



SMITH ENGINEERING & MANAGEMENT

October 24, 2007

Mr. William D. Kopper
Attorney at Law
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Subject: The Metropolitan Project FEIR

P06006

Dear Mr. Kopper:

Per your request, I have reviewed the transportation and circulation component of the final environmental impact report (hereinafter "the FEIR") for the Metropolitan Project in the City of Sacramento (hereinafter "the City") dated October 10, 2007. I have previously commented on the DEIR for this project and also commented in a letter dated August 17, 2007 on the version of the FEIR dated July 30, 2007 that was circulated, but has apparently been withdrawn, though without mention in this FEIR. Most of the comments my August 17, 2007 letter remain applicable to the current FEIR. This review constitutes a supplement to the comments contained in my August 17, 2007 letter and is specific to the Mixed Use Hotel Option for the project that has now been belatedly inserted in the FEIR and to the additional changes in the FEIR that have been made in the current release of the document. My qualifications to perform this review are documented in the August 17, 2007 letter. My comments on the subject FEIR follow.

The FEIR Is Improperly Circulated

Introduction of a completely new project alternative, the Mixed Use Hotel Option, at the FEIR stage deprives the public of reasonable opportunity to comment on this alternative. Although the FEIR opines that the impacts of this alternative are the same as or less than those of the original subject project, this conclusion is apparently based on nothing more than a superficial comparison to the number of residence units and total square footage in the originally proposed Residential Option. In the section below we demonstrate that the new project option involves fundamentally different potential impacts than the original project studied. Consequently, the public deserves the full review period ordinarily granted for a draft EIR and the document should be recirculated as a revised draft EIR.

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FEIR Fails To Evaluate Potentially Significant Effects of Mixed Use Hotel Option on Traffic, Parking, Pedestrian Pick-Up/Drop-Off and Loading Operations At Project Site

The site plan for the new Mixed Use Hotel Option includes what is essentially a new east-west alley located parallel to and only about 14 feet from the design limits of the existing alley that runs between 10'th and 11'th Streets along the project's north side. In the Mixed Use Hotel Option, the existing alley, enhanced by a 4 foot widening along the hotel's frontage continues to be used for access and egress to the project's loading docks, access and egress to all above-ground floors of the project's parking, for egress from the projects subsurface parking garage area and for egress from the new secondary alley. The new secondary alley provides access to the subsurface portion of the project's parking garage, to a new short term parking bay, and to a new passenger pick-up/drop off area. Egress from these areas is dependent on the existing alley.

The proposed hotel includes an 11,000 square foot restaurant including a 4000 foot kitchen that appears scaled to also service the 23,300 square foot hotel function rooms. Although the FEIR is deficient in failing to provide any potential occupancy statistics for these public spaces, we estimate the restaurant could seat in excess of 300 diners and that the function rooms could accommodate over 750 persons for meetings or banquets.

Neither the FEIR nor the DEIR that preceded it has provided any analysis of whether or not the approximately 72 feet of short term parking (equivalent to about 3.5 parking spaces) and the approximately 110 feet of passenger loading zone (equivalent to about 5.5 parking spaces) that are incorporated into the Mixed Use Hotel Option are adequate for the needs of residents, hotel guests plus the surge traffic of others dining at the restaurant or attending meetings and banquets in the hotel function rooms. The FEIR is deficient until such an analysis is performed.

Neither the FEIR nor the DEIR that preceded it has provided any analysis of whether or not the parking provisions of the Mixed Use Hotel Option are adequate for the needs of residents, hotel guests, plus the parking needs of others patronizing the restaurant or attending meetings and banquets in the hotel function rooms. The Hotel with the large restaurant and banquet/meeting facilities would require a much larger staff than the Residential Option. No consideration has been given to the parking demand of the enlarged workforce. The FEIR is deficient until a specific parking analysis of the Mixed Use Hotel Option is performed.

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Neither the FEIR nor the DEIR that preceded it has provided any analysis of whether or not the same sized truck loading bay (about 20 feet wide, enough to simultaneously accommodate 2 large trucks with difficulty) that was proposed to serve the Residential Option would be adequate to service the much more demanding truck loading needs of the Mixed Use Hotel Option, with all the added demands of hotel housekeeping, food and banquet service and meeting support services. The FEIR is deficient until such an analysis is performed

With the new secondary project alley intersecting 10th Street just 14 feet from the intersection of the existing alley with 10th, the combined intersection thus created will be an operationally complex location having potential level of service and safety implications. The FEIR and the DEIR that preceded it never performed a formal analysis of the intersection of the alley with 10th street for the Residential Option. With the more intense traffic use of the alley due to the traffic associated with hotel, restaurant and banquet/meeting facilities, and the more complex dual-alley configuration of the intersection with 10th Street, there must be a full formal level-of-service/operations evaluation of this intersection and the FEIR is deficient until one is provided.

FEIR Proposes Non-responsive Mitigation Measure To Significant Impacts On Freeway System, Fails To Implement Feasible Mitigation Measures for Those Impacts, and Fails To Inform of Conflicting Opinion of Responsible Agency

The EIR discloses that the project would have significant project and cumulative impacts on the freeway system serving downtown Sacramento including impacts on mainline segments, merge/diverge/weave areas and on freeway ramp queues in all three periods of analysis studied – baseline (2008), near term (2013) and long-term (2030). As attempted partial mitigation, the FEIR now proposes that the project pay fair share fees toward the construction of the Downtown-Natomas-Airport light rail transit extension project (DNA LRT).

However, the notion that contributing partial funding to DNA LRT mitigates the projects freeway system impacts is entirely a fiction. The initial operable segment of DNA (running only as far as Richards Boulevard) is optimistically scheduled for completion by 2013. The Natomas and Airport portions of the line would not be completed until sometime after 2020. Hence, DNA LRT will not be in service to provide any mitigation to the projects freeway impacts in the baseline (2008) period and will not be completed far enough to divert any traffic from the freeway system in the near term (2013) analysis period. Furthermore, The EIR's transportation and circulation analysis for the 2013 and 2030 periods *assumed all reasonably feasible diversion of travel to transit including the DNA line before the project's freeway traffic impacts were compiled*. If the purported mitigation had already diverted all travel it could practically attract before the

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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



SMITH ENGINEERING & MANAGEMENT

August 17, 2007

Mr. William D. Kopper
Attorney at Law
417 E Street
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Subject: The Metropolitan Project FEIR.

P06006

Dear Mr. Kopper:

Per your request, I have reviewed the final environmental impact report (hereinafter "the FEIR") for the Metropolitan Project ("the project") in the City of Sacramento (hereinafter "the City") with particular reference to the responses to comment on the transportation and circulation component of the preceding draft environmental impact report (hereinafter "the DEIR"). I was one of those who formally commented on the DEIR. My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and thirty-nine years experience as a traffic and transportation engineering consultant in the State. I have both prepared and reviewed the transportation and circulation components of numerous environmental documents and am familiar with the downtown Sacramento area. My current comments follow.

In its FEIR response, the City has identified our comments on the DEIR as Comments G-8 through G-11. We have maintained that identification system in these further comments.

Response to Comment G-8: Comment G-8 concerned the proposed mitigation of altering the timing of the phase-splits of the traffic signals at intersections where the DEIR found that the project would otherwise individually or cumulatively cause significant traffic impacts. Our comment noted that in a downtown grid system where the traffic signal timing is coordinated to provide progressive movement on major streets in both the north-south and east-west directions, it is inappropriate to suggest such timing changes as traffic mitigation without first determining whether or not the changes would wreak havoc on progressive traffic movement on the downtown system.

The City's response, that it is "common practice" to adjust signal timing to reduce delay at intersections is correct – but only within limits. Where signals are distant enough from others that they are not part of a coordinated system, the controlling jurisdiction has a very high level of flexibility to adjust the signal's timing to optimize its response to the patterns of traffic demand and minimize delay. However, when signals are operated in coordination with others, and especially when they are closely spaced in a coordinated grid street network such as the case in downtown Sacramento, that flexibility to make adjustments to optimize operations to minimize delay at individual intersections is much less because of the

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need to time intervals of progressive flow along the major street corridors so that platoons of traffic through a whole series of intersections on the street system without stopping at all. If retiming to optimize individual intersections to minimized localized delay significantly decreases the intervals over which progressive flow is maintained, the net delay to drivers moving through the street grid can be greater than the net delay savings to drivers at the intersections that have been optimized in isolation. That is to say, if drivers have to stop more frequently at intersections, even though their average delay at the intersections where they are forced to stop is within acceptable limits, the net delay in passing through the system may be significantly increased. The only way to check whether this is happening is to do a system evaluation and such an evaluation has not been done. The City's assertion that the adjustments to signal timing would not significantly affect progression is unsubstantiated by analysis. The City really does not know whether or not the purported mitigations would truly mitigate the project's traffic impacts or is just spreading the traffic delay impact around in a different way.

It is recognized that many of the mitigations involving shifting a second or two from one intersection approach to another, changes that appear unlikely to seriously affect progressive flow and the existing phase splits do not support maintenance of a consistent progression interval anyway. However, other proposed mitigation changes are indeed potentially significant. Consider the intersection of 15th and J. According to the DEIR, the signal at this intersection, like most in the downtown grid, operates on a 50 second cycle with half the green time allocated to 15th and half to J. The proposed cumulative traffic mitigation for the PM peak hour would reallocate about 5 seconds of green time in each signal cycle from the 15th Street approach to the J Street approach. This change demonstrably reduces delay that would occur at the individual intersection. But what it also does is reduces, by at least 20 percent, the length of the time interval in which vehicles in a platoon moving in concert with the coordinated signal progression will be able to stay within the progression. In the face of the obvious potential effect of changes on this scale, the responses statement that "the effects of adjusting the signal timing splits to improve efficiency would not significantly affect signal progression" is clearly unsubstantiated. While the City's claim in the response that "optimization of the signal system timing is beyond the scope of the study" may be true in regard to the scope of the contract of the City's traffic consultant, it is not true relative to the scope of a good faith effort to disclose impact required by CEQA. If the City is attempting to mitigate an impact of traffic delay through signal timing changes, it cannot claim to have done so without evaluating the reasonable possibility that it may have created an equivalent level of traffic delay in another way through the timing changes.

Response to Comment G-9a: This comment pertained to the adequacy of sight distance at the intersections with 10th and 11th Streets of the alley that would serve as the sole access and egress to the project's parking garage. Although the FEIR acknowledges that severe sight distance limitations do exist at these intersections, it dismisses them as existing conditions not caused by the project. This response ignores the fact that the project would greatly increase the amount of traffic subjected to the safety compromises inherent in sight distance limitations. Hence the project must be found to have a significant safety impact. The response also notes that the subject alley conforms to City standards for alleys. However, nothing in the existence of a City standard for alleys that formalizes City recognition of public rights of way that were designed for horsecars implies any reasonable

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modicum of safety inherent in use of the alley as the primary vehicular access/egress to a major high-rise development.

Response to Comment G-9b: This comment observed that the available turning radius at the project's loading dock area is inadequate for large single unit trucks and semi's and that such vehicles would have to load and unload on-street somewhere. The response does not dispute the inadequacy of the loading dock turn radius, but instead proposes to overcome the condition by posting obviously ineffective signage against on-street loading and unloading in the alley during peak hours and also inexplicably concludes that if there were on-street loading, things would somehow work out safely anyway. The response is inadequate. The project should be required to redesign its loading dock to provide adequate turning radius to permit off-street loading by the large vehicles that can be expected.

Response G-9c: This portion of our comment extensively described the operational and safety problems inherent at the project's access/egress point to and from the parking garage. The response concludes that at low vehicle speeds and with peak hour volumes involving a vehicle passage on the average of about one every 15 seconds, "no undue safety issues are anticipated". This sounds fine until one recognizes that with an *average interval* between vehicle passages of about 15 seconds, statistically there would be a *very high probability of numbers of nearly simultaneous* entry and exit movements and, since the geometry of the design forces the entry and exit movements into clearly conflicting paths and severely restricts sight distance, *significant safety issues can readily be anticipated.*

Response to Comment G-9d: This comment concerned pedestrian safety issues in the alley, given the sight distance restrictions. The response indicates that few pedestrians are anticipated in the alley and, without substantiating evidence, that other alleys downtown have not been pedestrian safety problems. However, we note that few alleys downtown currently serve as the primary vehicular access/egress to a major highrise project, so the purported historic and anecdotal experience has little relevance. The response is inadequate.

Response to Comment G-9e: This comment concerned operational issues at the garage gate in combination with certain design constraints within the garage near the access/egress point. The response does demonstrate adequate movement capability presuming that a quick-moving barrier-type gate common in office and retail-serving garages is employed for the project rather than the slower moving security-type gate that is ordinarily employed in predominantly residential-serving garages. However, the response does not directly address the maneuvering constraints inside the garage that we noted. Also, the findings regarding available queue storage space are based on the presumption that there would be no large vehicles loading or off-loading on-street, a presumption that is highly questionable given the inadequacy of the project's loading dock provisions and the inadequacy of the response to Comment G-9b.

Response to Comment G-10: This comment stated that, after discounting the proposed project's trip generation based on its downtown location and the high reliance on walking, transit and bicycle travel related to that downtown location and for internalization of trips related to the mixed use composition of the project itself, the further discounting of project trip generation due to some supposed interrelationship of its trips with those of other

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concurrent downtown projects, some of them quite distant, in essence constituted a "double-discounting for the same downtown location-related walk, transit and bicycle related factors as had already been discounted. In response, the City has revised the analysis of the "baseline" and "baseline plus project" scenarios to eliminate the double-discounting in those scenarios. However, the response fails to revise the "cumulative" scenarios to eliminate the double-discounting or provide a reasonable explanation of why the double-discounting should be contemplated. In these regards, the response is inadequate.

Response to Comment G-11: In our original comments on The Metropolitan Project DEIR and in our comments on other project DEIR's in downtown Sacramento of about that same period, we observed that the City had too readily classified the significant project and cumulative impacts on the freeway system as "unavoidable" without the good faith effort to identify feasible mitigation required by CEQA. In response, the City consulted with Caltrans and, to the City's apparent surprise, Caltrans identified mitigation proposals that Caltrans considered feasible. Those mitigations include:

- Widening the Interstate 5 bridges of the American River north of downtown to provide an additional standard lane in each direction and re-establish standard shoulders.
- Two high-occupancy vehicle lane (HOV) projects on I-5 serving downtown Sacramento from the north and south, with HOV lanes from Garden Highway to the I-80 HOV lanes with direct connections and HOV lanes from the U.S. 50 interchange to Elk Grove Boulevard.

The City disclosed those Caltrans-proposed mitigations as response-to-comment in the FEIR for 800 K & L along with dismissive rationalizations for not considering the proposals as project mitigations and for continuing to regard the significant project and cumulative traffic impacts on the freeway system as "unavoidable".¹ The City included the identical dismissive discussion of the Caltrans mitigation proposals in the mitigation analysis section of the DEIR for the 500 Capitol Mall project (see DEIR pages 5.6-39 through 5.6-41). Now it again includes the same dismissive rationalization in this FEIR for The Metropolitan Project. However, this analysis of the mitigation and the conclusory assessment that the significant traffic impacts are "unavoidable" is simply an improper evasion of the CEQA obligation to mitigate significant impacts and completely ignores facts relevant to the issue that have been known to the City as long ago as November, 2006. In failing to address facts it has had knowledge of for more than nine months prior to the circulation of The Metropolitan FEIR, the City has acted improperly relative to its obligations under CEQA.

In its November 27, 2006 letter of comment on the 500 Capitol Mall DEIR, Caltrans forcefully and thoughtfully disputes the City's continued characterization of the significant project and cumulative impacts on the freeway system as "unavoidable". The following sections summarize Caltrans comments in the November 27, 2006 letter, summarize the City's response in the FEIR and highlight the critical inadequacies in the City's responses.

500 Capitol Mall Comment and Response 5-3: Caltrans states that the significant impacts are not unavoidable, that there are feasible measures to mitigate the significant impacts and

¹ See Comment D-13 at page 4-33 and Response-to-Comment D-13 at pages 4-83 through 4-85 of the Final Environmental Impact Report for the 800 K & L Streets Project.

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that the subject project as well as other downtown projects can be required to make nexus-based fair share fee contributions to the mitigation.

The City's response in the current FEIR (Response to Comment 5-3) asserts that Caltrans and the City have no authority to impose fees to pay the cost of freeway improvements and that, without detailed plans for improvements in hand, nexus-based fees cannot be reasonably compiled.

This response is simply a non-factual effort to dodge a CEQA responsibility to mitigate that the City evidently wishes to enable its downtown projects to evade. Caltrans has the authority and procedural mechanisms in place to work with other agencies to develop mitigation projects on the State highway system. Furthermore, most nexus-based fee structures are established based on conceptual designs, well before detailed engineering plans of the improvements have been completed.

500 Capitol Mall Comment and Response 5-4: The Caltrans November 27, 2006 letter of comment asserts that adequate improvement plans and costs have been identified for purposes of establishing a nexus-based mitigation fee system. The City's response (Response to Comment 5-4) states that the proposed mitigations have not been subject to CEQA review, are not part of an adopted Caltrans capital improvement plan, are of "uncertain" feasibility and desirability, and that the proposal that the City adopt a mitigation fee structure to (in part) fund them would pre-ordain the outcome of any future CEQA review of the mitigation projects.

These objections in the City's response lack foundation. Transportation mitigations are often proposed prior to completion of CEQA review of the proposed mitigation and there is no CEQA requirement that a mitigation proposal must have already received CEQA clearance to be considered as mitigation. Caltrans is the State agency responsible for freeway construction and maintenance and Caltrans, the most knowledgeable agency, evidently has reasonable expectation that the proposed mitigation improvements are feasible. Given that, the City must document compelling evidence of infeasibility to label the proposals "infeasible" or of "uncertain feasibility"; the City has provided no such compelling evidence. Given the extensive significant project and cumulative traffic impacts that the project and downtown development will cause and that will affect all the public using the central area freeway system as disclosed in the FEIR (even despite its flawed existing traffic data base as described above), the inherent desirability of the proposed mitigations are obvious. The City must identify explicit and significant adverse consequences, which it has not done, to characterize the desirability of Caltrans mitigation proposals as "uncertain".

Finally, the City's statement that creating a mitigation fee structure to fund the freeway mitigation proposals would pre-ordain the outcome of any CEQA review is pure nonsense. Not only does it challenge the integrity of a responsible state agency, Caltrans, and the CEQA process; it runs counter the conventional practice re environmental clearance of most major transportation projects in California. Most State highway improvement projects, most major highway and transit projects of "self-help" sales tax counties (such as local Measure A in Sacramento County) and most transportation improvement programs funded by development impact fee structures have the projects identified and programmed for funding long before project development reaches a stage where CEQA review is performed. If the

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City's objection on this point were taken seriously, it would bring a halt to virtually all major transportation improvements in California.

500 Capitol Mall Comment and Response 5-5: In this comment, Caltrans describes its opinions regarding the feasibility of the proposed mitigation projects. The City's response strangely addresses completely different issues. It states the obvious – that it does not have a nexus-based fee structure in place to address freeway impacts of downtown development, a response that is also immaterial since *the essence of Caltrans overall comments in the matter is that the City should adopt the appropriate ordinances for such a fee structure so that downtown development can mitigate its significant traffic impacts.*

The response also claims that the mitigation improvements cannot be accomplished in a reasonable time and that therefore the City is not required to consider the mitigation measures Caltrans proposes. However, the City's claim that the mitigation cannot be accomplished in a reasonable time is contrary to fact, since the 7 to 10 year time frame for the projects in the MTP is entirely consistent with the 2013 time frame in the City's "near term" cumulative analysis.

500 Capitol Mall Comment and response 5-6: In this comment Caltrans notes that the HOV lanes including the American River Bridge widening are assured of funding through construction in the MTP. In its response, the City cites what it claims is a discrepancy between Caltrans current cost estimate and the cost estimate in the MTP as an uncertainty that makes it impossible to adopt a nexus-based fee to help implement the proposed mitigation. However, the City's response misrepresents the situation. *There is no confusion about the overall funding needed to implement the proposed mitigations. Caltrans cost estimate is the current cost estimate that the City would need to consider in development of a nexus-based fee.* It is commonplace for cost estimates made after additional design development has occurred to be different from the "place-holder cost estimates" that are initially employed when a project concept is first identified for funding in a capital improvement plan.

500 Capitol Mall Comment and Response 5-7: Caltrans comment notes that the HOV projects have preliminary approval for federal funding through construction and that funding is virtually certain as long as the ordinary sequential process steps in project development (including CEQA review) are followed. The City response attempts to characterize that funding certainty as an uncertainty.

The response attempts to characterize HOV lanes as unsafe when fact is that Caltrans, the Federal Highway Administration and the American Association of State Highway and Transportation Officials (AASHTO) have design standards for HOV lanes that they consider make HOV lanes reasonably safe for public use.

The City response also attempts to characterize the HOV lanes as being potentially counter to City policy to encourage use of public transit and other non-auto transportation modes. This absurd suggestion ignores the fact that the preponderance of carpool users (HOV lane users) are long distance travelers (hence HOV lanes would by no stretch of the imagination affect the choices of those who might walk or use bicycle) and are travelers in corridors or with origin-destination pairs that are not well served by transit (hence unlikely to use transit in any case). The response also ignores the fact that HOV lanes are a benefit to transit in