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that buses can also use the HOV lanes to provide patrons with travel times more competitive with those achievable via single occupant autos.

The City response on this item closes with the irrelevant conclusory opinion that freeway mainline improvements such as the proposed mitigations should be funded by combinations of federal, state and local financing mechanisms (such as local Measure A) and notes that the MTP and MTIP have not heretofore contemplated use of development impact fees for freeway mainline improvements. The response fails to note that nothing precludes the use of impact fees for such purposes.

500 Capitol Mall Comment and Response 5-8: Caltrans comment responds to the incorrect statement in the DEIR that state and federal funds available to the HOV lane projects may be insufficient to fund the portion of project costs not attributable to fair share costs of downtown development projects and points out that local measure A is funding 50 percent of the cost of the projects. The City's response does not respond on point, but instead advances the notion that because the 500 Capitol Mall project and its tenants pay their fair share of federal, state and local taxes, requiring the project to pay an impact fee to fund a fair share of the freeway mitigation would require the applicant to pay a disproportionate share of funding for the improvements.

The City response is pure nonsense. If a nexus relationship between causation of need for improvements and proportionate fair share to fund those improvements can be established, then under California law development impact fees can be imposed. It is irrelevant that the project sponsor and its tenants pay their federal, state and local taxes or that federal, state and local funds are used to fund the public's proportionate share of the improvement costs that are not directly attributable to readily identifiable development impacts. We note that no similar rationalization about disproportionate charging troubled the City when it proposed to require that the applicant pay its fair share for the cost of retiming signals at impacted intersections downtown or the fair share of intersection mitigation improvements such as those at 3rd and L Streets. The City's position on re mitigation fees for state highway improvements is inconsistent with its own mitigation fee impositions for traffic mitigations on roadways under local jurisdiction.

500 Capitol Mall Comment and Response 5-9: Caltrans comment is that it has provided cost estimates sufficiently certain for estimating costs in a nexus-based mitigation fee program and that the Downtown Traffic Study used in the DEIR provides a basis for determining the project's fair shares.

The City's response is off-point, stating that there is no evidence that the mitigation improvements will actually be constructed. The response is also non-factual, since Caltrans has provided ample evidence that the portions of project cost not funded by mitigation fees will be funded by State, federal and other local funds. The response also repeats the incorrect statement that the mitigations would not be timely. Since the subject freeway mitigations can be constructed within the 2013 time frame of the FEIR's near term cumulative analysis, they are clearly timely.

500 Capitol Mall Comment and Response 5-11: In this comment Caltrans summarizes its position that the City's characterization of the freeway traffic impacts as "unavoidable" is

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inaccurate because there are feasible mitigations and that nexus-based proportional share funding contributions from the subject project and other downtown projects are a logical and appropriate mitigation. The City responds by reference to its responses 5-4, 5-5 and 5-6 with the added unsubstantiated observation that there is no evidence that the proposed freeway mitigation projects would reduce the impact of the subject development project to less than significance. This conclusory observation, unsupported by any analysis, highlights the critical deficiency of the FEIR since it is the City's obligation as Lead Agency to analyze the potential mitigations in order to determine whether they would be effective. The City has performed no such analysis.

Given the City's faulty response on the freeway mitigation issue, our interest is drawn to the other comments of Caltrans and the City's responses to them. In particular, Caltrans made a comment now labeled Comment C-3e that indicates the volumes represented as "existing conditions" in the DEIR average, for the downtown freeway system links, 37 percent lower than Caltrans counts of those links at the time the DEIR and the Downtown Traffic Study on which it is based were in preparation

The City's response with regard to 'existing' traffic volumes (Response C-3e) is that freeway mainline and ramp volumes provided by Caltrans were the basis and does nothing to update the analysis to use correct "existing" volumes. The response does not indicate how the mainline and ramp data was "provided" by Caltrans. We have learned from Caltrans officials that City's consultants simply downloaded obsolete traffic volumes published on the Caltrans internet web site (in which case, depending when the data was obtained, it would be one to two years old) rather than directly contacting responsible Caltrans officials and obtaining the latest current count data as would be expected in a major study like the Downtown Traffic Study. However, regardless of how the City obtained and manipulated the freeway mainline and ramp data it used in the study, Caltrans is the ultimate authority on count data for the freeway and ramp system, and if Caltrans states that the DEIR's representation of existing traffic on the freeway and ramp system is significantly low, then the DEIR is incorrect and its existing conditions traffic database is significantly low.

The responses to comments C-3f through C-3i explain that traffic forecasts used in the DEIR for the various future scenarios without the new downtown project(s) were developed by adding the *differential* between the current year and future year (corresponding to the scenario) SACMET transportation model forecasts to the existing traffic estimate. It also indicates that the traffic forecasts for the future scenarios that include the new downtown projects were developed by adding both the current-to-future year SACMET model *differentials* and the estimates of new downtown development to the original existing traffic estimate. Hence, because all of the future scenarios with or without downtown development are developed by adding increments of estimated regional traffic growth (from the SACMET model) and estimates of traffic growth due to the downtown project(s) to the estimate of existing traffic, *if the study's estimate of existing traffic on the State Highway system is significantly understated, as Caltrans says it is, then the traffic in all of the forecast scenarios is significantly understated and the extensiveness of the significant impacts of the project on the State Highway system are also significantly understated.*

This is illustrated in several ways. Consider the Freeway Mainline Operations analysis. If all the existing freeway segment volumes are each incremented by 37 percent – the average

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percentage Caltrans indicates the DEIR has underreported the freeway segment volumes – one finds the following for the AM analysis:

- Two of the freeway segments the DEIR reports at LOS B are at LOS C,
- Five of the segments the DEIR reports at LOS C are at LOS D,
- Two of the segments the DEIR reports at LOS C are at LOS E,
- Three of the segments the DEIR reports at LOS D are at LOS F, and
- Two of the segments the DEIR reports at LOS E are at LOS F.

If one adjusts the "existing" PM freeway segment volumes by the same percentage as Caltrans says the DEIR volumes are low, one finds somewhat lesser differential because so many of the freeway segments are already at LOS F:

- Three of the freeway segments the DEIR reports at LOS B are at LOS C,
- One segment the DEIR reports at LOS C is at LOS D,
- One segment the DEIR reports at LOS C is at LOS E, and
- One segment the DEIR reports at LOS D is at LOS F.

Clearly, the DEIR and now the FEIR has reported more favorable existing freeway conditions than the traffic count data Caltrans believes to be correct indicates.

Problems with the existing freeway segment count information cascade into the analysis of the proposed project and other future development in downtown. If one makes the same adjustment to the existing freeway segment volumes by the average percentage Caltrans indicated the DEIR existing freeway volumes are reported low, the analysis of freeway segments for the 'Baseline' and 'Baseline plus project' scenarios indicated on Table 6.6-14 would exhibit the following differences. In the AM analysis:

- Two of the freeway segments the DEIR reports at LOS B would be at LOS C,
- Four segments the DEIR reports at LOS C would be at LOS D,
- Four segments the DEIR reports at LOS C would be at LOS E,
- Three segments the DEIR reports at LOS D would be at LOS F, and
- One segment the DEIR reports at LOS E would be at LOS F.

In the PM analysis:

- One segment the DEIR reports at LOS B would be at LOS C,
- Four segments the DEIR reports at LOS C would be at D,
- One segment the DEIR reports at LOS C would be at E, and
- One segment the DEIR reports at LOS D would be at F.

The DEIR and now the FEIR is clearly underreporting the extent and severity of deficient freeway segment conditions in the future scenarios.

City staff may claim that the DEIR and FEIR have already identified that the project has significant and unavoidable impacts on the State Highway system and that, in light of this finding, the differences in existing traffic data are inconsequential whether Caltrans or the DEIR existing traffic representation is correct and the DEIR/FEIR remains adequate in its current state. However, such a claim is presumptive that public policy decisionmakers will, if they do not deny the project based on the significant and unavoidable impacts, adopt findings of overriding significance and approve the project *regardless of how severe* the project's significant and unavoidable impacts are.

The differences in the traffic data identified by Caltrans implies highly significant differences in the severity and duration of gridlock on the State Highway system serving downtown

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Sacramento. While it is conceivable that a responsible Lead Agency might make findings of overriding considerations to approve a project (or group of projects) that cause elements of the State Highway system serving downtown to operate marginally worse than thresholds of acceptable functionality for a brief period of time, it does not necessarily follow that the Lead Agency would reach the same conclusion if they knew that the gridlock impact on the State Highway system would extend over a period of hours. In failing to resolve the State Highway traffic issue and correct any consequent errors in the forecasts, staff deprives Lead Agency policy decisionmakers of adequate information, and consequently discretion, when the DEIR/FEIR fails to distinguish a significant impact that somewhat exceeds functionality tolerances on the state highway system from a significant impact that implies gridlock over an extended period of hours. Hence, without resolving the issue of the existing traffic data on the State Highway system, the FEIR is inadequate as an information document under CEQA.

Caltrans comments on the inaccuracy of the existing freeway data led us to make consistency checks with regard to other elements of the existing traffic data base. Our review of the data in the DEIR's representation of existing intersection traffic counts reveals instances where outbound traffic from one intersection is significantly different from inbound traffic to the next adjacent intersection, although there is no land use between the two intersections that would add or subtract traffic. The following locations are of concern:

- Southbound on Fifteenth Street between W and X Streets. A summation of the turning traffic movements presented on DEIR Figure 5 shows that in the AM peak hour southbound traffic on Fifteenth Street departing south from its intersection with W Street (Intersection 39 on the figure) is 15 percent higher (790 vehicles versus 686) in the AM peak and 11 percent higher in the PM peak (1965 versus 1767) than the sum of the traffic movements southbound on 15th approaching the intersection with X Street (intersection 40 on the figure). There is no land use or street between the two referenced intersections that could account for traffic being added or subtracted between them. Clearly, the existing data is inconsistent and is so by enough traffic to cause significant differences in LOS computations.
- A similar circumstance occurs on J Street between its intersections with 29th and 30th Streets (Intersections 49 and 50 respectively on Figure 5). The sum of the eastbound traffic movements proceeding eastbound on J from its intersection with 29th in the AM peak is 11 percent higher than the eastbound volume on J that approaches 30th (1041 versus 936), an inconsistency great enough to affect LOS computations. There is no land use or street between the two referenced intersections that could account for traffic being added or subtracted between them.

These instances of critical data inconsistency, both located on major streets that are thresholds to the freeway system, demonstrate that the problems with the FEIR's representation of existing traffic volumes is not limited to the freeway system alone; it occurs on key surface streets as well. The whole issue of having an adequate representation of existing traffic conditions must be resolved before the EIR can be certified.

Conclusion

This completes my comments on the Metropolitan FEIR. For the above reasons, I believe the document is inadequate relative to Transportation/Traffic impacts.

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Sincerely,

Smith Engineering & Management
A California Corporation



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