

June 2, 2023

VIA EMAIL

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Re: Comments on DEIR
Highway 1 State Park Dr to Freedom Blvd Aux Lanes, Bus-on-Shoulder &
Coastal Rail Trail Segment 12 Project

Dear Ms. Bertaina:

This law firm submits the following comments on the above referenced Draft Environmental Impact Report (DEIR) on behalf of the Campaign for Sustainable Transportation (CFST), one of the prevailing parties in *Campaign for Sustainable Transportation v. California Department of Transportation* (Sacramento Superior Court Case No. 34-2019-80003073). This letter is to remind the California Department of Transportation (Caltrans) that it does not currently have the authority certify a Draft Environmental Import Report (DEIR) that relies on the decertified Environmental Impact Report for the widening of Route 1 in Santa Cruz County (Decertified EIR).

I. Caltrans Cannot Certify an EIR that Relies on the Decertified EIR

Caltrans cannot certify the DEIR for the Highway 1 State Park Dr to Freedom Blvd Aux Lanes, Bus-on-Shoulder & Coastal Rail Trail Segment 12 Project (Project) because it relies on the Decertified EIR.

One of the basic purposes of the California Environmental Quality Act (CEQA) is to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.” (14 Cal. Code Regs. § 15002 (a)(1).) “The courts have repeatedly stated that informed decision making and public participation are fundamental purposes of the CEQA process.” (Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont. Ed. Bar 2020) § 1.18, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, *Laurel Heights Improvement Ass’n v. Regents of Univ. of California* (“*Laurel Heights*”) (1988) 47 Cal.3d 376, and *No Oil, Inc. v. City of Los*

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Angeles (1974) 13 Cal.3d 68.) Without an adequate EIR, this fundamental purpose is not fulfilled.

In 2019, CFST filed a petition for writ of mandate challenging the actions of Caltrans in approving the Tier I – Corridor Analysis of High-Occupancy Vehicle (HOV) Lanes and Transportation System Management Alternatives and Tier II – Build Project Analysis of 41st Avenue to Soquel Avenue/Drive Auxiliary Lanes and Chanticleer Avenue Pedestrian-Bicycle Overcrossing Project (Tier I/Tier II Project) and certifying the Environmental Impact Report for the Tier I/Tier II Project. The Sacramento Superior Court found that Caltrans had violated CEQA because, *inter alia*, the Decertified EIR failed to include a proper baseline, project description, and an adequate analysis of toxic air contaminants. As such, the court ordered that “Caltrans’ approval of the Tier I Project and the EIR shall be set aside, and that Caltrans shall recirculate a revised DEIR for public review and comment.” (*Caltrans v. CFST*, Ruling, p. 15.) Caltrans decertified the EIR as ordered by the Court.

According to the CEQA Guidelines, “Where a prior environmental impact report has been prepared and *certified* for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report...” (Cal. Pub. Resources Code, tit. 14, §21094.) The DEIR here is built on a house of cards. It relies on studies that are tiered off the Decertified EIR.

First, the Caltrans Energy Analysis Report relied upon by the DEIR states:

Improvements in the project area were addressed previously in a combined Tier I/Tier II Environmental Impact Report/Environmental Assessment (EIR/EA), which was adopted in December 2018. The Tier I component, referred to as the corridor improvement project, proposed approximately 8.9 miles of new high-occupancy vehicle (HOV) lanes, HOV on-ramp bypass lanes, auxiliary lanes, pedestrian and bicycle overcrossings, and reconstructed interchanges. It was recognized that the Tier I project would likely be implemented in phases. The Tier II component therefore analyzed the first phase of the corridor improvement project, which included auxiliary lanes between 41st Avenue and Soquel Avenue/Drive among other improvements within the Tier II project limits.

The project is the second phase of the improvements described in the Tier I EIR/EA. The SCCRTC developed an implementation plan for building out the Tier I corridor improvement project based on traffic operation criteria to ensure that each phase identified as a future construction-level project would have independent utility because it would individually provide a benefit to traffic operations on SR 1. The project has independent utility and logical termini because it would resolve a congestion problem on SR 1 between Freedom Boulevard and State Park Drive.

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(Caltrans Energy Analysis Report, p. 1.) As such, it is clear that the Project is connected to the project described in the Decertified EIR and as a result, the DEIR relies on information in the Decertified EIR.

The DEIR also improperly relies on the Traffic Operations Analysis Report (CDM Smith 2021)(TOAR) to argue the need for the Project. (DEIR, p. 2.) The TOAR clearly states the connection between the Project and the Tier I/Tier II Project : “The Santa Cruz County Regional Transportation Commission (SCCRTC), in a joint effort with Caltrans District 5, is developing the Tier II Highway 11 (State Park Drive to Freedom Boulevard) Auxiliary Lanes Project (also referred to as the “Project”).” (TOAR, p. 2-1.) The purpose of the TOAR “is to describe the methodology and results for traffic analysis performed for this Project.” (TOAR, p. 2-1.) However, the TOAR admits that it relies on the Decertified EIR: The TOAR’s Traffic Operations Analysis Methodology also indicates this portion of the report also relied on the Decertified EIR: “Induced traffic volumes due to the addition of auxiliary lanes due to this Project **and the background Tier II projects were estimated by scaling the induced traffic volume impacts of auxiliary lanes identified under the Tier I EIR/EA TSM Alternative** on the basis of auxiliary lane-miles added.” (TOAR, p. 4-1, emphasis added.)

In addition, the DEIR’s reliance on the Community Impact Assessment (CIA) is also improper, blatantly admitting “This CIA is based ... technical documents prepared for the Santa Cruz Route 1 Tier I & Tier II Environmental Impact Report / Environmental Assessment (EIR/EA).” (CIA, p. 2.) The Community Impact Analysis also states “Where applicable, this report includes information from the 2018 Cumulative Impact Analysis for the Santa Cruz Route 1 Tier I High Occupancy Vehicle (HOV) and Tier II Auxiliary Lanes from 41st Avenue to Soquel Avenue project (Caltrans 2018a)” and that “Analysis of impacts and resource area health was based primarily on information presented in the Cumulative Impact Analysis for the Tier I/Tier II Project” and (Community Impact Analysis, p. 1, 21.) The analysis concerning the current health of the surrounding resources also “utilized [resource study areas] established for the Cumulative Impact Analysis for the Tier I/Tier II Project. Figures showing these [resource study areas] are located in Appendix 1.” (Community Impact Analysis, p. 23.) In the Preliminary Geotechnical Design Report, it states, “Improvements in the project area were addressed previously in a combined Tier I/ Tier II EIR with a Finding of No Significant Impact (FONSI), which was adopted in December 2018.” (Preliminary Geotechnical Design Report, p. 2.) The Preliminary Geotechnical Design Report then goes on to describe the project of the Decertified EIR, stating “The Tier I component, referred to as the corridor improvement project, proposed approximately 8.9 miles of new high-occupancy vehicle (HOV) lanes, HOV on-ramp bypass lanes, auxiliary lanes, pedestrian and bicycle overcrossings, and reconstructed interchanges. It was recognized that the Tier I project would likely be implemented in phases. The proposed project is the third phase of the improvements described in the Tier I EIR/FONSI.” (Preliminary Geotechnical Design Report, p. 2.)

Therefore, there are several instances in which it is clear that the DEIR relies on the Decertified EIR, which is a violation of CEQA. Therefore, the analysis must be expanded and

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completed to independently analyze the impacts of this Project without reliance on the Decertified EIR. Thus, this DEIR must be recirculated for public review and comment. Any reliance on the Decertified EIR would be a violation of the Sacramento Superior Court's order, judgment and writ of mandate issued in *CFST v. Caltrans*.

II. The Project is Not Exempt From Providing a Vehicle Miles Traveled Analysis Pursuant to SB 743

In enacting SB 743, the Legislature intended to meet two distinct goals:

- (1) Ensure that the environmental impacts of traffic, such as noise, air pollution, and safety concerns, continue to be properly addressed and mitigated through the CEQA
- (2) More appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.

In analyzing whether the Project would impact any circulation systems, the DEIR states:

No Impact—The project is included in the Santa Cruz County Regional Transportation Commission's 2040 Metropolitan Transportation Plan/Sustainable Communities Strategy and the Santa Cruz County Regional Transportation Plan. In addition, the supplemental traffic analysis prepared for the project states that in terms of vehicle miles traveled, the Senate Bill 743 (Transportation Impact) guidelines have listed auxiliary lanes as a project type that is not likely to lead to measurable or substantial increase in vehicle travel, and transit projects such as the Bus-on-Shoulder element of the project are exempt from Senate Bill 743 analysis.

(DEIR, p. 412.) This conclusion is an incorrect application and oversimplification of the SB 743 Guidelines.

According to the Technical Advisory on Evaluating Transportation Impacts in CEQA (Technical Advisory) published by the Governor's Office of Planning and Research (OPR), auxiliary lanes maintain the ability to contribute to an increased in vehicle travel:

If a project would likely lead to a measurable and substantial increase in vehicle travel, the lead agency should conduct an analysis assessing the amount of vehicle travel the project will induce. Project types that would likely lead to a measurable and substantial increase in vehicle travel generally include:

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- Addition of through lanes on existing or new highways, including general purpose lanes, HOV lanes, peak period lanes, **auxiliary lanes**, or lanes through grade-separated interchanges.

(Technical Advisory, p. 20, emphasis added.) The Technical Advisory goes on to state

Projects that would not likely lead to a substantial or measurable increase in vehicle travel, and therefore generally should not require an induced travel analysis, include:

...

- Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety

The DEIR admits that “The total length of the project on State Route 1 is 2.6 miles, and on the Santa Cruz Branch Rail Line is 1.14 miles.” (DEIR, p. 1.) Neither the Technical Advisory nor the DEIR include any other exceptions for analyzing the VMT of auxiliary lanes. Therefore, it is clear that the Project does not fall under any exemptions from analyzing the vehicle miles traveled (VMT) of the Project.

Moreover, the DEIR actually provides evidence that shows the Project will increase VMTs. According to the TOAR:

Project Added Capacity: The Project will add mainline segment capacity¹⁴ within the Project Limits on the SR 1 mainline segments increasing from a range of 3,950-4,400 vehicles/hour to a range of 5,600-6,100 vehicles/hour due to the added auxiliary lanes. This results in a vehicle throughput increase between interchanges but within the Project Limits but not through the interchanges. The added mainline segment capacity would also benefit congested upstream mainline segments operationally by providing additional storage space for the queued upstream vehicles.

(TOAR, p. 1-6.) Despite this information, the DEIR baselessly concludes

As stated in Section 2.1.7, the project would not increase vehicle miles traveled. Rather, the Build Alternative would reduce vehicle delay, increase average speed, and improve level of service, thereby reducing operational mobile source air toxic emissions associated with vehicle idling. As discussed in Section 2.2.6, Air Quality, the Bus-on-Shoulder component of the Build Alternative would move buses slightly closer to freeway-adjacent land uses. However, Santa Cruz Metro is continuously upgrading its transit fleet to include new hybrid buses and zero-emission electric buses. California Air Resources Board has also set a deadline of 2040 for all transit operators to transition to zero-emission electric fleets. Lastly, the project includes construction of Segment 12 of the Coastal Rail Trail, which would increase connectivity and safety for bicyclists and

pedestrians, and increases use of alternative transportation modes. Therefore, impacts would be less than significant.

(DEIR, p. 392.) Nevertheless, the DEIR never adequately analyzed vehicle miles because the DEIR claims the project is exempt.

III. The DEIR Fails to Adequately Analyze Greenhouse Gas Impacts

The DEIR fails to provide a greenhouse gas (GHG) analysis that complies with CEQA requirements.

The Legislature has “emphatically established as state policy the achievement of a substantial reduction in the emission of gases contributing to global warming.” (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215, 195 Cal.Rptr.3d 247, 361 P.3d 342 (*Center for Biological Diversity*)). This policy is implemented in CEQA.

CEQA requires a lead agency to “make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of [GHG] emissions resulting from a project.” (Cal. Code Regs., tit. 14, § 15064.4, subd. (a).) In determining the significance of a project's GHG emissions, CEQA directs the lead agency to consider, among other things, the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of [GHG] emissions.” (Guidelines, § 15064.4, subd. (b)(3).)

(*Golden Door Properties, LLC v. County of San Diego* (“Golden Door”) (2020) 50 Cal.App.5th 467, 485.) The DEIR’s analysis of the Project’s GHG are unsupported and cursory. According to the DEIR,

This project would result in shifts from auto to transit modes, improve freeway level of service and average speed, improve freeway operation conditions in the southbound PM peak direction, and improve pedestrian and bicycle connectivity with the two new trail crossings. The project would generate a less than significant amount of pollutants during construction and would result in emission reductions under long-term operation. The project is included in the Santa Cruz County Regional Transportation Commission’s Regional Transportation Plan and Regional Transportation Improvement Program, both of which were found to be conforming (see Section 2.2.6, Air Quality). Therefore, the project would not conflict with the Air Quality Management Plan. Impacts would be less than significant.

(DEIR, p. 391.) In addition, the DEIR states

For the Build Alternative, the amount of mobile source air toxins emitted would be proportional to vehicle miles traveled. As discussed above, the Build Alternative would reduce county-wide Vehicle Miles Traveled from the No-Build Alternative. In addition, the Build Alternative would reduce vehicle delay, increase average speed, and improve level of service, reducing mobile source air toxic emissions associated with vehicle idling. Furthermore, emissions will likely be lower than present levels in the design year as a result of the U.S. Environmental Protection Agency's national control programs that are projected to reduce annual mobile source air toxic emissions by over 90% between 2010 and 2050 (FHWA 2016). Local conditions may differ from these national projections in terms of fleet mix and turnover, vehicle miles traveled growth rates, and local control measures. However, the magnitude of the U.S. Environmental Protection Agency-projected reductions is so great (even after accounting for vehicle miles traveled growth) that mobile source air toxic emissions in the study area are likely to be lower in the future in nearly all cases.

(DEIR, p. 424.) The DEIR lacks any “good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of [GHG] emissions” resulting from the Project. (Cal. Code Regs., tit. 14, § 15064.4, subd. (a).) While somewhat relevant, simply relying on other GHG reduction measures to conclude that the Project's GHG impacts will be less than significant does not comply with CEQA requirements. Again, there was no true effort to provide a compliance vehicle miles traveled analysis because the DEIR claims it is exempt from such analysis.

IV. The DEIR Fails to Provide a Reasonable Range of Alternatives

“The ‘core of an EIR is the mitigation and alternatives sections.’ (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 564.) An agency may not approve a project that will have significant environmental impacts if there are feasible alternatives that would substantially lessen those effects. (Pub. Resources Code, § 21002; Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).)”

(*Golden Door*, 50 Cal.App.5th at 546.) The Legislature has declared “it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...” (Pub. Resources Code, § 21002.) “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061, emphasis added.) Here, the DEIR failed to provide an adequate alternatives analysis. The DEIR improperly conflates the project

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description with the project alternatives and, as a result, does not provide any project alternatives other than a No Project Alternative that fails to satisfy CEQA requirements.

A. The Proposed Project Cannot be an Alternative

The Build Alternative cannot be an alternative to the proposed project because it *is* the proposed project. “An EIR shall discuss a range of reasonable alternatives *to the project, or to the location of the project...*” (Guidelines, § 15126.6(a), emphasis added.) Strangely, the project alternatives analysis is included in the Project Description section. The DEIR states, “This section describes the proposed project that meets the purpose and need while avoiding or minimizing environmental impacts. The alternatives are the Build Alternative and the No-Build (No-Action) Alternative.” (DEIR, p. 6.)

The range of alternatives included in an EIR must be “potentially feasible alternatives that will foster informed decisionmaking and public participation.” (Guidelines, § 15364.) “An EIR shall describe a range of reasonable alternatives to the project... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines, 15126.6 (a), emphasis added; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.)

The California Supreme Court has made clear the importance of identifying alternatives to the project:

... “The purpose of an environmental impact report is to identify the significant effects of a project on the environment, *to identify alternatives to the project*, and to indicate the manner in which those significant effects can be mitigated or avoided.” (Italics added.)
.... Perhaps most important, the Legislature has expressly declared that “... it is the policy of this state to: ... [r]equire governmental agencies at all levels ... *to consider alternatives to proposed actions* affecting the environment.” (§ 21001, subd. (g), italics added.)....

The foregoing CEQA provisions and Guidelines make clear that “One of its [an EIR's] major functions ... is to ensure that *all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.*” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197, 132..., italics added.)

(*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400, italics in original.)

The Proposed Project cannot be an alternative to itself. As stated above, CEQA requires “An EIR shall discuss a range of reasonable alternatives *to the project, or to the location of the project...*” (Guidelines, § 15126.6(a), emphasis added.) Not only does the Build Alternative’s analysis describe the proposed project, the DEIR also calls the Build Alternative the “proposed

project.” For example, when describing the Bus-on-Shoulder Features of the Build Alternative, the DEIR states, “***The proposed project*** would include construction of transit-only shoulder lanes within interchanges (off-ramp to on-ramp). The shoulder improvements would allow buses to drive on the new auxiliary lanes between interchanges and the outside shoulder through the interchanges...” (DEIR, p. 8, emphasis added.) Moreover, under the Standard Measures section for the Build Alternative, the DEIR also states “This project contains a number of standardized project measures that are used on most, if not all, Caltrans projects and were not developed in response to any specific environmental impact resulting from ***the proposed project***. These measures are addressed in more detail in the Environmental Consequences sections in Chapter 2.” (DEIR, p. 20.) Throughout the Chapter 3 CEQA Evaluation, the DEIR vacillates between calling the Project the “proposed project” and the Build Alternative.

Moreover, by conflating the Build Alternative description with the Project description, the DEIR fails to adhere to CEQA’s requirement to provide an adequate project description. The CEQA Guidelines require an EIR to set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact. (Guidelines, § 15124.) An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) Only an accurate, stable and finite project description fulfills CEQA’s objective to allow affected outsiders and public decision-makers to “balance the proposal’s benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance.” (*Id* at 193.) A project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. (*Washoe Meadows Community v. Department of Parks and Recreation*, (2017) 17 Cal.App.5th 277, 287.) Given that the Project was described as both the Proposed Project and an alternative, this not only resulted in an inadequate alternatives analysis, but also culminated in a fundamentally inadequate and misleading project description.

B. The No Build Alternative Does not Satisfy the Requirement to Provide a Reasonable Range of Alternatives

Since the Project itself cannot be considered an alternative, the No Build Alternative is the only true remaining alternative.

CEQA requires the analysis of a No Project Alternative. The specific alternative of ‘no project’ shall ***also*** be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.

(Guidelines, § 15126.6.(e)(1), emphasis added.) Thus, the CEQA Guidelines require Caltrans to analyze a No Project Alternative in addition to the alternatives that accomplish the objectives of the Project.

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The DEIR states that “Under the No-Build Alternative, there would be no construction of auxiliary lanes or Bus-on-Shoulder features on State Route 1 within the project area, and Coastal Rail Trail Segment 12 would not be constructed... The No-Build Alternative assumes the construction of other planned and programmed projects in the region, including other auxiliary lanes projects on State Route 1 and other segments of the Coastal Rail Trail. Routine maintenance activities would continue.” (DEIR, p. 22.) Thus, the No Project Alternative for this DEIR is the No-Build Alternative.

The No Build Alternative alone does not satisfy the requirement that the DEIR must analyze a reasonable range of alternatives. “CEQA procedures ‘are intended to assist public agencies in systematically identifying both the significant effects of proposed project and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.’” (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937.) A comparison between the Project and the No Project Alternative cannot fulfill such a purpose.

The DEIR lacks sufficient data and analysis to be adequate. The document contains bare conclusory statements regarding significant impacts and mitigations. In many instances, the DEIR does not meet the substantive mandates of CEQA. For this reason, the DEIR must be substantially revised and recirculated for public comment.

Pursuant to Public Resources Code § 21167(f), we are requesting that the Caltrans forward a Notice of Determination to this office if and when the Project is finally approved. That section provides:

If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

Thank you for your consideration of these comments. We look forward to Caltrans’ written response to these comments.

Very truly yours,
WITTWER PARKIN



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cc: Client