

Mr. William D. Kopper
October 24, 2007
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traffic impact is compiled, it is pure nonsense to pretend that it is a mitigation measure that could further reduce freeway traffic and impacts. Project fair share fee payments to the DNA project may be reasonable as a *transit mitigation* but not as a mitigation for freeway system impacts.

Caltrans has proposed feasible mitigations to the central area freeway system impacts. The City has attempted to characterize those proposed mitigations as infeasible. Caltrans has convincingly refuted that attempted characterization, most specifically in a letter of comment on the 500 Capitol Mall DEIR from Caltrans District 4 Director Jody Jones dated November 27, 2006. This has threefold importance:

1. The City cannot characterize the projects freeway system impacts as 'unavoidable'.
2. Because CEQA Article 21002 prohibits approval of projects having significant impacts without implementing all feasible mitigation measures, the City cannot approve the subject project without such actions as requiring it to pay fair share mitigation fees toward implementing the proposed freeway mitigations.
3. The FEIR is deficient in failing to disclose to the public the difference of opinion on these matters of Caltrans, a Responsible Agency.

Conclusion

This completes my current comments on the Metropolitan FEIR. For the above-stated reasons, and for additional reasons stated in my letter of August 17, 2007, I do not believe the FEIR is adequate for certification. Furthermore, I believe that proper analysis of issues associated with the new Mixed Use Hotel Option would retire recirculation of the document in draft status.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

DEPARTMENT OF TRANSPORTATION

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November 27, 2006

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500 Capitol Mall (P05-108)
Draft Environmental Impact Report
SCH# 2005112038

Scott Johnson, Associate Planner
City of Sacramento
Development Services Department
Environmental Planning Services
2101 Arena Boulevard, Suite 200
Sacramento, CA 95834

Dear Mr. Johnson:

Re: DEIR for 500 Capitol Mall (SCH No. 2005112038)

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the 500 Capitol Mall Project (Project) (SCH No. 2005112038). The Project is one of eight high-rise projects that were included in the recently completed Downtown Traffic Study (dated June 2006). It is exciting to see the potential of Downtown Sacramento being realized. Because the State highway system provides the primary access to the government, job, and entertainment centers located in the city center, we want to reiterate our desire to work cooperatively with the City of Sacramento to identify potential mitigations for the impacts to the State highway system, that will accompany the planned growth, to ensure that an appropriate level of access and mobility are retained.

The Project is the first submitted to Caltrans for review that includes the Downtown Traffic Study as a basis for its transportation analysis for the environmental impact assessment. Caltrans supported the concept of a consolidated Downtown Traffic Study as an opportunity for all parties to efficiently analyze the impacts of cumulative development and to develop a more comprehensive approach to mitigation for the impacts. We presume that the City of Sacramento (City) intends to consistently apply the results of the Downtown Traffic Study to all projects that were part of the study and to also use the study's results in evaluating additional downtown projects. We are concerned that study does not fulfill its promise and would like to work with the City to modify the findings.

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The City found the Project's impacts to the State highway system mainline to be significant and unavoidable. Caltrans must disagree with this finding. Although the impacts are significant, they are not unavoidable and there are ways the impacts can be reduced and mitigated. Feasible, nexus based measures are available to mitigate the Project's direct and cumulative impacts to the State highway system mainline. The Project, and other projects included in the Downtown Traffic Study, should contribute proportionally towards reasonable mitigation measures.

As noted on Page 5.6-40, the City and Caltrans discussed possible mitigation measures for the Project. Caltrans subsequently submitted mitigation projects that we consider appropriate for mitigation via proportional share funding contributions to the projects:

- Two High Occupancy Vehicle (HOV) lane projects on Interstate 5 serving Downtown Sacramento from the north and south, and
- Widening the Interstate 5 bridges crossing the American River, just north of Downtown.

As reported in the DEIR, Caltrans provided cost estimates to the City for these projects and is available to provide further detail regarding the scope, schedule and cost for each of the projects.

Two additional projects were discussed during our meeting, but Caltrans was unable to determine if the two projects are feasible and was unable to develop cost estimates within the time requirements of the DEIR release date. Caltrans has subsequently determined that one of these two projects (extending the northbound, outside lane between J Street and L Street) is likely feasible, but will require a Project Study Report to adequately scope the project. This potential mitigation project is substantially more complex than simply restriping the lanes. The other project, adding additional mainline freeway lanes through the Interstate 5 Boat Section in Downtown, is still being investigated. It will be several more months before we know if this potential project is feasible.

In finding that the three potential mitigation projects identified by Caltrans are not feasible (Page 5.6-41), the City misinterpreted the Sacramento Area Council of Governments (SACOG) existing Metropolitan Transportation Plan (MTP), did not acknowledge that the projects are already included in the SACOG Metropolitan Transportation Improvement Program (MTIP) and did not acknowledge that the HOV lane projects are included in the voter-approved "Measure A" program in Sacramento County.

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As noted in the City's discussion, the MTP is the long-range, financially constrained transportation plan for the SACOG region and includes projects to be constructed within the planning horizon of the Plan based on reasonably assured funding. The two HOV projects are included in the MTP for all phases through construction, not just preliminary engineering and environmental as stated on Page 5.6-41. One of the HOV lane projects extends across the American River Bridge to Downtown, and thus, the widening of Interstate 5 across the American River is also included in the MTP.

5-6 continued

There is also a companion document to the MTP that the City did not mention in its discussion, the SACOG Metropolitan Transportation Improvement Program (MTIP). The MTIP is the document that programs Federal funding for projects. The current MTIP includes funding for the preliminary engineering and environmental phase of the two HOV lane projects. As is the case with all high-cost transportation projects, such as the HOV lanes, the MTIP does not program funding for all phases of a project at the same time. Programming is implemented as project phases are completed. The City's statement that, "The proposed freeway improvement projects are not currently approved and funded" is not entirely correct. It is correct that the environmental documents for the projects have not been completed and approved, but the project concepts themselves have been approved for development phases and are active.

5-7

The lack of reference to Measure A is an important oversight regarding the assessment of mitigation project feasibility and funding. Measure A is a voter-approved transportation sales tax measure that identifies funding for a variety of transportation projects and specifically both of the HOV lane projects recommended by Caltrans as mitigation for the Project. Measure A will be providing 50% of the funding for the HOV lane projects. This status contradicts the City's statement that, "there is no fee or other funding mechanism currently in place for future funding."

5-8

Caltrans does not agree as is stated on Page 5.6-41 that "the City cannot determine either the cost of the proposed freeway improvement projects or the proposed project's fair share proportional contribution to the improvement projects with sufficient certainty to enable the City to develop a fee-based mitigation measure that would satisfy the legal requirements for fee-based mitigation under both CEQA (see CEQA Guidelines 15126.4) and constitutional principles that call for a nexus and rough proportionality between a project's impacts and the fee-based mitigation measure." Caltrans has provided the City with cost estimates for the three projects. The fair share proportionality determination is based on the Project's traffic study and should be readily determined from the information provided in the study. As the lead agency, the City is responsible for determining the fair share proportionality, but Caltrans is willing to assist the City to develop both interim and permanent processes for adequate mitigation that will not unnecessarily delay projects.

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Page 5.6-41 includes a discussion of the adverse impacts of widening Interstate 5 through the Downtown section, commonly known as the "Boat Section." While Caltrans discussed the possibility of modifying the striping of the section so that it might accommodate an additional traffic lane in each direction, we have not proposed widening the actual pavement section by modifying the floodwall/levee or removing historic buildings in the Old Sacramento District. Although we agree that the widening project is not a feasible mitigation strategy, restriping the facility to add mainline lanes is currently being analyzed by Caltrans.

5-10

Caltrans disagrees with the statement on Page 5.6-41 that, "the City has been unable to identify any feasible mitigation measures that could reduce or avoid the impact of the proposed project on the three I-5 freeway mainline segments to a less than significant level." We reiterate that the three projects that we suggested are feasible, are actively being developed, are in regionally approved transportation planning documents, and have realistic prospects of full funding. Nexus based proportional share funding contributions from the Project and other pending Downtown projects are a logical and appropriate component of the full funding program. The HOV projects and expansion of the Interstate 5 bridges across the American River are specifically intended to serve peak-hour traffic going to Downtown Sacramento, including to new buildings such as the Project.

5-11

The City and Caltrans have limited opportunities to ensure that needed transportation improvements accompany growth. Our recent management consultation meetings with the City regarding major development projects have been productive and have emphasized the importance of a partnership approach to meeting the challenge of maintaining mobility in the Sacramento Region. We would like to continue and expand these efforts. We seek agreement between the City and Caltrans on a consultation and mitigation process that would eliminate much of the uncertainty that accompanies our review of projects, such as the 500 Capitol Mall Project.

5-12

Caltrans would be pleased to meet with the City and Project proponents to discuss and resolve these issues so that the Project can quickly move forward with assurance that impacts to the State highway system will be mitigated. To arrange for such a meeting, please contact Wayne Lewis at (530) 741-4337.

Sincerely,



JODY JONES
District Director

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c: Fran Halbakken, City of Sacramento
Jerry Way, City of Sacramento
Mike McKeever, Sacramento Area Council of Governments
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"Caltrans improves mobility across California"

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October 18, 2007

Planning Commission
City of Sacramento
Planning Department
915 I Street, 3rd Floor
Sacramento, CA 95814

RE: The Metropolitan Project

Dear Members of the Planning Commission:

I represent Gene A. Moe, Karl H. Mindermann, and Jeffrey S. Linn, all residents of the City of Sacramento. These are their comments on the Final Environmental Impact Report for The Metropolitan Project. We incorporate into these comments, the comments of all other individuals and entities. My clients oppose The Metropolitan Project. In addition to the comments included in this letter, we incorporate the traffic comments prepared by Daniel Smith, the Cultural Resources comments completed by Barry Price, and the energy conservation comments prepared by Marshall Hunt. The consultants' comments are attached. Our additional comments are as follows:

1. Failure to Provide a Stable Project Description.

The project description must be accurate and consistent throughout an EIR. "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.) A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decisionmakers balance the proposals benefits against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (*Id.* at 192-193.)

Generally, when an agency changes a project midstream it reduces the size of the project or changes it in some way to reduce the severity of environmental effects. In the case of The Metropolitan Project, the Final Environmental Impact Report proposed a new Project: "Mixed-use hotel option". The Final Environmental Impact Report postulated a Project that would be the same size as the original Project but would have 190 hotel rooms and 190 residential condominium units, instead of the 320 condominium units originally proposed. Mixed-use hotel option was not presented in the Final Environmental Impact Report as another alternative that was considered and rejected by the City but as a Project also approved by the Final Environmental Impact Report.

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The problem with the hotel option is that the Final Environmental Impact Report does not include any information about the traffic generation for a hotel, including taxi cabs, airport vans, and other vehicles that access a hotel on a regular basis. The comments of Daniel Smith on the Draft Environmental Impact Report already pointed out problems related to the use of the alley as ingress and egress to the parking garage for the condominiums. According to the newly proposed Project, the alleyway would serve as the main ingress and egress to the hotel. Taxi cabs would traverse the alley to pick up guests and drop off guests, guests coming to the hotel to check-in would have to access the hotel from the alley. The Environmental Impact Report needs to address the traffic to be generated into the alley and how the alley will be able to accommodate the traffic using the parking garage and also the hotel traffic. The Project Environmental Impact Report already requests a variance for turning radiuses in the alley. The EIR does not address whether there will be sufficient room for trucks accessing the hotel, buses accessing the hotel, and all the additional traffic to be able to use the alley without causing backups onto 10th and 11th Streets. Additional traffic analysis is necessary before the City can include that the Final Environmental Impact Report is satisfactory for the vastly changed Project.

2. The Final Environmental Impact Report Fails to Adequately Respond to Comments.

A Final Environmental Impact Report is required to provide reason and accurate information in response to comments.

The EIR's response to Comment No. G-1 is not adequate. Guideline §15086 does not just require the City to consult with SACOG, but the transportation department of public agencies which have transportation facilities within their jurisdiction which could be affected by the project. The Project will increase congestion on Sacramento downtown streets. This will affect facilities in West Sacramento, including the I Street Bridge and the intersections on the west side of the I Street Bridge in the City of West Sacramento. Gridlock on I-5 affects traffic flowing into I-5 from Yolo County. The City violated CEQA by failing to consult with the City of West Sacramento and Yolo County.

The EIR is non-responsive to Comment G-3. The EIR states as follows "As noted, the Project description identifies one of the requested entitlements as a variance to reduce the required maneuvering area from 26-25 feet. Final EIR Chapter 2, provides an additional sentence to clarify the Project description regarding the variance." These commenters could find nothing in Chapter 2 that clarified the variance. The authors of the EIR have the duty under CEQA to provide the clarification in response to the comment.

The authors of the EIR have created substantial confusion regarding the Project environmental documents. The authors of the Environmental Impact Report first released a Final Environmental Impact Report dated July 30, 2007. They then released a Second Final Environmental Impact Report dated October 10, 2007. The authors of the EIR have failed to indicate the differences between the July 30, 2007, draft and the October 10, 2007, draft. City needs to clarify the differences between the two drafts of the Final Environmental Impact Report. The public must have clear information in order to be able to accurately access and comment on the environmental documents for a project.

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In Mr. Daniel Smith's comments, he stated that in order to determine whether the signal timing adjustments would have a positive impact on traffic circulation or in fact would have an overall negative impact on circulation in the core area, it was necessary to complete a signal system analysis. In response to the request for a signal system analysis to determine whether the timing changes would produce a net benefit or detriment, the authors of the EIR state as follows: "Optimization of the signal system timing is beyond the scope of the study and is not required to demonstrate the effectiveness of the mitigation measures." This is clearly a non-responsive answer to the comment. Mr. Smith did not ask for a signal system analysis to determine whether the signal system was optimized, but whether the signal timing changes would provide a net benefit or detriment to the overall circulation in the downtown core area. If the signal changes produced an overall detriment to traffic circulation in the core area, then the mitigation is meaningless. The authors of the Environmental Impact Report avoid responding to the question by rephrasing the comment in a manner in which it was not stated. The response to G-8 is non-responsive and a violation of CEQA.

In Comment G-9A: the authors of the EIR state that there will be low volumes of traffic in the alley approaches. Further, "the site distance limitations are an existing condition and are not caused by or exacerbated by the proposed project." The authors postulate because of the low volumes of traffic and slow speeds in the alleys that the site distance limitations would not cause dangerous conditions. However, the Project description is now changed and the Project includes 190 hotel rooms. There will be substantial taxi cab traffic, limousine service traffic, and van traffic to and from the hotel entrance in the alley. This added alley traffic will change the safety conditions with respect to the ingress and egress to the alleys. This impact was not studied or considered in the Draft Environmental Impact Report or in the Final Environmental Impact Report.

3. Energy/Greenhouse Gases.

The Final Environmental Impact Report includes a section on the Project's emission of greenhouse gases. The EIR acknowledges that the Global Warming Solutions Act requires projects in the State to reduce carbon dioxide emissions. The Attorney General of the State of California has provided several opinions that CEQA requires an agency to consider a project's impact on greenhouse gases.

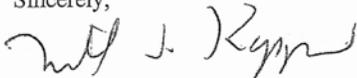
The authors of the EIR postulate that the EIR does not need to consider greenhouse gases because the emissions for the Project may not be new emissions, but they may be emissions that might otherwise be produced somewhere else. This argument runs contrary to the growth model that is followed by the City of Sacramento. The City of Sacramento relies upon the SACOG growth model for the area, which predicts substantial new growth of population in the Sacramento area. The Metropolitan Tower is a residential Project that is intended to accommodate the greater growth in the Sacramento area. Therefore, it is appropriate to assume that all new growth is associated with additional and new carbon dioxide emissions. SMUD no longer has sufficient hydroelectric power available to provide electricity for the growth of the Sacramento area. All growth in the Sacramento area is dependent upon electricity that is generated by burning natural gas. The burning of natural gas produces greenhouse gases. It is therefore axiomatic that any measures that reduce energy consumption also reduce greenhouse gases.

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The Final Environmental Impact Report for the Project takes the position that the Project does not have to reduce greenhouse gases and does not have to conserve energy, beyond the minimum Title 24 standards. As stated in the Final Environmental Impact: "There are no energy mitigation measures required for this project." (Page 4-93.)

The City's failure to require energy mitigation measures reflects the policy on the part of the City to allow development at the cheapest possible cost to the developer and to ignore the long-term costs to the Project users, the consumers, the public at large, and the environment. It reflects a profound disregard for the current global warming crisis that faces the world. However, most importantly, it ignores the requirements of the California Environmental Quality Act. Public Resources Code §21100(b)(3) clearly require an agency to consider and implement mitigation measures to reduce wasteful consumption of energy. (See *People v. County of Kern* (1976) 62 Cal.App.3d 761.)

The proposed Project includes 320 condominium units. However, according to the calculations of ENRG, LLC and Mr. Marshall Hunt, one of the leading professionals in the State in the field, the Project would use an equivalent amount of electricity of 720 homes, more than double the housing units that are provided by the Project. In light of the wasteful use of energy and consumption of power per housing unit, CEQA imposes on the City the requirement to adopt mitigation measures to reduce the Project's energy use. There are several options available to the City: 1) the City could require the Project to comply with gold or platinum (LEED) green building standards or could require the Project to adopt the many feasible mitigation measures that are proposed in the ENRG report and the report of Mr. Marshall Hunt.

Sincerely,


WILLIAM D. KOPPER

WDK:kgr
enclosures