.

**End of Section of Comments
on Re-circulation Section
of the June 14, 2012 Update on**

The June 14, 2012 fails to discuss the CEQA Law on Re-circulation.

1. The Law Mandates Re-Circulation:

Interestingly under its Recirculation section, The City ignores the law on recirculation. It should be noted that in these legal precedents, the courts were not dealing with EIR's which were intentionally deceptive. The DEIR and the FEIR and the two additions to the FEIR are all deceptive in that they omit intentionally significant data and then they argue that their intentional omissions of material data mean that they do not have to add that information and re-circulate the EIR.

Because The City failed to add the significant new data when the public complained about the data's omission from the Draft EIR, the Public Comment period has closed and we are now in that interim times between close of Public Comment and Certification. Thus, we shall discuss recirculation standards in this interim period, but without waiving all the other objections we have to the HCP. The pertinent statute is Pub. Res. Code, § 21092.1

[W]e conclude that the addition of new information to an EIR after the close of the public comment period is not "significant" unless the EIR is changed in a way that **deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect** (including a feasible project alternative) that the project's proponents have declined to implement. Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1129, 26 Cal.Rptr.2d 231 [Laurel II]

2. The Substantial Adverse Environmental Impact:

The entire HCP was based on the falsehood that Hollywood had to prepare for 250,000 ppl by 2030. The old 2000 US Census data along with the new 2010 US Census data showed that the present standards adopted in 1998 were significantly harming Hollywood and that Hollywood needed to study reducing those construction standards.

The population exodus itself was a significant factor showing that the 1988 standards were harming Hollywood. The 2010 US Census data showed that the subway which the HCP said revitalized Hollywood had significantly harmed Hollywood. In the census tracts contiguous to the Metro Stations, Hollywood lost 4,405 persons after the subway had been constructed. That was about 35% of the population loss in the very areas where the 1988 standards and The City planned to concentrate density.

The adverse impact of the subway and the adverse impact of the dense mixed-use projects were a significant impact which The City

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ignored. When The City selected four (4) census tracts to “prove” that Hollywood’s population was growing, the tracts showed a net loss of 225 persons. The City’s response was to remove the tract with a population loss. The City behavior is actually proof that figures don’t lie, but liars can figure. The City had to re-select its census tracts, as follows:

There are at least ~~four~~ three census tracts in central Hollywood that exhibited a net population gain. The tracts include census tracts 1905.10, ~~1905.20~~, 1907 and 1910. These same tracts also exhibited a gain in dwelling units. ~~All four of these~~ These census tracts are located within the Community Redevelopment Agency Project Area and are areas where the Hollywood Community Plan is proposing increased capacity. June 14, 2012 Update 18/33

The City’s original falsehood about increasing population in four census tracts and its deletion of one of those census tracts highlights the deceptive nature of the HCP. The City’s HCP may be the first legal case where the EIR, the FEIR and the two additions are intentionally deceptive.

By using these misleading census tracts, The City was attempting to prove a falsehood, i.e. that the CRA projects in central Hollywood were attracting people. When one looks at the LA County Census tract map, one sees that the tracts which lost population are in or contiguous to the subway and/or CRA projects. The census tract which The City struck, 1905.20, was contiguous to the Hollywood-Western Metro Station and it had lost 598 persons. As has been shown more than once, the population loss has been greatest near the subway stations and the CRA projects.

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The 6% population decline between 2000 and 2010 had to overcome a population increase in the non-CRA parts of Hollywood. Thus, the adverse impacts of the subway and the CRA projects, which the HCP wants to continue in one form or another, must be disclosed to the public so that they can make meaningful comments.

The US census showed that the attempts to concentrate density had backfired and had the opposite adverse impact. It caused people to move away. The Administrative Record contains other peer reviewed articles and research studies showing that people moving away from density is the characteristic way most Americans react. Thus, there is nothing unique about Hollywood's losing population after spending hundreds of millions of dollars on the subway and the various CRA projects. An analysis of the population data also showed that Hollywood sustained a loss in socio-economic status since 2000, indicating that Hollywood is losing its more educated and talents residents.

By hiding this material data, The City mislead people into believing that Hollywood had to construct more mixed-used projects and to increase density in Transit Oriented Districts in order to house 250,000 persons. This fraudulent omission of material data left people unable to make meaning comment on the HCP.

[A] feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (cf. Guidelines, § 15162, subd. (a)(3)(B)(3), (4)) **requires the EIR to be re-circulated.** [bold added] Laurel II 6 Cal.4th 1112,

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The Laurel II Court also noted another basis to require the re-circulation.

[T]hat the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043 [263 Cal.Rptr. 104]). fn. 15

The HCP, the DEIR, the FEIR, and the two additions to the FEIR are fundamentally inadequate and conclusory making public comment like talking to a wall.

When the public tried to discuss these defects, The City responded with non-sequiturs. In its June 14, 2012 Update, The City replied:

In response to disinvestment and concerns of blight, the Hollywood Redevelopment Project area was adopted in 1986. Major transit investment followed with the Metro Red Line's Hollywood stations opening in 1999 and 2000; and residential infill development following in the latter half of the 2000-2010 decade, resulting in increased population in **some** central Hollywood census tracts. It is reasonable to plan for growth in Hollywood, consistent with the City's adopted growth policies of the General Plan Framework, and the regional growth strategy of SCAG focusing future housing in existing urban areas **well served** by transit thereby minimizing the need for greenfield development. [**bold added**]

The public has a right to expect The City not to mislead them. The City tries to make the Public believe that this infill development has led to people coming to Hollywood by its use of the word "some central Holly-

wood census tracts” and “ the regional growth strategy of SCAG focusing future housing in existing urban areas **well served** by transit thereby minimizing the need for greenfield development”

Rather than refer to **some** unspecified census tracts, The City has the duty to discuss the actual tracts so that the public does not have to guess. It appears after The City discovered that the public takes the time to verify the data, that it was best not to name the tracts least the public show that the data was materially false. (See above discussion where The City was caught misrepresenting population loss as a population increase in central Hollywood.)

Let’s do what the DEIR or FEIR should have done, i.e. look at the census tracts in central Hollywood.

Following are the three census tracts in central Hollywood which did increase population. They run between Hollywood Boulevard on the north and Sunset Boulevard on the south from Serrano in the east and Highland in the west. They are contiguous

Census Tract	2000	2010	Increase
1905.10	4187	4227	40
1910	3035	3228	193
1907	3269	3379	110
total increase			343

The City spend over \$500 Million on the subway and CRA projects in this area which monetized The City’s cost for each new resident @ \$1,457,726.

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Now let's look at the census tracts which surround these three contiguous tracts. Each and everyone loss population. It is vital to remember that each one of these other census tracts is within ½ mile of a Metro Station and thus they are all relevant to the adverse or beneficial impact of the Subways and the CRA projects. The population changes in these Metro - CRA census tracts show the adverse impact which the subway and the CRA projects have had on central Hollywood.

Census Tract	2000	2010	Increase	Decrease
1905.20	4326	3728		598
1904.02	2695	2487		208
1903.01	5676	4758		918
1909.01	4930	4742		188
1909.02	4621	3960		661
1908.01	2979	2594		385
1908.02	3331	2784		547
1919.01	3822	3355		467
1901	4872	4481		391
1902.02	3109	3044		65
Total loss				4,428

The only way to juggle the figures to justify more density in the CRA census tracts is to misrepresent the data by cherry picking only the few tracts which would support The City's goal – as if they were on some other planet of their own and the rest of Hollywood did not exist.

One does not find neighborhoods adding population between 2000 and 2010 until one gets farther away from the Subway-CRA zone, that is,

neighborhoods north-west, north-east and south-west of the subway-CRA zone had population increases. The EIR conceals all these facts, which the public has to ascertain by consulting the US Census data for itself.

The EIR is supposed to objectively present all the data and non-biased analyses. The DEIR, FEIR, the two additions not only fail to provide the data, but they also fail to present any “analysis.” One cannot call misrepresentations based upon non-representative census tracts to be an “analysis.” Instead The City distorts the data in order to mislead the public into thinking that the data supports The City’s conclusions. It does not. In fact, it rebuts the basic allegation that Hollywood needs to prepare for 250,000 persons in 18 years.

**3. Material Adverse Impacts Are Added to the FEIR
One Week Before the June 19, 2012 Council Hearing:**

Although the material is added on June 14, 2012, The City’s ignores the adverse impact.

It is an adopted City policy **to concentrate growth** in conjunction with services, infrastructure and access to amenities (see General Plan Framework). State and regional regulations and policy also support concentrating growth near transit (SB 375, SCAG 2012 Regional Transportation Plan including the Sustainable Communities Strategy, 2% Growth Strategy, Compass Blueprint Plan). **While population in the Hollywood CPA dropped between 2005 and 2010, the number of housing units increased by 2.6% between the 2005 estimate and the 2010 Census.** The number of persons per household also dropped (in 2000, census data showed there were 2.33 people per unit, in 2005 SCAG data estimates showed there were 2.23 people per unit, in 2010,

census data showed there were 2.09 people per unit). There could be a variety of factors that account for this drop in household population including increased vacancy rates, fewer couples and households with children and not all those living in a unit being reported to the Census. **It is reasonable that population increased from 2000 to 2005 followed by a decline between 2005 and 2010 as housing prices and rents rose, followed by economic crashes and economic declines.** The Census data does not identify the cause of population changes during the 10-year period between Census surveys, nor can it identify fluctuations during the period between Censuses. [**bold added**], June 14, 2012 Update 16/33

(A) Growth is to be concentrated in the TOD's. That requires there to be growth. Despite the City's denials, Hollywood had a 7.3% Decline and thus there is no growth to concentrate anywhere.

(B) The decline in population with an increase in housing units signifies three things: (1) the flight of families and the advent of Unmarrieds and (2) the CRA over-built in this part of Hollywood and (3) the extra density drove away families. The public had added a number of research studies showing that when cities try to force density upon a population, the more affluent and those with families move to less dense areas. The City's own 1993 Telecommuting Study noted that density results in people leaving.

(C) The sentence about population increases between 2000 and 2005 and then a decline is an insult to everyone's intelligence. Here are the figures behind the theory that the population increased and then dropped.

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Year	Population	Increase	Decrease
1950	160,047		
1960	160,383	336	
1970	156,335		4,000
1980	181,002	24,667	
1990	213,858	32,856	
2000	210,824		3,034
2010	198,228		12,596

The June 14, 2012 Update asks us to believe that the downward population trend between 1990 and 2000 reversed itself so that Hollywood had 224,426 person in 2005. That required an influx of 13,602 ppl which would be 2,721 new people per year and no one noticed.

Then, The City asks the public to conclude that after the September 2008 market crash, the population fell to 198,228. The City omits what allegedly happened to the population between 2005 and 2008. Thus, The City postulates a population drop of 26,198 ppl in three years. That would be an average of 8,733 persons leaving each year. Never in its history has Hollywood experienced such a dramatic population shift. The 32,856 increase between 1980 and 1990 averaged only 3,287 ppl per year.

Because the housing market is still in the doldrums, an extrapolation of The City's 8,733 loss per year means that in 2012 Hollywood has about 16,000 fewer people which would be a present population of 182,228 ppl.

The City bases this nonsense on its belief that housing prices have risen between 2005 and 2010!

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4. Appellate Review:

Some day at least two appellate justices will have to sign a published opinion which will forever be available for posterity to read. What is the likelihood that justices will declare that concealing material data is insignificant.

5. Conclusion:

Rather than asking a justice to pretend that Down is Up and that a twenty (20) year downward population trend does not require a Down Zoning Alternative, The City can save a few years by breaking with its established practice of adopting whatever the councilmember wants in his district and by sending this community plan back for a new EIR.

Very truly yours,

Richard MacNaughton

Richard MacNaughton

RMN:ra
electronically signed
HZC-1061