

THE SILVERSTEIN LAW FIRM

A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

ROBERT@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

July 16, 2013

VIA EMAIL caltrans.director@dot.ca.gov
AND U.S. MAIL

Mr. Malcolm Dougherty, Director
California Department of Transportation
P.O. Box 942873
Sacramento, CA 94273-0001

Re: Millennium Hollywood Project's Disregard of Caltrans and Public's
Objections; Inadequate CEQA Review of Traffic/Circulation

Dear Mr. Dougherty:

This firm and the undersigned represent Communities United for Reasonable Development, a coalition of more than 40 Los Angeles community organizations and Neighborhood Councils representing more than 250,000 residents, all of which oppose the proposed Millennium Hollywood project near Hollywood and Vine in Hollywood.

We applaud Caltrans' efforts to date to require the City of Los Angeles and the Millennium Hollywood project developer to provide proper analysis in the EIR of the significant impacts to the State's facilities from this proposed twin sky scraper, 1.1-million-square-foot project.

The City and developer have repeatedly disregarded Caltrans' written and oral concerns about the health, safety and welfare of the community and the functioning of the State's facilities, specifically the 101 Freeway. It is imperative that Caltrans continue to insist that the City and developer, *as part of the EIR process*, analyze impacts to the 101 Freeway, its on- and off-ramps and adjacent roadway systems, including regarding cueing and safety issues, all of which requests have been repeatedly identified in writing by Caltrans since at least May 18, 2011, and all of which requests have been repeatedly ignored by the City and Millennium Hollywood developer.

Caltrans' involvement as a "responsible agency" under CEQA is imperative. Caltrans must not simply accept vague assurances by the City and/or developer that Caltrans' concerns will be addressed in the future. Caltrans' concerns must be addressed

Mr. Malcolm Dougherty, Director
California Department of Transportation
July 16, 2013
Page 2

as part of a recirculated Draft EIR now. The purpose of CEQA is to provide critical information so that the decisionmakers and public have adequate data upon which to make informed decisions. CEQA requires disclosure, analysis and mitigation of environmental impacts as part of the EIR process. It is illegal for that analysis to occur after an EIR has already been certified, or as a substitute for the public EIR process.

“Abuse of discretion [by the City of Los Angeles] is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Resources Code § 21168.5; Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392, fn. 5.) “Noncompliance with substantive requirements of CEQA or noncompliance with information disclosure provisions ‘which precludes relevant information from being presented to the public agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.’ (Pub. Resources Code § 21005, subd. (a).) In other words, when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. **The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation.**” County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 946 (emphasis added).

That is exactly what has occurred here. The City and developer have ignored Caltrans’ requests for analysis and studies as part of the EIR process. That subverts the purposes of CEQA because material necessary to informed decisionmaking and informed public participation has been omitted from the EIR.

This is not only a problem related to this project, but it has become chronic in the City’s processing of approvals for other development projects throughout the City which have significant impacts on the State’s facilities, but which are never adequately analyzed or mitigated by the City. The result is dramatically worsening infrastructure and a shifting of the costs and burden of dealing with these projects to Caltrans and the taxpayers.

Mr. Malcolm Dougherty, Director
California Department of Transportation
July 16, 2013
Page 3

It would be improper for the City to promise further testing or studies after project approvals are granted next week. To do so would be to paper over substantial deficiencies in the EIR. As our Supreme Court has repeatedly held:

“Besides informing the agency decision makers themselves, the EIR is intended ‘to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions.’” Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 136, citing No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 86, accord, Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.

For many reasons, we are an apprehensive citizenry. The Millennium project EIR’s total disregard of Caltrans’ objections has greatly increased that apprehension.

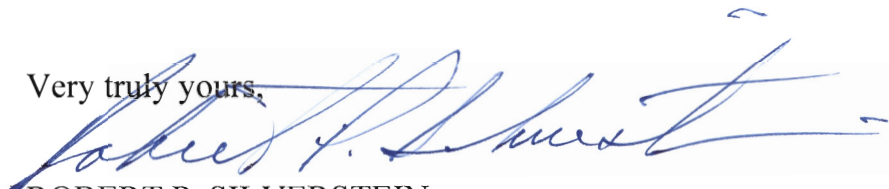
The Los Angeles City Council is poised to certify the Final EIR on **July 24, 2013**. There is no possible way that Caltrans’ concerns can legally and adequately be addressed by the City – as part of the required Draft and Final EIR public disclosure process – prior to July 24, 2013. We urge you to give this matter the utmost attention and not to be lulled into believing that these issues can or will be addressed after July 24, 2013.

Please remember that once the Final EIR is certified by the City Council, there will only be 30 days within which Caltrans can file a lawsuit under CEQA. Caltrans, a responsible agency, must take the issue to court within 30 days after the City as lead agency files a notice of determination, or Caltrans will be deemed to have waived any objection to the adequacy of the EIR. CEQA Guidelines § 15096(e). If you wait until day 31, it is too late. Caltrans will have absolutely no leverage – despite whatever assurances may be offered by the City or developer now.

Mr. Malcolm Dougherty, Director
California Department of Transportation
July 16, 2013
Page 4

The interests of Caltrans and the public it represents require your ongoing vigilant attention to this matter. Please contact me with any questions or if we can be of assistance in any way. Thank you.

Very truly yours,



ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM

RPS:jmr

cc: Hon. Jerry Brown, Governor of California (governor@gov.ca.gov)
Will Shuck, Deputy Director, External Affairs (will.shuck@dot.ca.gov)
Michael Miles, District Director, District 7 (michael.miles@dot.ca.gov)
Aziz Elattar, Deputy of Planning, District 7 (aziz.elattar@dot.ca.gov)
Dianna Watson, IGR/CEQA Branch Chief (dianna.watson@dot.ca.gov)
(all via email and U.S. Mail)