



MEMORANDUM

TO: Mayor McLean & City Council Members
FROM: Joseph Montes
DATE: August 15, 2007
RE: Response to February 5, 2007 SCOPE Letter

CC: K. Pulskamp, K. Striplin, P. Brotzman, L. Hardy, F. Follstad, Carl K. Newton
FILE NO. 02012-0447

I. Background

Our firm has been asked to provide a response to legal issues raised by the February 5, 2007 comment letter ("February 5, 2007 SCOPE letter) submitted by Lynne Plambeck, President, Santa Clarita Organization for Planning and the Environment (SCOPE) in connection with the Henry Mayo Newhall Memorial Hospital Master Plan, Master Case No. 04-325, ("Project"). The February 5 SCOPE letter raises two main objections: (1) that the Project improperly defers environmental analysis of impacts and mitigation measures and (2) the Project is inconsistent with the City's General Plan and zoning requirements.

II. SCOPE's Objections

Preliminarily, SCOPE does not oppose the expansion of hospital facilities in Santa Clarita but objects to the location of the facilities and objects to an entitlement period of 25 years. These comments address land use policy decisions not issues pertaining to compliance with the California Environmental Quality Act ("CEQA"), so they are not addressed in this memo. SCOPE further objects to the adequacy of the public review and comment period, but acknowledges compliance with the Brown Act with respect the February 7, 2007 Planning Commission hearing on the Project. Two subsequent SCOPE comment letters were submitted dated June 11, 2007 and July 9, 2007. .

A. SCOPE Objects That The Project Improperly Defers Environmental Analysis and Imposition of Mitigation Measures

SCOPE asserts that Condition PL4 of the Conditions of Approval improperly defers analysis of traffic, sewer and storm drain impacts for the buildout phase of the project. SCOPE further asserts that the condition improperly defers consideration of and imposition of mitigation measures. In support of the deferred analysis claims, SCOPE cites to cases concerning water supply issues as analogous to traffic, sewer and storm drain issues. Based on these water supply issue cases, SCOPE asserts that the City must disclose and provide possible alternatives for impacts to traffic, and sewer and storm drain facilities.

Generally, “[i]t is improper for lead agencies to defer formulation of possible mitigation programs by simply requiring future studies to see if mitigation may be feasible.¹ However, if impacts are unavoidable even with imposition of all feasible mitigation measures, a statement of overriding considerations (“SOC”) satisfies CEQA.²

SCOPE’s concerns have been addressed by the substantial elimination of the buildout phase improvements by the Applicant. As a result, the need for Condition PL4 has been eliminated. PL4 was drafted to address the need to study impacts created by the buildout phase improvements that were likely to be constructed beyond the useful life of the current traffic, sewer and storm drain models utilized by the City to study impacts. Because the Applicant has eliminated these improvements from the Project, the need to conduct future impact studies has also been eliminated. As a result, there is no condition requiring future studies or review and the analysis of the Project’s impacts will not be deferred. Accordingly, SCOPE’s concerns regarding deferred analysis and mitigations are now moot.

Additionally, we disagree with SCOPE’s position that environmental review of traffic, sewer and storm drain impacts is analogous to water supply issues. The water supply issues addressed in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (“*Vineyard*”) arise from the requirements of Senate Bill 221 (“SB 221”) and Senate Bill 610 (“SB 610”), signed into law in 2001. These amendments to the water code and public resources code require some assurance regarding the reliability of adequate water supplies when approving certain development projects. The requirements are limited to water supply issues and do not include other issues such as traffic, sewer or storm

¹ *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 244 citing *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

² *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 [lead agencies may approve projects with significant, unmitigable impacts provided they adopt a statement of overriding considerations regarding those impacts.

drain impacts. Under *Vineyard*, the California Supreme Court analyzed SB 221 and SB 610 and held that “where despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.”³ There are no similar statutory requirements for traffic, sewer, or storm drain impacts that require the assurance necessary when addressing water supply issues.

CEQA does not require analysis of every imaginable alternative or mitigation measure; its concern is with feasible means of reducing environmental effects.⁴ CEQA requires that significant project impacts to traffic, sewer and storm drain facilities must be identified and all feasible mitigation measures imposed. Where specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the EIR for traffic, sewer or storm drain impacts, project approval requires findings that specific overriding economic, legal, social, technological or other benefits of the project outweigh the significant effects on the environment.⁵ All significant impacts to traffic, sewer and storm drain facilities of the reduced Project are being analyzed and all feasible mitigation measures imposed.

B. SCOPE Objects That The Project Violates Zoning and General Plan Policies

First, SCOPE asserts that Conditions of Approval-Planning Division #15 Setbacks and heights are inappropriate for Residential Low zoning and that Conditions #5 and #8 result in a de facto zone change. Section 17.13.040 of the Santa Clarita Municipal Code (SMC) expressly marks “Hospital Services” as permissible with a conditional use permit in a Residential Low zone. Therefore, no change in zoning is required. Moreover, Section 17.15.010 of the SMC provides that a building may exceed the prescribed height limitations by obtaining a conditional use permit.

Second, SCOPE asserts that a SOC for unavoidable impacts to the intersections at McBean Parkway/Orchard Village Rd and Valencia Blvd./Magic Mountain Parkway is inappropriate because it is inconsistent with the City’s General Plan. SCOPE provides no legal or factual basis for the assertion. Absent specifics, the general rule is that if a General Plan mandates a fundamental, mandatory and clear policy and Project impacts violate the policy, the Project may be inconsistent with the General Plan.⁶

³ *Vineyard Area Citizens, supra*, 40 Cal.4th at 432.

⁴ *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1790.

⁵ See, Pub. Res. Code § 21081.

⁶ See, *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 (*Endangered Habitats*) [where general plan required a certain traffic model and specific level of

The City of Santa Clarita General Plan Circulation Element sets forth general policies used to guide the development of the circulation plan and serves to measure goal achievement. A principal goal is to provide a circulation system to move people and goods safely and efficiently throughout the City of Santa Clarita and the general Planning Area. However, the General Plan Circulation Element acknowledges constraints to the mitigation and/or resolution of circulation and traffic problems within the City. The General Plan Circulation Element states, "Existing street improvements are, in some cases, not able to be modified to accommodate additional traffic or circulation movements due to right-of-way limitations and existing development." This language in the adopted General Plan acknowledges that the benefits of improvements may be outweighed by a combination of the physical and economic costs at the affected properties and the social costs that could occur if private properties were acquired.

Based on City Council expressed policy not to condemn property for improvements, project-related impacts at these intersections are unavoidable and consideration of a SOC is appropriate, as the City's General Plan clearly contemplates situations where traffic improvements cannot be modified to fully mitigate traffic impacts.

In the final paragraph of its letter, SCOPE offers a series of conclusory opinions regarding SOC findings for air, solid waste, traffic and visual impacts, the analysis of alternatives and analysis of mitigation measures. Without specific information regarding the particular concerns raised, no additional information or changes to the draft EIR are required in response to these comments.

service at particular locations, and project increased traffic to an unacceptable level, the project was inconsistent with the General Plan.]