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12 July 2006

Gregory C McConnell, Senior Environmental Planner
Attention: Sheryl Dorado, Associate Environmental Planner
California Department of Transportation, District 4 Environmental Analysis
Mail Station 8B, Box 23660
Oakland, CA 94623-0660

Dear Mr. McConnell and Ms. Dorado:

The following comments are submitted by the writers of this letter in behalf of the Fourth Bore Coalition. By way of qualifications, Mr. Rossmann has practiced land use and natural resources law (including NEPA/CEQA) since 1973; has served as the Lecturer in Land Use and Water Resources Law at the University of California, Berkeley School of Law (Boalt Hall) since 1990; and has served since 1988 as Special Counsel to City of South Pasadena in its successful resistance of the proposed 710 freeway. Dr. Flashman has practiced environmental and land use law, with an emphasis on enforcement of CEQA, since 1990. In addition to his law degree, Dr. Flashman holds a Sc.M. in biology from Brown University and a Ph.D. in biochemistry and molecular biology from Harvard University and was a research biologist for ten years in academia and industry before obtaining his law degree. Dr. Flashman has represented many local, regional, and national environmental groups and represented the Hayward Area Planning Association and Citizens for Alternative Transportation Solutions in their successful opposition to Caltrans' proposed Route

1

238 "Hayward Bypass" Project.

We are astonished that a project of the dimension, impact, and controversy as the proposed Fourth Bore should be the subject of such a legally inadequate and unsupportable draft EIR/EA. The only lawful remedy for this circumstance calls for the state and federal lead agencies (Caltrans and FHWA) to withdraw the present document and issue a new draft EIR/draft EIS. This remedy will not only cure the first error assigned in the paragraphs below, but will also enable the agencies to expand the analysis to include the total area of potential effect, a broader range of meaningful alternatives, a definition of legally-unavoidable mitigation measures, and the development of community enhancements that will compensate for the cumulative impacts of the Fourth Bore together with those of the existing but never-analyzed route 24 freeway. 1

Critics will claim that the Fourth Bore Coalition is responsible for asking (and forcing) the highway agencies to "start over." That will be a false charge. Until December 19, 2005, with the publication of FHWA's notice that it was withdrawing its intent to prepare an EIS on this project (70 Fed. Reg. 75236), FHWA represented to the public that it would prepare a full EIS. (67 Fed. Reg. 70296 (2002).) The February 2003 scoping report for this project correctly represented that NEPA requires an EIS. Only when the agencies briefed the Fourth Bore Coalition on 28 November 2005 did we learn of FHWA's intention to renege on the EIS commitment. In response the Fourth Bore Coalition wrote to both agencies on 22 December 2005, objecting to FHWA proceeding without an EIS. (This letter is attached to and incorporated into these comments by reference.) The agencies, and not the affected communities, bear full responsibility for the inevitable delay occasioned by their insistence on refusing to issue a draft EIS. 2

I. The present environmental document must be withdrawn and in its place a full draft EIR/EIS circulated.

The environmental checklist, claiming that all project impacts (including construction and operation noise, BART ridership loss, constructive use of recreational and educational properties) will be mitigated, is simply dishonest; if this list is accurate, why did not Caltrans proceed by mitigated negative declaration under state law? The entirety of the Fourth Bore Coalition's comments provide not merely substantial, but overwhelming, evidence that this project constitutes a major federal action significantly affecting the environment (NEPA), just as under state law it may have a significant effect on the environment (CEQA). A draft EIS and EIR 3

2

are both required. (42 U.S.C. §4332(c); Pub. Res. Code, §21110.)

The public, and federal, state and local decision makers are entitled to a full draft EIS and EIR before **any** decisions (federal, state, or local) are made. That is because federal law requires that when an EIS is prepared with a state-law assessment, the result must be "one document [that] will comply with all applicable laws." (40 CFR §1506.2.) Only then will all interested parties be able to proceed with the full section 4(f) analysis and socio-economic analysis that comes with the draft EIS.

II. A consistent project description based on purpose and need requires expansion of the analyzed area of potential effect.

The project broadly serves, according to the now-circulating draft, to improve transportation mobility in the entire route 24 corridor. Impacts (both positive and negative) will thus be occasioned in that entire corridor, and not at the truncated corridor that frames the draft EIR/EA analysis, ending in a westerly direction at route 13 or the Broadway interchange. Impacts ranging from traffic levels and trip generation, to those on parks, schools, and historic properties, must be assessed along the entire 24 corridor, and most particularly in the Rockridge community that extends from route 13 west to the 580/24 interchange. (Indeed, trip-level impacts outside the corridor must be addressed, since the project is intended to produce those impacts; two logical points to include are the major intersections at which the decision to travel on route 24 is made: the Bay Bridge eastbound off-ramp, and the route 80/route 680 intersection in Solano County.)

The draft erroneously confines its area of potential environmental effect to that part of the corridor between state route 13 or Broadway, and the Gateway or El Camino sintersection. Without belittling the great impacts that will occur within that confined area, particularly on residents at the west portal, the section 4(f) and other impacts beyond are also extremely significant: in Rockridge, a middle and elementary school (and their recreational park elements), public parks in Oakland and Berkeley, and local streets in both cities. 4

III. Induced demand must be examined as part of the project impact.

The draft EIR/EA's estimates of future traffic and resultant congestion if the project is constructed wrongfully fails to take into account the effects of induced

3

demand on future traffic in the corridor. Because of induced demand, traffic in the reverse-commute direction (i.e., west to east during AM peak hours, east to west during PM peak hours) will be greater than indicated under the future conditions modeling in the DEIR/EA. As a consequence, there will not be as much improvement in reverse-flow congestion as predicted in the DEIR/EA. Further, adverse impacts due to increased noise and air pollution will be greater than indicated in the DEIR/EA. For these reasons, the analysis in the DEIR wrongfully underestimates future project impacts. 5

Induced demand is a well-recognized and documented phenomenon in transportation planning. As the attached articles make clear, the concept of induced demand has been investigated in transportation planning for at least fifteen years, and is now well-accepted in that discipline.

Induced demand means, in the simplest possible terms, "Build it, and they will come." More specifically, if improvements are made that increase highway capacity, additional trips will be generated as a result, beyond those predicted using historical trip generation rates.

The reason for this phenomenon is fairly simple to understand. The attached Wikipedia article excerpt presents it in terms of an economic analysis. Each trip has a cost – both in terms of the actual dollar cost for fuel, wear-and-tear, and other operating expenses for the vehicle, and in terms of other less tangible values such as time, aggravation, etc. When deciding whether to take any particular trip, when, and how, we all unconsciously compare the costs of different options, including the cost of simply not taking the trip. If the overall cost of taking the trip is higher than the cost of not taking it, the trip does not occur.

At a simple level, some current Bay Area traffic models, such as the MTC model, include at least a rudimentary analysis of, for example, effects of congestion in trip route planning[1]. If two or more alternative routes compete for traffic, traffic is assumed to use the quickest, least congested one. However, even the MTC model does not consider trip deferral – putting off a trip for a couple of hours until peak hour congestion subsides, and it does not at all consider that of the "cost" of a trip is too high, it will not occur, or may be directed to a different alternative location.

[1] Even ignoring the larger problem of induced demand, the EIR's analysis erroneously uses the outdated Contra Costa Transportation Authority's model, which fails even to incorporate congestion avoidance.

The converse of this analysis gives rise to induced demand. If congested conditions have raised the cost of trips enough so that they don't occur, reducing the cost will make some trips more attractive, so "new" trips will be generated. These are trips that would happen if all trips had zero "cost", but had been inhibited by their high cost until the cost was lowered.

As applied to the Caldecott Improvement Project, the current congestion in the "reverse commute" direction raises the cost of such reverse-commute trips. Consequently, some of these trips are either delayed or eliminated. In either case, they do not currently contribute to peak hour congestion. With the addition of another two lanes in the reverse-commute direction, the "cost" of such trips (in terms of time, gas consumption, congestion, frustration, etc.) would be reduced considerably. As a result, there will be more decisions favoring use of Highway 24 EB during the morning peak hours, and WB during the evening peak hour. The additional traffic along Highway 24 will reduce the projected project benefits in travel speed and reduced congestion, while actually increasing overall noise and air pollution impacts over those for the no project alternative.

Caltrans may claim that induced demand is still too speculative a concept to require analysis. However, Caltrans documents themselves reference and acknowledge the reality of induced demand. (*See, e.g.,* California Life-Cycle Benefit/Cost Analysis Model (Cal-B/C) (Caltrans/System Metrics Group/Cambridge Systematics, June 2004).) While Caltrans environmental review documents, such as this draft EIR/EA, still tend not to incorporate induced demand in their analyses, the validity of the concept is universally recognized, and must now be included here.

Caltrans may also argue that there are no good data available that can be used to incorporate induced demand into modeling future traffic figures for this project. However, Caltrans has an almost ideal case study close at hand with plentiful data on the effects of induced demand.

Caltrans, in cooperation with the Alameda County Transportation Authority and the Santa Clara County Transportation Authority, has, over the past decade, added both northbound and southbound lanes to I-880 between Oakland and San Jose. Caltrans has accurate figures on both pre-project and post-project traffic on I-880, both northbound and southbound, during morning and evening peak hours. Caltrans also has the projected cumulative traffic figures used in the I-880 widening project EIR/EIS. These figures included traffic from projected future projects, but

5

not that due to induced demand. The difference between the actual and projected post-project cumulative traffic, taking into account changes in other projects from the assumptions used in the EIR/EIS, can be attributed largely if not entirely to induced demand.

Caltrans needs to prepare these calculations and determine the extent of induced demand. Assuming the traffic increase attributable to induced demand is found significant, it needs to be added into the modeling for the Caldecott Fourth Bore Project and used to re-evaluate both future traffic conditions and future noise and air quality impacts. Any significant changes require recirculation of the revised analysis.

IV. The impacts of mode shift on BART and other transit must be assessed (and mitigated).

Mode shift is a phenomenon closely related to induced demand. Like induced demand, it results from consumer choice based on the cost of a trip. However, in mode shift, the consumer is comparing the price of various different modes of transportation and choosing between them. As applied to the Caldecott Fourth Bore Project, the major mode choices are between BART, a single occupancy vehicle ("SOV"), and a high-occupancy vehicle ("HOV") (including buses and vanpools). The current situation provides little if any benefit to the choice of HOV over SOV[2]. However, the congestion on Highway 24 in the reverse commute direction tends to raise the cost of such trips and therefore increase the comparative attractiveness of a BART trip as an alternative. The Fourth Bore Project, by lowering the relative cost of a SOV trip, will tend to shift trips from BART towards SOV trips. Not only will this appear, in terms of traffic levels, as a type of induced demand, reducing the Project's benefits and increasing its noise and air quality impacts, but it will also reduce overall BART ridership and revenue. This, in turn, will force BART to have to choose, all other factors remaining constant, either service cutbacks or fare increases to maintain revenue balance.Either of these two changes would further increase the cost of BART trips compared to SOV trips, causing a further mode shift. As can be seen, the net effect is a vicious circle that will only reach a steady state when the final cost of a BART trip again balances against the cost of an SOV trip,

6

[2] Generally, all other factors being equal, na SOV trip will have a lower overall cost than a HOV trip, because HOV trips usually involve the inconvenience of multiple trip segments and reduced flexibility in time of travel, as well as often a lower level of individual comfort.

most likely because the combination of induced demand and mode shift has resulted in enough of a traffic increase that congestion, and resultant SOV trip cost, has returned to close to its former value.

As this analysis should make clear, the Fourth Bore project will have a negative impact on overall BART operations by reducing ridership, leading to reduced revenue, leading to either service cutbacks or increased fares, either of which will result in a further mode shift away from BART and towards SOV use that will go far beyond the direct effect of the Fourth Bore Project.

Caltrans may again claim that it has no way to gauge the effects of mode shift on BART ridership or revenue. However, there are numerous local examples that can be used to estimate the impact. The three most obvious are the I-880 widening project, the closure of the Bay Bridge after the Loma Prieta Earthquake, and recent "Spare the Air" free transit days.

For the I-880 widening project, the analysis would be similar to that for induced demand outlined above. I-880 parallels the Oakland to Fremont BART line for much of its length. Therefore, there is, at least to some extent, a competition between BART and freeway SOV on I-880 that is similar to that between BART and SOV on Highway 24.[3] When the additional lanes were added to I-880, some people presumably switched from using BART to using a SOV/HOV on I-880. An analysis of BART ridership before and after the extra lanes opened would indicate, at least roughly, how much of a shift should be expected for the Foiurth Bore Project.

The analysis for the Bay Bridge closure after the Loma Prieta Project would be similar, but in the reverse direction. The bridge closure essentially made the cost of an SOV (or HOV) trip across the Bay much higher.[4] BART ridership, not surprisingly, increased substantially. When the Bay Bridge reopened, BART ridership dropped back down. The extent of these rises and drops would indicate the effect of a major cost change on mode shift and BART ridership. Obviously, the Bay Bridge effect will likely be more pronounced than what can be expected from the

[3] Of course, the analysis is complicated because I-880, unlike highway 24, already has an HOV lane, decreasing the relative cost of an HOV trip relative to both BART and an SOCV trip.

[4] *I.e.*, it would involve either driving south to the highway 92 bridge in Hayward, or north to the I-580 bridge in Richmond, then south over the Golden Gate Bridge .

Fourth Bore Project. Nevertheless, it provides some basis for estimating the mode shift effect of the project.

Finally, the recently-declared "spare the air days" offer a third opportunity for empirical analysis. During these days in late June 2006, BART ridership increased in reported proportions of approximately 15 per cent. To our observation, freeway traffic through the Caldecott Tunnel in both directions markedly decreased, to the point of no congestion in either direction. Clearly, reducing the cost of BART use in the end reduces traffic congestion in the route 24 corridor; increasing the cost of BART use enhances traffic congestion.

The DEIR/EA totally ignores this synergistic dynamic and the associated impacts. The report must be revised to quantify and take into account both the direct impacts of the project on BART ridership through mode shift, and the indirect and cumulative impacts on BART ridership as BART struggles to cope with the decreased revenue resulting from mode shift caused by this project.

As reiterated below in relation to a tolls alternative, the mode shift impact can be mitigated by employing tolls on part or all of the Caldecott Tunnel use, in an effort to remove the grossly inequitable pricing disparities that presently govern commute traffic between highway 24 users and BART users. Presently an SOV commuter doing a roundtrip a roundtrip from MacArthur BART to Walnut Creek BART travels approximately 27 miles. Even at a gas price of $3.25 per gallon and a car that only gets 25 miles per gallon, the cost, at least in terms of gasoline, is only about $3.50. Further, without congestion the trip would take only 20 minutes each way. The same commuter on BART from MacArthur station to Walnut Creek BART would pay $5.50 in fare for a trip that would also take about 20 minutes each way. (A greater inequity applies to travel between Walnut Creek and San Francisco, with the round trip SOV toll $3.00, and round trip BART fare $8.00.) By establishing tolls for all or part of Caldecott Tunnel use, – and dedicating the increased tolls to BART (and other transit) fare reduction – the Fourth Bore Project offers Caltrans and FHWA the most promising means of removing this unacceptable inequity.[5] A revised draft EIR/EIS must propose and explore this mitigation.

7

[5] Financial potential is established in the just released Route 710 Tunnel Technical Feasibility Assessment Report (LA County MTA, June 7, 2006), projecting on estimate weekday volume of 170,000 trips [comparable to Fourth Bore estimated volume] annual revenues starting at $133 million. (This revenue must be halved on the assumption that Caldecott tolls would be taken only one direction; the $3 toll on which the above projection

8

V. The EIR must include a "HOT" lanes alternative.

Preliminarily, alternatives must be measured from a proper statement of "purpose and need," or "project description." The DEIR/EA commendably recognizes overall project purpose "to increase mobility by providing for the movement of people and goods" through the highway 24 corridor. (*Op. cit.*, p. 1.) Alternatives, therefore, must be measured for their effectiveness in promoting mobility. Because the DEIR/EA unfortunately restates "purpose and need" in tunnel-specific objectives (*e.g.*, eliminate tunnel reversals, spend money on the tunnel because it is programmed in "Measure J") (*Id.*, p. 5), the lead agencies must take great care not to rely on that tautological statement of purposes to reject elements of alternatives that do not meet all those tautological goals.

As mentioned above, the highway 24 corridor currently provides no extra incentives for HOV use. Presently and as proposed, the cost of a HOV trip is as high or higher than that of a SOV trip. Right now, the Caldecott Tunnel is a "bottleneck" in both directions, limiting traffic flows and increasing trip time and cost. One alternative for the Fourth Bore Project not mentioned in the DEIR/EA would capitalize on this situation to provide a significant incentive for HOV use in the corridor. It could also be used as a revenue source to fund improved transit in the corridor, thereby reducing the cost of transit and increasing its attractiveness as an alternative to SOV use.

The current project calls primarily for construction of a new Fourth Bore tunnel that would be used for traffic in the reverse-commute direction. More simply, rather than having one bore switch directions at least once a day, there would be two bores – four lanes – in both directions at all times.

A relatively obvious and simple alternative project would add a two or three lane bore, but dedicate one lane in each direction as a combination HOV and toll lane 8

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is based would bring the SOV direct monetary cost into at least rough parity with the existing BART fare.) Relevant pages of the 710 tunnel study are appended to these comments.

9

(so-called a "HOT" lane). With a two-lane tunnel, there would always be three standard lanes in each direction, and a fourth lane that would (at least during peak traffic hours) become a HOT lane. This modification would result in converting one currently-unrestricted commute-direction lane into the HOT lane.

Because highway 24 is already marked for the loss of two lanes through the Caldecott Tunnel, the tunnel approach could be restriped so that the new HOT lane would begin where the current four-lane-to-two-lane transition begins. Further, the lane configuration could be modified to position a Fastrak transponder receiver next to the new HOT lane so that toll collection would be automatic. Such electronic toll collection also enables congestion pricing for the HOT lane, so that toll-paying SOVs using the HOT lane would be charged based either on the time of day or the degree of congestion on the tunnel approach. (The toll could be posted on the electronic signboards on the tunnel approach so that drivers would know the toll to expect and could decide whether it was worth the extra cost to avoid the congestion.) And, as stated in the previous comment, toll revenues could be funneled into the public transit agencies (BART, AC Transit, and County Connection) serving the corridor, to increase quality of service and reduce the cost for transit alternatives to the tunnel, thereby indirectly relieving congestion by inducing a mode shift towards transit.

Of course, use of the new Fourth Bore for HOT lanes in both directions may actually result in improved transportation efficiency not only in the reverse-commute direction, but also in the primary commute direction (i.e., East to West in A.M.; West to East in P.M.), especially if the HOT lanes are used for express commuter bus service. Given this is the case, new traffic figures should be calculated for this alternative and included in the recirculated EIR/EIS.

VI. The EIR must assess the cumulative impacts of the Fourth Bore and other unanalyzed past, present, and reasonably foreseeable projects. 9

The DEIR/EA purports to include an analysis of cumulative impacts. Cumulative impacts are the effects of the project in conjunction with related impacts of other past, present, and reasonably foreseeable future projects. (40 C.F.R. §1508.2; Pub. Res. Code, §21083(b)(2); 14 Cal. Admin. Code, §15130.) The DEIR/EA's cumulative impact analysis, however, erroneously fails to consider unassessed impacts from past projects, most notably the impacts from existing highway 24 and BART Concord/Pittsburg/Baypoint line approved and constructed prior to the Clean Water Act section 404, National Historic Preservation Act, Department of Transportation Act section 4(f), NEPA, CEQA, and Civil Rights Act

10

Title VI (environmental justice). Never-assessed-and-mitigated losses produced by the 1964 Grove-Shafter Freeway include removal of 1,400 homes, fill of one kilometer of Temescal Creek and trail alignment,[6] loss of historic buildings on College Avenue – in all, route 24 destroyed more homes and wetlands than proposed by the now-rescinded 710 freeway in Pasadena, South Pasadena, and the El Sereno community of Los Angeles. The cumulative impact analysis must include the never-assessed impacts of the existing freeway, as well as the later-constructed BART line, as now modified by Fourth Bore impacts.

Highway 24 and BART in combination have produced major impacts on the surrounding Oakland/Berkeley community. Those impacts have been most severely and directly felt in the areas directly adjacent to highway 24 and BART, as will the impacts from this project. Aside from the impacts described above, perhaps the most severe impact divided the North Oakland community along the highway 24/BART right of way. Numerous streets were cut off and neighbors living down the street from one another now were required to travel blocks to reach each others' houses. More generally, North-South pedestrian and bicycle access was severely impeded. The freeway essentially divided the surrounding areas of North Oakland into a "North of 24" and "South of 24" segment. The project will further contribute to this fragmentation by increasing traffic flows on entrance and exit ramps and their adjoining streets, thereby making these streets more impassible for pedestrians and bicyclists. In particular, Miles and Keith Streets Claremont Avenue and Telegraph Avenue (a designated bicycle corridor) and the northernmost section of Broadway will all be further impacted, as will parts of Tunnel Road and Hiller Drive in Berkeley. The project must include mitigation for these cumulative impacts, including at the very least funding for additional pedestrian signals and traffic calming mechanisms on the streets leading to and from highways 24 access points. 10

The cumulative noise impacts of highway 24 and BART have also been highly significant and detrimental. These impacts will only be further increased by the additional traffic caused by this project, especially including traffic due to induced demand and mode shift effects. Caltrans should therefore consider including additional noise mitigation measures along the corridor. Caltrans is currently proposing several soundwalls in areas close to the western tunnel portals. These soundwalls need to be re-evaluated to ensure that they do not merely redirect sound 11

[6] The Oakland Museum of California's watershed map of Temescal Creek, including its Tunnel Branch, is attached to document the length of creekbeds covered and destroyed by route 24 construction.

11

impacts at a different set of residents. More inclusively, Caltrans should evaluate the feasibility of additional noise mitigation in areas extending westward from the tunnel at least as far as Children's Hospital, Oakland. Such mitigation should again be designed to ensure that the sound is not merely reflected onto those who live on the other side of or above the highway. Rather, the mitigation should be designed to contain or absorb the noise so it does not impact the surrounding community. Moreover, all noise mitigation measures must improve, and not degrade, the physical environment of either highway users or the community and should be analyzed for possible secondary impacts. Particular care should be taken to mitigate impacts on the public use and section 4(f) resources adjoining highways 24, including public school and their playgrounds, other public recreational spaces, and the Rockridge BART station platform, which is already severely impacted by traffic noise from highway 24[7].

VII. As a compelling mitigation measure, tunnel construction can only proceed in one direction staged at the east portal.

In terms of localized impacts, the project as proposed would visit the greatest of those on residents near the tunnel's west portal. Other comments submitted by the Fourth Bore Coalition details these impacts, including those of full time staging and construction for several years, on fhundreds of residences. 12

These impacts present a totally unnecessary and avoidable cost of the Fourth Bore. At the Caltrans briefing at the Claremont Middle School on 15 June, Caltrans engineers described the boring technique using the "roadheader" technology. This is the same technology that has been assessed for construction of the proposed route 710 tunnel in Southern California. The 710 Tunnel Feasibility Report (relevant pages attached to these comments) estimates for the 4.1-mile tunnel a one-way boring time of 5.0 years using "roadheader" technology. This schedule suggests that for the one+ mile length of the Caldecott, it could be bored in two years from the Orinda side only, sparing Parkwoods and other west portal residences and residents virtually all 13

[7] The DEIR provides no existing or future noise levels measurements or estimates for any of the BART stations on either side of the tunnel. Measurements should be made, at a minimum, for the MacArthur, Rockridge, Orinda, and Lafayette BART stations. All of these stations are surrounded by highway 24 and are already heavily impacted by freeway noise. Indeed, patrons waiting at the Rockridge BART station can often be seen wearing earplugs, demonstrating the severity of the existing problem.

excavation and dirt-removal impacts.

VIII. Beyond mitigation for Fourth Bore impacts alone, enhancements offer the promise of convincing our communities that we (as well as the assertedly benefited motorists) will benefit from this project.

As described above, construction of existing route 24 produced extreme community impacts, which were only possible because route 24 was approved prior to the enactment of virtually all the environmental laws designed to avoid that community destruction. It is inconceivable that starting today the route 24 freeway could be built as it presently exists.

Thus it is important, as part of this Fourth Bore project, for the sponsoring federal, state, and local agencies to propose what under today's law would be called "enhancements," but which more accurately can be identified as overdue mitigation – an attempt to compensate the Oakland and Berkeley neighborhoods for community features that were taken from them four decades ago. It should be clear from the entirely of the Fourth Bore Coalition's members' comments that a substantial part of our community would be willing to accept the project if it brought benefits to us as well as to users of the tunnel. If the sponsoring agencies have any chance to make this project community-acceptable, it is through development of and commitment to meaningful enhancements. 14

Two historic precedents for significant enhancements beyond mitigation, which succeeded in creating political consensus to compensate for harm done years before, should guide the agencies in this case: (1) former Caltrans Director Bob Best's wise decision on the Cypress Freeway realignment to undo the divisive original alignment and leave West Oakland better off than the original project condition; (2) Los Angeles' commitment to permanently rewater the Owens River for the first time since 1913 as compensation for unquantified groundwater pumping impacts in the Owens Valley .

Within the next several weeks, members of the Fourth Bore Coalition in concert with their elected community representatives hope to produce a consensus list of mitigation measures and enhancements. The limited circulation period of the present draft EIR/EA disables us to complete that process in 60 days. With recirculation of a revised draft EIR/EIS, however, the lead agencies will be able to proceed from a base of meaningful enhancement proposals. 15

13

Conclusion.

For reasons stated in these comments and others submitted by the Fourth Bore Coalition, the California Department of Transportation and Federal Highway Administration should prepare a draft EIR/EIS and recirculate that report for further public comment. The new draft EIR/EIS should respond to the comments submitted on the present inadequate draft. 16

Respectfully submitted,

STUART FLASHMAN

Stuart M. Flashman

ANTONIO ROSSMANN

Antonio Rossmann

14

1, 2, and 3 - Please see the essay on "The Environmental Process; Environmental Impact Statement/Environmental Impact Report (EIS/EIR) versus an Environmental Assessment/Environmental Impact Report (EA/EIR); and Criteria for Significance" in Chapter 1.

4- Please see the essay on "Project Study Area Boundaries" in Chapter 1.

5- Please see response #2 in the essay on "Traffic Modeling/Forecasting" in Chapter 1. Please also see response #2 in the essay on "Traffic Operations" in Chapter 1.

6- Please see responses #2 and #3 in the essay on "Traffic Modeling/Forecasting" in Chapter 1.

7- Please see response #9 in the essay on "Traffic Operations" in Chapter 1.

8- Please see response #5 in the essay on “Traffic Operations” in Chapter 1.

9- Please see the essay on “Cumulative Impacts/Enhancements” in Chapter 1.

10- Please see the essays on “Cumulative Impacts/Enhancements” and “Bicycle and Pedestrian Access/Improvements” in Chapter 1.

11- Noise abatements are considered only at locations where noise impacts are identified within the project study area boundaries. Caltrans has no program to provide noise abatements for areas currently subject to freeway traffic noise, or where there is no new freeway or reconstruction of an existing freeway. Reflective noise will not be a problem at this location. A wall that perfectly reflects all the noise that hits it (physically not possible) will increase noise by no more than 3 dBA, and this will be masked by the originating traffic noise. Please also see the essay on “Project Study Area Boundaries” in Chapter 1.

12- Please see the essay on “Constructing the Tunnel from the East Side Only” in Chapter 1.

13- The preliminary reports for the 710 tunnel include a schedule that shows tunnel excavation taking approximately 6 years. This schedule appears to be based on using two roadheaders per tunnel each mining approximately 10,000 feet of tunnel or approximately 1,700 feet per year. The schedule developed for the fourth bore predicts that tunnel excavation will take approximately 18 months using 2 roadheaders for a total of 3700 feet of tunnel. This results in an average rate per roadheader of 1230 feet/year. The construction schedule for the fourth bore is based on a very detailed analysis and has been independently verified by industry experts.

14- Please see the essay on “Cumulative Impacts/Enhancements” in Chapter 1.

15 and 16- Please see the essay on “The Environmental Process; Environmental Impact Statement/Environmental Impact Report (EIS/EIR) versus an Environmental Assessment/Environmental Impact Report (EA/EIR); and Criteria for Significance” in Chapter 1.

Grassetti Environmental Consulting

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Environmental Assessment
NEPA/CEQA Compliance
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July 10, 2006

SUBJECT: COMMENTS ON CALDECOTT TUNNEL IMPROVEMENT PROJECT DRAFT ENVIRONMENTAL IMPACT ASSESSMENT/ENVIRONMENTAL IMPACT REPORT

Dear Mr. McConnell;

I am a CEQA/NEPA expert with over 22 years of experience, including consulting, public sector planning, and teaching professional workshops and college-level courses in environmental impact assessment. I also am a concerned resident of the area to be impacted by the proposed Caldecott Tunnel Improvement Project, and a member of the North Hills Phoenix Association's Steering Committee. In all of these capacities I am submitting the following general and detailed comments on the Draft Environmental Assessment/Environmental Impact Report (EA/EIR) Caldecott Tunnel Improvement Project.

1

In summary, this EA/EIR fails to meet even the most minimal NEPA and CEQA requirements for disclosure, analysis, and mitigation. It is deficient in failing to:

- respond to and address detailed comments submitted during the scoping period;
- accurately describe the project's purpose and need;
- fully describe the project for the purposes of environmental impact assessment;
- provide an adequate environmental baseline for comparison with project impacts;
- analyze an adequate range of alternatives;
- use appropriate criteria of significance protective of the environment;
- adequately analyze project impacts;
- identify adequate, enforceable, monitorable mitigation measures; and,
- fully consider cumulative projects and their impacts.

These failures result in a document that fails to serve CEQA's and NEPA';s purposes of full public disclosure and reducing potential impacts of the project. The document should be substantially revised and recirculated for public review as an EIS/EIR. Specific comments on each of these topics are presented below.

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Although the document fails to adequately assess many topics, ranging from air quality to traffic to lighting to biological resources, the lack of analysis of construction noise deserves special attention. This project is planned to, at a minimum, involve 24-hour 5-plus days/week of construction, including nighttime construction, generators, batch plants, and possible blasting immediately adjacent to a high-density residential complex of 1000 persons, and at the mouth of a canyon (up which noise travels freely) with several hundred more houses. This EA/EIR fails to do any meaningful evaluation of the impacts of construction on these approximately 2,000 residents. It also completely ignores the legal dictum established in the Berkeley Keep Jets Over The Bay v. Board of Port Commissioner's (Oakland Airport expansion) case which explicitly states that arbitrary noise standards cannot be substituted for meaningful analysis, that time-averaged noise metrics may not be adequate descriptors of noise impacts, and that, under CEQA, noise must be considered in the context of the disturbance that it causes, not other arbitrary factors. Caltrans' failure to even acknowledge these legal requirements is more disconcerting considering the fact that they have been requested to consider this at least twice; once at a meeting with the 4th Bore Coalition and again in our comments on the NOP. We now understand that Caltrans has retained a noise consultant to evaluate the project's construction noise impacts. I note that CEQA and NEPA require a transparent process where all analyses are presented to the public for review and comment during the statutory comment periods. Therefore I am requesting that Caltrans recirculate the Draft EA/EIR for public review when the new noise analysis is complete. This recirculation is required not just for noise but also for required revisions for the numerous other deficiencies in the document that are detailed below and in other comment letters. 2

Scoping Comments

The NHPA and other community organizations and individuals submitted repeated detailed scoping comments on the NOP/NOI, yet none of these comments are addressed in the EA/EIR. These scoping comments are attached to this letter and we request that you address each of these comments in the Final EA/EIR or, preferably, in a revised, recirculated EIS/EIR that also addresses the additional comments on the Draft document detailed in this and other letters. 3

Purpose and Need

The EA/EIR's discussion of the project's need spends considerable time addressing commute-direction congestion (pp. 5-7) and has only minimal discussion of reverse-commute direction congestion. It relies, instead on "voter-perceived" needs as evidenced by voter approval of transportation bonds and taxes, which provided funding for a variety of transportation improvements, not just this project. A review of the transportation section of the document further questions the project need. That section states that the reverse commute traffic volumes are approximately 50% of the commute direction volumes. This would argue for the adequacy of the existing tunnel configuration or, if improvements are to be made, they should be in the commute direction, where much longer queues are anticipated than in the reverse commute direction absent any improvements. Further, the project purpose and need does not

consider the rising price of gasoline either currently or over the next 25 years. In fact, it is even possible that traffic would be reduced compared with current levels by the proposed 2012 opening of the tunnel. Further, the EA/EIR does not consider the implication on reverse commutes of commute-direction backups of nine miles or more. Will this level of backup dissuade short-duration trips where the return trip may be caught in the miles-long congestion? In sum, this seems to be a project driven by perception rather than reality. It is inappropriate for a NEPA/CEQA document to use perception and analytical/logical blinders as rationales for needing a project. 4

Project Description and Alternatives

The project description fails to describe important components of the project, including:

- Where will spoils be disposed? 5
- What equipment will be used in the project construction? 6
- How many truck trips will occur during each day of construction? 7
- Will those trucks operate at night? 8
- Will blasting be done at night? 9
- Will night lighting be used? If so, where and what type? 10
- What temporary road closures will occur during construction? 11

The project description states that the current tunnels have no or minimal shoulders, and that the proposed alternatives both have shoulders that have adequate width to serve as additional travel lanes. Is it possible that these shoulders will be converted to travel lanes at some point in the future? If so, the potential impacts of the four-lane alternatives should be evaluated in the EIR/EA. If not, will the approval be conditioned on the shoulders remaining shoulders and not being converted to travel lanes? 12

The range of alternatives is inadequate because it fails to reduce or eliminate the project's impacts, which is CEQA's stated purpose for considering alternatives. This inadequate range of alternative may have resulted form Caltrans' opting to use a construction process where it assumed that one of these two alternatives will be selected and has already embarked on additional engineering on those alternatives as a cost-saving measure. Unfortunately, this approach is inconsistent with CEQA's requirement that agencies shall not "***take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of the CEQA review of that public project***". (CEQA Guidelines section 15004(b) 2.) 13

Additional alternatives that should be considered include: combinations of transit and transportation demand management. How much traffic reduction can be achieved by $500,000,000 in transit incentives (actually, far more if interest on bonds is factored in) between now and 2032? For example, could free or more frequent non-commute direction bus and BART travel be cost-effectively substituted for the project? The EA/EIR should assess the environmental impacts of a carpool/HOV/transit-only new-

bore tunnel for either the commute or non-commute direction rather than a lower-need non-commute direction general use tunnel. 14

The Construction Staging description (pp. 195-6) states that the alternatives "***can*** be constructed using the NATM…" but it doesn't state if they ***will*** be constructed using that method. Certainty of the construction method is critical to conducting the impact assessment. Please revise to state whether this method will, in fact, be used, and , if not, what other method will be used. Further, this discussion states that this "excavation method required that work be performed at a minimum on a 24-hour per day, 5 day per week basis…". Please provide evidence supporting this "requirement". If work can be halter for weekends, why can't it be halted during the nighttime hours? Which portions of the work are "required" on this schedule? Please provide a more detailed discussion of the various work components and the proposed/required periods for each. How would this change if construction were done from only the eastern portal. 15

The Construction Staging description (pp. 196) states that there will be a shotcrete batch plant as part of the project. Where will it be located? What will be its hours of operation? Please evaluate the noise and air quality impacts of that batch plant and recirculate for public review. 16

Setting//Baseline/Plan Consistency

Unlike NEPA, CEQA has strict requirements that the "Setting" conditions against which project impacts are evaluated must be the on-the-ground conditions at the time that the NOP is issued (or at the time that the DEIR is provided to the public) per CEQA Guidelines Section 15125. The EA/EIR uses a wide variety of baselines in its analyses. For example:

- The discussion of truck traffic states that "truck traffic will not be increased by the project". Yet, compared with existing conditions, truck traffic will be substantially increased with the project (3032) condition. The EIR/EA mistakenly compares the project with future conditions without the project, and not with current conditions. (In fact, the EIR statement is even in error in its comparison with no-project future conditions, which, according to the document would reduce vehicular traffic compared with the project). 17
- Similarly, in assessing noise, the EA/EIR states that "the cut and cover structures will generate little additional noise and vibration compared to other tunnel operations…". Again, per CEQA Guidelines Section 15125, the document should be comparing project impacts against existing conditions, not other tunnels. 18
- The park and recreation facilities table fails to include the Frog Park, Ayala Park, the Gateway Shakespeare Festival area, and the recreational facilities at Park Hills and Parkwoods. 19
- The Plan consistency discussion (pp. 41-43) fails to include the planned/designated residential development over and immediately south of the tunnel. Plans for up to 70 housing units in this residentially-zoned area have been submitted to the City for review. 20

- Similarly, the Parkwoods building nearest the proposed 4th bore was entirely omitted from the noise setting section. 21
- The EA/EIR fails also to address the project's conformity with the City's general plan noise element. 22

Criteria of Significance

The document uses criteria of significance that fail CEQA's mandate of environmental protection and which impermissibly rule out feasible mitigation measures. These include:

- The noise criteria of significance of 12 dBA leq is more than twice the increase considered significant in City of Oakland or City of Berkeley CEQA documents. It represents a 2.5-time increase in noise over background conditions, even with the freeway in full operation. Many neighbors of SR 24 are disturbed by existing freeway noise levels, therefore even a small (i.e. 1-3 dBA) time-averaged noise increase would be significant in that it would adversely affect resident's sleep, conversation and lives. The use of only a time-averaged noise significance criteria results in a document that fails entirely to addressed increased single-event noise impacts of the new tunnel, both in terms of operation and construction. This is particularly egregious with respect to construction impacts, which will include five years of 24-hour activities that include single-event noise associated with night-time haul trucks, boring, and even occasional blasting. Single-event noise impacts have been acknowledged as being particularly disturbing to residents, especially in areas that are otherwise fairly quiet, such as the upper North Hills neighborhood north of the proposed tunnel. This issue was addressed in detail in Berkeley Keep Jets Over the Bay v. (Oakland) Board of Port Commissioners, where the California courts ruled as entirely inadequate an EIR that relied entirely on time-averaged noise significance criteria and refused to address single0event noise. Further, CEQA considers temporary impacts as potentially significant (see CEQA Guidelines Section 15126.2(a), which specifically calls out "short-term" impacts as potentially significant). 23
- The use of the 5dBA criteria for accepting noise mitigation is also unsupported by any facts or analyses. Please either add supporting material or eliminate this arbitrary criteria for eliminating mitigation measures. 24
- Air quality impact significance criteria are similarly flawed in that the EIR fails to either conduct the analyses specified in the Bay Area Air Quality Management District's CEQA Guide (http://www.baaqmd.gov/pln/ceqa/ceqa_guide.pdf), or use the criteria of significance specified in that Guide. We specifically request that the EIR be revised to include a BAAQMD-compliant air quality analysis and significance determination. 25

Impact Assessment

The EIR entirely omits several key impact assessments, and understates or otherwise fails to adequately analyze numerous other impacts. These errors and omissions are summarized below:

- The traffic analysis fails to include any analysis of the project's impacts on weekend traffic. 26
- As described above, the noise section fails to analyze construction noise. The document currently has conclusatory statements that such impact might be a problem, but no analyses of the extent of the impacts or the effectiveness of mitigation. It then inexplicably finds that this impact would be less than significant. We understand that, after release of the Draft document, Charles Salter Associates was retained by Caltrans to prepare an actual analysis of construction noise and develop mitigation measures. That analysis should be provided to the public for public review and comment in a revised/recirculated Draft EA/EIR. 27
- As noted above, single-event noise must be addressed in a revised, recirculated EA/EIR. 28
- The traffic analysis arbitrarily cuts off at I-680 on the east and the junction of 24 and I-580 on the west. However, a review of the traffic analyses indicates that project traffic impacts extend well east and west of those endponts. For example, under both build- and no-build alternatives, LOS's of E or F are noted as extending into those interchanges. In order to be adequate, the EA/EIR traffic analyses must be extended to follow the project traffic backups until they are free of project influence. 29
- The EA/EIR apparently used the CCTA traffic model, which does not accurately assess traffic impacts west of the tunnel; an updated or more-Oakland-specific model should be used and revised analyses included in a recirculated document. 30
- The EIR/EA fails to address any potential changes in truck/auto mix resulting from the project; this could affect the accuracy of the noise and air quality analyses. 31
- The EIR/EA fails to address project impacts on traffic associated with the elimination of merging requirements at the tunnel. Specifically, will this increase the capacity of the Tunnel? If so, what are the impacts of that increase in throughput capacity on the commute direction? This appears to be a growth-inducing impact. 32
- The document's traffic analysis fails to address potential project impacts on the use of Caldecott Lane. Specifically, how will both day-to-day and emergency access from Parkwoods be impacted and mitigated? Please remember that Parkwoods was burned to the ground in the 1991 firestorm; if emergency access is impaired, many could die should a similar event occur. 33

- Visual quality from much of the north Hills area will be significantly affected by the additional freeway facilities and loss of trees. Please note that the EA/EIS deceptively uses photosimulations of mature vegetation (10-15 years after completion of construction) in its impact assessment; this does not account for the impacts of the project prior to the maturation of that vegetation, which would be significant and unmitigable. 34
- The large berm and wall depicted in 2.1.6-33 would significantly impact those views by walling in that community. This should be reflected in the EIR. 35
- The Hydrology discussion should address the project's conformance with the City of Oakland's Creek Protection Ordinance. 36
- The Hydrology discussion should address the capacity of the tunnel and freeway stormdrains to handle the cumulative impacts of increased runoff from the project and the intense development occurring in the Temescal Creek Drainage upstream of Highway 24. Because the City of Oakland is approving many new homes in this drainage, it is possible that the cumulative runoff could exceed Caltrans' storm drain facilities' capacities, resulting in roadway flooding. The tunnel storm drains were clogged last winter by runoff and earthflows from construction sites above the freeway, requiring emergency weekend work to fix the problems. 37
- CEQA requires that a CWA Section C.3 plan be evaluated in the EIR for the project. Please add this to the revised document and recirculate. 38
- The visual impact assessment acknowledges that there would be night lighting immediately adjacent to the Parkwoods residences, and visible from many of the North Hills residences, yet, absent any analysis, identifies this impact as not significant and fails to offer any mitigation measure. No analysis, no impacts, no mitigation, equals no CEQA compliance. 39
- The water quality assessment (p. 132) fails to include any actual analysis of the project's impacts on water quality. Please add such an analysis and recirculate. 40
- The soils and geology section fails to describe existing landslide conditions or assess the potential impacts of landslides on the new proposed bore (and vice versa). Please note that large-scale landslides closed Tunnel Road above the proposed tunnel last winter, and portions of that roadway are still blocked. 41
- As noted above, the BAAQMD CEQA Guide must be used for the impact assessment and mitigation development for the air quality section. The EA/EIR's current section uses an inappropriate protocol that fails to actually identify the project's impacts and therefore violates CEQA requirements. CEQA case law (for example, CBE v. Resources Agency) clearly states that mere compliance with the SIP (the methodology used in this document per pp. 144-5) does not mean that an impact is less than significant under CEQA. 42
- Determining project CO impacts based on nearby intersections having volumes less than others in the region is inappropriate and not an actual analysis. Screening-level analyses should be done per BAAQMD Guide methodology. 43

- The PM10 analysis is a cut-and-paste of the inadequate CO analysis, so much so that it reverts to discussing CO standards (p. 147) rather than particulate standards. Again it fails to include any actual analysis, and should be redone per BAAQMD Guide methodology. Also, an analysis of particulate impacts during the five-year construction period is entirely missing from the document, and must be added and recirculated for public review. 44
- Similarly, diesel emission impacts should be assessed using BAAQMD methodology and impact significance criteria, and all air quality assessments should consider the fact that the emissions sources will be closer to the existing and proposed residences than under the current conditions. 45
- Air quality impacts associated with dust from the proposed soil stockpiles should specifically be evaluated in the document, with a special focus on impacts to adjacent Parkwoods residents. 46
- A quantitative analysis of anticipated blasting impacts to nearby houses should be conducted as part of the EIR. Otherwise, mitigation (i.e. no blasting; no nighttime construction) cannot be effectively developed. 47
- Please evaluate single-event construction noise per requirements set forth in the KJOB v. Board of Port Commissioners decision. Note that time averaged noise descriptors fail entirely to account for disturbing repeated single-event noise. As I was involved as an expert in that case, I would be happy to explain its implications with respect to noise impact assessment to you. 48
- The noise analysis fails to account for the Parkwoods building closest to the highway/tunnel. Further, noise and air quality impacts to upper-story units at Parkwoods are not meaningfully evaluated. This omits the most sensitive noise/air quality receptors from evaluation in this document. Please revise and recirculate the document for public review. 49
- As described previously, the analysis of construction noise on over 1,000 Parkwoods and North Hills residences has been entirely omitted from the EA/EIR. Instead, the document states only that such noise "could at times reach levels higher than existing traffic noise." The document contains no analyses of the potential severity of this noise or its impact on the lives of nearby residents. Further, it contains no commitment to mitigation but, instead, says that Caltrans Standard Specifications ***may*** include certain measures, ***where feasible*** (see p. 168). Please revise the analyses and mitigation measures and recircluate for public review. 50
- The document notes that some construction noise will occur (p. 198), but provides no analysis of the significance of that noise, no significance criteria, nor any mitigation measures. This fails to provide the public or decisionmakers with any useable information on this impact. 51
- The biological resources analysis fails to state whether or not the project could result in the take of Alameda Whipsnake, which could be a significant impact. Rather it states that "additional studies are being completed for this species" (pp. 190 - 191). CEQA does not permit impact assessment to be deferred to future 52

studies. Those studies must be included in the EIR for public review and comment.

- Spoils disposal is being considered for EBRPD lands. Please evaluate the impacts of this activity on recreational lands, as well as 4F compliance of these activities. 53
- P. 202 states that "it does not appear that residential routes will be used by construction traffic". On what basis is this statement made? Has any analysis of construction routes, including spoil disposal hauling, been made? What commitments will Caltrans make to assure that this will be the case? 54
- Section 2.4.6.1 should be expanded to assess the potential impacts of upset/spills of hazardous materials to be stored on the site, including any fuels, solvents, and other materials used in construction activities/equipment maintenance on the site. A complete listing of those materials and their use and storage should be included in the revised/recirculated document. 55
- Project construction activities adjacent to wildlands on both sides of the tunnel could increase fire hazards. Please discuss this impact and provide mitigations to assure that that all construction activities will be halted in Diablo (easterly) wind conditions during the June-October fire season. 56
- Section 2.4.7.2 states that "For PM 10, PM 2.5, or air toxics, there are currently no requirements that are applicable at the project level for temporary impacts of the construction phase". This is false. The BAAQMD has clear requirements for construction dust control, as well as impact significance screening methodology and criteria in its 1999 CEQA Guidelines, pp. 28-29; mitigation measures are outlined in Chapter 4 of that document. Why was this standard Guide, which is applied to all CEQA and NEPA projects in the Bay Area air basin completely omitted from this study. Please note also that 5 years of 24-hour excavation/grading/blasting could release substantial quantities of particulates into the air, so this could, in fact, be a significant impact and should be analyzed in a revised/recirculated EA/EIR. 57
- Section 2.4.9, notes that blasting impacts may result in high vibration levels on nearby homes, but this impact is not considered significant. The mitigation of documentation doesn't actually eliminate the impact, it just documents it. Therefore this impact is un-mitigated and remains significant. 58
- Section 2.4.10 notes that "residents may experience increased light and glare due to nighttime construction" but fails to identify this impact as potentially significant. No actual analysis of the lighting impacts has been done; lighting intensity, locations, duration of use, etc. are not identified anywhere in the document. The "mitigations" listed in Section 2.4.10.2 include no mitigations for lighting impacts. Therefore this impact remains significant. 59
- Construction-related landslide impacts have been omitted from the document. 60
- Although the EA/EIR contains a "Growth" section, that section fails entirely to evaluate the project's potential growth inducement per CEQA criteria (see CEQA Guidelines Section 15126.2 (g), particularly in terms of the project's removing obstacles to population growth and easing access for Contra Costa commuters. 61

Please remember that removing this transportation obstacle is one of the project's objectives. 61

Mitigation Measures

Many proposed mitigation measures are presumed in the EA/EIR to mitigate project impacts to a less than significant level absent any analysis of the effectiveness of the measures or any commitment in the document to actually implementing the measure. These failures render the EA/EIR inadequate on its face, as described below:

- CWA Section 401. States that "Any impacts to Waters of the US will be minimized. Mitigations measures will be considered for any unavoidable impacts." This "mitigation" fails to identify what the mitigations may be, and fails to assure implementation because "consideration" of a measure doesn't assure implementation. Therefore this impact would still be significant. 62
- CWA section 402: as noted above, the stormwater plans' effectiveness must be evaluated in the EA/EIR. C.3 plans (permanent treatment BMPs) must be evaluated in the EIR. Saying "trust us" doesn't assure mitigation. 63
- Mitigation for fossils (p. 142) acknowledges that shotcrete may be applied before the mitigation inspections can be accomplished, thereby leaving the impact as potentially significant and unmitigated. 64
- Noise: please include the following mitigation that eliminates most of the 5 years of 24-hour/day construction noise in the residential North Hills area: 65
    - *Tunnel construction shall be conducted only from the east side. No tunneling or removal of spoils shall occur at the western portal.*
- The EA/EIR repeatedly states that mitigation measures "will be considered" (see, for example, pp. 157, 158, 159, 160, etc.) . As described earlier in this letter, consideration does not constitute mitigation. The EA/EIR repeatedly relies on "considered" mitigation to reduce impacts to less than significant levels, yet, consideration mitigates nothing. In addition, CEQA requires mitigation monitoring. Please explain how "consideration" of a mitigation can be effectively monitored. 66
- The "reasonableness" criteria for considering sound walls (see, for example, p. 157) is not in compliance with CEQA. Please eliminate this criteria or explain how it conforms to CEQA's mandate for all feasible mitigations to be considered in an EIR. 67
- Spoils disposal mitigations are entirely omitted from the document (p. 197). Instead, the document defers this mitigation to future study. Per the Sundstrom v. County of Mendocino decision, this is not permissible in a CEQA document. 68
- Similarly, the document defers analysis of impacts associated with staging areas to some future date (p. 198). This is an inappropriate deferral of analysis and impermissible piecemealing of the project impact assessment. 69

- On p. 202, with respect to construction noise, the document states that standard industry practice for construction noise "may be used to minimize impacts." The document should clearly state which measure will be used and which will not be used. Absent this information, it is impossible to tell if the impacts would be mitigated and therefore the Drat EA/EIR may not assume that they are mitigated. 70
- P. 203 states that Caltrans will "work with local agencies to minimize traffic impacts…". "Working with" doesn't assure mitigation. Specifically what measures will Caltrans implement to assure mitigation of these traffic impacts? Absent specific mitigation, this impacts should be considered significant. 71
- Section 3.1.2.1 states that the project would not have any significant environmental effects. As detailed above, this statement is unsupported and appears to be false. Please revise. 72

Cumulative Impacts

The document's consideration of cumulative impacts is flawed in that it fails to identify most of the planned development west of the portal, and otherwise omits key analyses of cumulative effects of the project along with other planned, approved, or reasonably foreseeable development in the area.

- Cumulative impacts of planned development of up to 70 houses directly above and to the south of the tunnel have been entirely omitted from this document. These impacts include night lighting, noise bounce from proposed sound walls, construction noise, and cumulative runoff issues into Temescal Creek. 73
- The cumulative noise analysis (Section 2.5.4.4) fails to asses how noise-bounce from the sound walls will affect proposed cumulative residential development yet it still concludes that the project "will not have a significant increase in future predicted noise levels…" Please provide supporting analysis/modeling for this statement. 74
- Cumulative visual impact should address the proposed 70 new houses above and just south of the Tunnel. 75

Conclusions

The above comments clearly indicate that this EA/EIR is a substandard document that fails to meet CEQA and NEPA's purposes of disclosure and environmental protection. It does not provide the neighbors or decision-makers with adequate information upon which to make and informed decision on the project while considering environmental impacts. Caltrans' failure to require any specific mitigation measures further exacerbates this problem. Further, there appear to be a number of significant environmental impacts associated with the project that will materially adversely affect local residents and businesses. Therefore the document should be revised and a draft EIS/EIR, and recirculated for a full public review period. 76