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December 1, 2017

Dan Dawson
Principal Transportation Planner
Marin County DPW
Box 4186
San Rafael, CA 94913-4186
By email: DDawson@marincounty.org

Re: Draft CEQA Environmental Impact Report: Sir Francis Drake Boulevard Rehabilitation Project, Marin County CA

Dear Mr. Dawson:

I represent Community Venture Partners in regard to the California Environmental Quality Act (“CEQA”) Pub. Res. Code § 21000 et seq. compliance for the Sir Francis Drake Boulevard Rehabilitation Project (“SFD Project”).¹

Per my November 2, 2017 letter to you, the SFD Project Draft Environmental Impact Report (“DEIR”) improperly excludes basic project description information, regarding narrowing lane widths. Because of this lack of project information, the EIR also fails to provide required data and analysis, regarding impacts to traffic congestion and circulation.

Such basic inadequacies render the DEIR so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment have been precluded. *Therefore, to comply with CEQA, the EIR must be recirculated for public review.*

¹ This letter incorporates by reference a letter by Geoffrey H. Hornek, dated November 29, 2017 addressed to Bob Silvestri, CVP and a memo by Robert L. Harrison, dated November 30, 2017 addressed to Bob Silvestri, CVP.

1. The Project Description is Incomplete.

One of the primary flaws of the DEIR is its failure to provide an accurate project description. “An accurate, stable and finite project description is an essential element of an informative and legally sufficient EIR under CEQA.” (See CEQA Guidelines §15124, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.3d 185, 199 [139 Cal. Rptr. 396].) Several courts have invalidated EIRs for their failure to provide an adequate Project Description. For example, in *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, the California Supreme Court found that an EIR was invalid because it omitted a meaningful discussion of the conditions in the northern part of the proposed water supply system. (See also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376.)

In particular, with regard to the SFD Project, the CEQA Guidelines require that the project description contain a description of the projects’ technical’ characteristics and “consider the engineering proposals.” 14 Cal. Code Regs §15124(c) (“CEQA Guidelines.”) The change in lane width is both a technical characteristic and an engineering proposal and must be included in the Draft EIR so that the public can understand the project.

Other appellate court decisions on project description hold that where the project description makes public participation difficult, the EIR is not legally adequate.

These curtailed and inadequate characterizations of the Project were enough to mislead the public and thwart the EIR process. As noted in *County of Inyo v. City of Los Angeles*, supra, 71 Cal.App.3d 185, when an EIR contains unstable or shifting descriptions of the project, meaningful public participation is stultified. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” (Id. at pp. 197–198 [holding that although the “ill-conceived, initial project description” did not carry over into impacts section of EIR, the shifting description did “vitiate the city’s EIR process as a vehicle for intelligent public participation”].)

(*San Joaquin Raptor Rescue Center v. County of Merced*) (2007) 149 Cal.App.4th 645, 656.

Nor is there any exemption allowing the County to not disclose project description information. In previous email correspondence, Bob Silvestri of CVP asked why the project description did not include basic data or discussion of the lane width change. You stated in an email of Monday, October 30 that:

“The current lane widths, which vary throughout the corridor, and the multiple proposed lane modifications are both within adopted standards, do not alter vehicle throughput, and are (sic) thus analysis is not necessary under CEQA.”

And in a subsequent correspondence you wrote:

“Lane widths were not analyzed in the DEIR as the project does not propose constructing

any lanes at a width less than adopted design standards in the Caltrans Highway Design Manual,”

I am not aware of any such authority under CEQA that would exempt the County from providing the required “accurate, stable and finite project description.” Specifically, CEQA provides no such exemption to omit either: 1) a project description for a project component; or 2) environmental analysis, based on adherence to an adopted technical standard. CEQA Guidelines 15064.7(c) allows agencies to establish thresholds of significance which consider previously adopted or recommended public agency environmental standards, provided there is evidence to support that standard.

First, a state lane width standard is not an air quality, safety, circulation or any other standard related to environmental review. It is a technical standard for transportation planning and thus, does not qualify for the allowance in Section 15064.7 related to "environmental" effects. (See *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 334.

Second, the DEIR does not provide or rely on any such threshold of significance – even for traffic transportation planning - but instead simply fails CEQA’s basic mandate to provide project description detail and environmental analysis.

The County has not provided my client or me with any legal authority for the County’s position that where a project’s proposed lane widths are within Caltrans or other agency adopted standards, project description and environmental analysis are not required by CEQA.

2. DEIR Impact Assessment is Inadequate

An EIR must identify, analyze, and mitigate each and every significant environmental impact of a proposed project. Specifically, CEQA has a statutory mandate that requires that an EIR “shall include a detailed statement setting forth ... all significant effects on the environment of the proposed project.” (Pub. Res. Code §21100(b)(1), emphasis added.); see also CEQA Guidelines § 15126(a).)

CEQA Guidelines §§15126 and 15126.2 require that an EIR evaluate and classify impacts as to their severity. Impacts are normally measured against the existing environmental setting, which relates to the project description. A persistent problem is that the DEIR does not identify, evaluate or classify certain impacts. Part of the reason for this omission is that the project is not sufficiently described (e.g., due to missing details regarding lane width, etc.). That is, the SFD Project DEIR fails to properly measure the impacts against the existing environmental setting because the project description is incomplete and inaccurate.

Mitigation. An EIR must describe feasible mitigation measures which will avoid or substantially lessen each significant environmental effect to the maximum extent feasible. (CEQA Guidelines §15126.4(a)(1); *Save Our Peninsula Committee*, supra, 87 Cal.App.4th at 139.) A lead agency cannot approve a project if there are feasible alternatives or mitigation

measures that would avoid or substantially lessen significant impacts. (Pub. Res. Code §§21002 and 21081(a)(3); CEQA Guidelines §§ 15002(a)(3) and 15021(a)(2); *Mountain Lion Foundation*, supra, 16 Cal.App.4th at 134.)

The DEIR fails to comply with CEQA Guideline §15126, which requires analysis and mitigation of indirect impacts. Additionally, the DEIR misclassifies some impacts by improperly concluding that they can be mitigated to less than significant.

a. Traffic and Circulation Section Lacks Data and Basis for Assumptions

CEQA requires that where there are industry wide assessment models, an agency shall use those models. (See *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 CA 4th 357, 372.) CEQA further requires quantitative analysis where feasible and necessary to analyze a project impact. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1381.)

In a memorandum by independent traffic engineer and transportation expert Robert L. Harrison, dated October 30, 2017, Mr. Harrison identifies several examples of the DEIR using an inadequate model to calculate traffic delays. For instance, Mr. Harrison opines that: “[t]he incremental delay factor (cfi) as shown the DEIR capacity analysis calculations appears to be larger than would be expected.

Mr. Harrison further points out major flaws in the data and methodologies used by the County’s DEIR consultants in analyzing the potentially significant traffic congestion impacts of the Sir Francis Drake Rehabilitation Plan. Among those are:

- The existing traffic count data is not consistent;
- The projected 2040 traffic volumes are not consistent; and
- Peak hour factors are not consistent.

Regarding the lack of completeness of the project description, Mr. Harrison opines that:

“The DEIR's project description does not include dimensioned plans for the proposed lane width narrowing or other roadway configuration changes. Without this information, it is not possible to accurately assess the significance of the project's impact on traffic congestion that may be caused by the proposed changes. This lack of information on lane widths makes it impossible to properly undertake quantitative modeling of traffic impacts. The conclusion of the DEIR that the project would not have a significant adverse impact on traffic congestion and would therefore not require mitigation, cannot be verified without study of a fully competent detailed project description.”

These are only some of the numerous DEIR inadequacies identified by Mr. Harrison. The DEIR must address these failures in order for the public to understand the consequences of the SFD Project. (Pub. Res. Code §21100(b)(1), emphasis added.); see also Guidelines §§ 15126(a); 15088.5.)

b. Air Quality Lacks Project Description Leaving DEIR Conclusions Unsubstantiated

Courts have held EIRs deficient where it failed to correlate adverse air pollution effects with indirect health effects. First, not including lane width project description information/data/analysis in the DEIR renders the underlying air quality assumptions and conclusions inadequate. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.) CVP has retained air quality expert, Geoffrey H. Hornek, to review the DEIR. Mr. Hornek states that:

“The DEIR does not include dimensioned plans of project-related lane width changes or other roadway configuration changes or traffic link levels of service or of idling times at intersections. There is no quantitative air quality modeling using actual data, only summary conclusions about the project not having adverse impacts on ambient pollutant levels (see text below from DEIR p. 125 - 127). The lack of information about lane widths and similar design data makes it impossible to perform dispersion modeling of air quality impacts; consequently, the DEIR's air quality conclusions are unsupported. Given the DEIR's failure to do proper quantitative analysis, as noted herein, there remains the distinct possibility that project impacts on ambient air quality and health risk will be significant and unmitigated.” See November 29, 2017 letter from Geoffrey H. Hornek to Bob Silvestri.

Thus, the lack of precise project description and the lack of accurate quantitative modeling mean the DEIR does not have the required evidence to support its conclusions.

Because the DEIR uses the wrong modeling methodology and the data for that modeling is incomplete, there is no required substantial evidence for the air quality assumptions and conclusions. Mr. Hornek opines:

“[t]he DEIR must use CAL3QHCR to look at the PM 2.5 levels at sensitive receptors in the roadway corridor by modeling the proposed roadway configuration changes potentially affecting average speeds, idling times at intersections and changes to traffic lane widths .”

Mr. Hornek further states that,

“the DEIR must conduct dispersion modeling studies of project construction and operational ambient impacts and TAC health risks, then evaluate the need for exposure mitigations based on the findings.”

Thus, the DEIR cannot and does not have the necessary data and analysis to consider mitigation measures as required by CEQA. CEQA Guidelines §§15126 and 15126.2. Finally, the DEIR is inadequate on its face because it does not follow BAAQMD CEQA Guidelines and thus, does not provide any mitigation of any identified project ambient air quality impacts as mandated by the Marin Countywide Plan.

It appears therefore that the County has simply not been willing to pay for the type of modeling and analysis that is necessary for a project of this scale. Such unwillingness shorts the public and the decision maker and is penny wise and pound foolish.

3. The EIR Must Be Recirculated

A draft EIR must be recirculated, where it is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment have been precluded. (CEQA Guidelines, §15088.5.; *Mountain Lion Coalition v. Fish & Game Com.*(1989) 214 Cal.App.3d 1043).

The DEIR fails to adequately provide a project description, provide accepted industry modeling to assess traffic impacts, and provide a project description and baseline information that provides evidence for its conclusions regarding traffic and circulation and air quality. These legal failures compromise the integrity of any conclusions concerning significance of impacts and identification of reasonable mitigation measures. Further, as shown in letters by technical experts, Mr. Harrison and Mr. Hornek, such lack of a specific project description, lack of baseline information and failure to use accepted modeling, renders experts, much less members of the public, unable to conduct inform and reasoned review of the DEIR.

Because these errors are so essential, CEQA requires that the DEIR be revised and recirculated to provide the decision maker and the public the opportunity to examine reasonable alternatives as required by CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Yates", with a horizontal line extending to the right.

Edward Yates